

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
Defender Services
SUMMARY STATEMENT OF ACCOUNT REQUIREMENTS

Fiscal Year 2025 Appropriation	\$1,450,680,000
Fiscal Year 2026 Appropriation Request	\$1,766,010,000
Requested Increase from Fiscal Year 2025 Appropriation	\$315,330,000

APPROPRIATION LANGUAGE

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
DEFENDER SERVICES

For the operation of Federal Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under 18 U.S.C. § 3006A and 18 U.S.C. § 3599, and for the compensation and reimbursement of expenses of persons furnishing investigative, expert, and other services for such representations as authorized by law; the compensation (in accordance with the maximums under 18 U.S.C. § 3006A) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of expenses of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. § 1875(d)(1); the compensation and reimbursement of expenses of attorneys appointed under 18 U.S.C. § 983(b)(1) in connection with certain judicial civil forfeiture proceedings; the compensation and reimbursement of travel expenses of guardians ad litem appointed under 18 U.S.C. § 4100(b); and for necessary training and general administrative expenses, [\$1,450,680,000]\$1,766,010,000 , to remain available until expended.

Based on enactment of the FY 2025 Full-Year Continuing Appropriations and Extensions Act (P.L. 119-4), the judiciary’s starting point for developing its FY 2026 budget request reflects bill language and appropriations levels enacted in the FY 2024 Financial Services and General Government appropriations bill (division B, title III, P.L. 118-47).

**SUMMARY OF REQUEST
DEFENDER SERVICES
FISCAL YEAR 2026
(Dollar amounts in thousands)**

Fiscal Year 2026 Resource Requirements:

<u>Page</u>		<u>FTE</u>	<u>Amount</u>
	Fiscal Year 2025 Assumed Obligations	3,445.0	1,512,577
	Less Encumbered Carryforward from FY 2024 into FY 2025	-	-
	Fiscal Year 2025 Assumed Obligations Excluding Encumbered Carryforward	3,445.0	1,512,577
	Less Unencumbered Available Carryforward from FY 2024 into FY 2025	-	(51,897)
	Less Prior year Recoveries Available in FY 2025	-	(10,000)
	Fiscal Year 2025 Appropriation	3,445.0	1,450,680

Adjustments to Base to Maintain Current Services:

A. PERSONNEL

Pay and Benefit Adjustments

	1. Annualization of 2025 Pay Adjustments		
5.23	a. Federal Pay Adjustment (2.0% for three months)	-	3,126
5.23	b. Panel Attorney Capital Rate Adjustment (from \$220 per hour to \$223 per hour)	-	320
5.24	c. Panel Attorney Non-capital Rate Adjustment (from \$172 per hour to \$175 per hour)	-	5,985
5.24	2. Promotions and Within-grade Increases	-	4,711
	3. Benefits Increases		
5.24	a. Health Benefits	-	5,676
5.24	b. FICA Adjustment	-	572

B. OTHER ADJUSTMENTS

General Inflationary Adjustments

5.24	4. Inflationary Increases for Contracts, Services, Supplies, and Equipment	-	8,826
5.25	5. Inflationary Increase in GSA Space Rental Costs	-	1,399

Workload and Financing Adjustments

	6. Change in Projected Panel Attorney Requirements		
5.25	a. Change in Projected Panel Attorney Workload	-	11,984
5.25	b. Restoration of FY 2025 Panel Attorney Payment Base	-	92,640
5.25	c. Panel Attorney Deferred Payments from FY 2025	-	92,640
5.26	7. Increase in Appropriation Needed to Maintain FY 2025 Requirements Due to a Decrease in Carryover Funding	-	41,897

	Subtotal, Adjustments to Base to Maintain Current Services	-	269,776
	Total Current Services Appropriation Required	3,445.0	1,720,456.0

C. PROGRAM CHANGES:

	8. Change in Positions for Projected Workload (re-request)		
5.26	a. Federal Defender Organization Staffing Formula Changes	44.0	13,108
5.26	b. National Position	0.5	122
5.27	9. Coordinating Discovery Attorney Contract (re-request)	-	730
5.27	10. Training Operations (re-request)	-	1,610
5.27	11. Major Physical Infrastructure Requirements (partial re-request)	-	5,000
	12. Change in Positions for Projected Workload		
5.27	a. Federal Defender Organization Staffing Formula Changes	59.0	18,498
5.28	b. National Positions	0.5	123
	13. Information Technology (IT), Cybersecurity, and IT Modernization Requirements		
5.28	a. Multiyear Plan Requirements Cybersecurity and IT Modernization	-	1,800
5.28	b. Other IT Requirements	-	3,773
5.29	14. Training Operations	-	540
5.29	15. Reimbursable IT Positions	-	250
	Subtotal, Program Changes	104.0	45,554
	Total Fiscal Year 2026 Appropriation Required	3,549.0	1,766,010
	Total Appropriation Increase, Fiscal Year 2025 to Fiscal Year 2026	104.0	315,330

D. FINANCING THE FISCAL YEAR 2026 REQUEST:

	Total Appropriation Required	3,549.0	1,766,010
5.30	16. Anticipated Carryforward from FY 2025 into FY 2026	-	20,000
	Estimated Obligations, Fiscal Year 2026	3,549.0	1,786,010

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES DEFENDER SERVICES Obligations by Activity (\$000)			
Activity	FY 2024 Actual	FY 2025 Enacted	FY 2026 Request
CJA Representation & Related Expenses Obligations	1,483,524	1,488,618	1,759,219
Program Administration Obligations	19,671	23,959	26,791
Direct Obligations	1,503,195	1,512,577	1,786,010
Unencumbered Unobligated Balance, Start of Year	(84,066)	(51,897)	(20,000)
Encumbered Unobligated Balance, Start of Year	(3,990)	-	-
Total Unobligated Balance, Start of Year:	(88,056)	(51,897)	(20,000)
Deposits and Other Adjustments:			
Prior Year Recoveries	(15,883)	(15,000)	(10,000)
Anticipated Financial Plan Savings	-	(15,000)	-
Unobligated Balance, End of Year:	51,897	20,000	10,000
Less Offsetting Collections	(473)	-	-
Appropriation	1,450,680	1,450,680	1,766,010

Obligations by Budget Object Class (\$000)

Description	FY 2024 Actual	FY 2025 Enacted	FY 2026 Request
11.1 Full-time Permanent	452,458	480,696	501,504
11.3 Other Than Full-time Permanent	9,108	9,964	10,218
11.5 Other Personnel Compensation	716	743	764
11.9 Personnel Compensation Subtotal	462,282	491,403	512,486
12.1 Personnel Benefits	172,778	185,335	199,123
13.0 Benefits for Former Personnel	1,068	1,114	1,144
21.0 Travel	14,396	16,796	18,311
22.0 Transportation of Things	291	302	322
23.1 Rental Payments to GSA	52,205	55,169	57,867
23.2 Rental Payments to Others	626	653	697
23.3 Communications, Utilities, and Miscellaneous Charges	17,803	15,746	16,082
24.0 Printing and Reproduction	71	73	78
25.0 Other Services	526,046	460,201	677,729
25.3 Other Goods and Services from Federal Sources	11,410	12,841	13,314
26.0 Supplies and Materials	1,774	1,861	1,981
31.0 Equipment	32,487	43,908	47,728
41.0 Grant Payments	209,957	227,175	239,148
Direct Obligations	1,503,194	1,512,577	1,786,010

Full-time Equivalents (FTE) by Activity

Activity	FY 2024 Actual	FY 2025 Enacted	FY 2026 Request
CJA Representation & Related Expenses ¹	3,282	3,434	3,538
Program Administration	11	11	11
Total FTE	3,293	3,445	3,549

¹ The FTE listed are attributable to Federal Public Defender Organization staff.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES
DEFENDER SERVICES
Relation of Obligations to Outlays (\$000)

	FY 2024	FY 2025	FY 2026
	Actual	Enacted	Request
Direct Obligations	1,503,195	1,512,577	1,786,010
Obligated Balance, Start of Year	107,860	128,758	114,039
Recoveries of Prior Year Unpaid Obligations	(13,250)	(15,000)	(10,000)
Change in Uncollected Payments	227	-	-
Obligated Balance, End of Year	(128,758)	(114,039)	(112,242)
Total Outlays	1,469,274	1,512,296	1,777,807
Less Offsets	(3,335)	(5,000)	(5,000)
Net Outlays	1,465,939	1,507,296	1,772,807

GENERAL STATEMENT AND INFORMATION

The right to effective assistance of counsel for persons financially unable to obtain adequate representation is constitutionally mandated. It is a critical component of the criminal justice system and a foundation of liberty in America. The Defender Services appropriation supports the appointment of counsel and other related services required to be provided under the United States Constitution; the Criminal Justice Act (CJA), 18 U.S.C. § 3006A; and other statutes. It also provides for continuing education and training of persons who furnish representational services under the CJA.

The constitutional right to the assistance of counsel is a cornerstone of the criminal justice system. In *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), the United States Supreme Court wrote: “The right of one charged with [a] crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” The mission of the Defender Services program is to ensure the Sixth Amendment right to counsel is available to those who cannot afford to retain counsel and other necessary defense services.

The goals of the Defender Services program are to:

- provide timely appointed counsel services to eligible persons;
- provide appointed counsel services consistent with the best practices of the legal profession;
- provide cost-effective services; and
- protect the independence of the defense function performed by appointed counsel so the rights of individual defendants are safeguarded and enforced.

By fulfilling its mission, the Defender Services program helps to:

- ensure the successful operation of the constitutionally based adversarial system of justice by which both federal criminal laws and federally guaranteed rights are enforced; and
- maintain public confidence in the nation’s commitment to equal justice under law.

The Defender Services account funds the operations of federal defender organizations (FDOs), payments to private attorneys appointed under the CJA, and program administration costs. The fiscal year (FY) 2026 appropriation request of \$1,766.0 million will enable FDOs and private attorneys to accept CJA appointments and retain necessary expert services.

The FY 2026 request will support:

- 258 additional FDO staffing formula positions (the equivalent of 98.0 percent of formula requirements);
- two new formula-based positions for the National Information Technology Operations and Applications Development (NITOAD) branch;
- all projected FY 2026 panel attorney payments and the resources needed to fully redress the significant shortfall in the panel attorney program projected for FY 2025 as a result of the hard freeze of this account;
- two additional information technology (IT) security-related reimbursable positions;
- one additional coordinating discovery attorney contract;
- IT requirements, including cybersecurity and IT infrastructure modernization;
- additional training; and
- major physical infrastructure requirements.

Impact of No-Year Funds and Carryforward Balance on the FY 2026 Request

The judiciary reduces its Defender Services appropriation request using unobligated no-year funds carried forward in this account from prior fiscal years. In FY 2025, \$61.9 million in prior-year unobligated balances (\$51.9 million in unencumbered carryforward and \$10.0 million in prior year recoveries) will be used to finance FY 2025 requirements. This level of carryforward into FY 2025 was greater than initially projected due to cost-savings realized from the FDO hiring freeze in place from July 2023 until February 2024 and lower than projected panel attorney payments.

In developing the FY 2026 request, the judiciary assumes \$20.0 million will carry forward from FY 2025 into FY 2026 to finance FY 2026 requirements. Because the judiciary anticipates having less carryforward funding available in FY 2026, \$41.9 million in funding must be restored to substitute direct appropriations for base expenses previously funded from carryforward balances. The judiciary will advise appropriations subcommittee staff of any changes to this estimate.

The judiciary is appreciative of Congress' support of the Defender Services program, in particular its understanding of the impact carryforward has on the need for appropriated funds from one year to the next.

FDO Staffing Formulas

In FY 2024, revised FDO staffing formulas were implemented to calculate staffing requirements, resulting in more accurate budget requests, efficient spending, and the equitable distribution of resources.

The updated FDO staffing formulas incorporate several improvements to more accurately reflect FDO workload. These include utilization of new case weights, use of a three-statistical-year average for workload drivers (instead of the previous five-year average), and a module to calculate organizational and IT support requirements separately from operational and legal work.

These formulas apply to all FDOs except for the Northern and Eastern Districts of Oklahoma, which are excluded due to unique workload resulting from the Supreme Court’s 2020 decision in *McGirt v. Oklahoma*, which established that the federal government, rather than the state, must prosecute major crimes involving Indian defendants in these jurisdictions for offenses such as murder, rape, sexual assault, and battery. The increased workload due to this decision led to the establishment of a standalone federal defender organization in the Eastern District of Oklahoma in Fall 2021.

TYPES OF COUNSEL

The CJA authorizes the appointment of two types of counsel: attorneys employed by an FDO, and private attorneys appointed to represent clients (these private attorneys are known as “panel attorneys”). Each is described below.

Federal Defender Organizations

The CJA authorizes two types of FDOs: federal public defender organizations (FPDOs), which are part of the judiciary; and community defender organizations (CDOs), which are private, state-chartered, non-profit corporations funded by annual federal judiciary grants.

The CJA allows for, and Judicial Conference Policy recommends,¹ an FDO (either FPDO or CDO) be established in any district (or combination of districts) in which at least 200 CJA appointments are made annually. As of publication, there are 82 FDOs authorized to serve 92 of the 94 judicial districts. The Southern District of Georgia and Eastern District of Kentucky meet the required number of appointments but are not served by an FDO.

¹ [JCUS-SEP 2018](#), p. 39

FDOs are the flagship of federal criminal defense, delivering high-quality representation at a reasonable cost while safeguarding the rights of individuals under the Constitution. FDOs recruit, train, and retain lawyers with skills comparable to those who prosecute criminal matters in U.S. Attorney's Offices (USAOs). Because of their expertise and efficiencies, FDOs provide cost-effective defense services consistent with best practices of the legal profession.

FDO attorneys are available for appointment on short notice, ensuring the rights of the accused are protected and court operations are not disrupted. FDOs also optimize national resources by sharing expertise and best practices with other FDOs and panel attorneys.

FDO staff improve the overall quality of CJA representation within the districts they serve by providing expert advice, training, and other assistance to panel attorneys in complex legal and technical areas, such as sentencing, mitigation, litigation support, and cases involving death penalty issues.

Panel Attorneys

A panel attorney is a private lawyer who serves on a panel of qualified counsel maintained by the district or appellate court and is appointed by the court to represent eligible individuals under the CJA. The CJA specifies that in all judicial districts (including those served by an FDO), private attorneys shall be appointed "in a substantial proportion of the cases." 18 U.S.C. § 3006A(a)(3).

There are three primary reasons for utilizing panel attorneys:

- (1) Ethical standards prohibit appointing FDOs in conflict-of-interest situations (e.g., an FDO is precluded from representing more than one defendant in a multi-defendant case and is disqualified from accepting a new appointment that may present a conflict with the interests of represented clients).
- (2) The workload demands in an FDO may periodically limit the ability of that FDO to accept new representations and maintain professional ethical standards.
- (3) The district is not served by an FDO.

The CJA provides panel attorneys shall be compensated for their services at authorized hourly rates and reimbursed for their expenses. There are many factors which influence panel attorney representation costs, such as the complexity of federal cases, electronic discovery (eDiscovery), and high rates of pretrial detention.

CJA CASELOAD AND WORKLOAD TRENDS

Attorneys appointed under the CJA provide constitutionally required defense services in a variety of complex criminal cases, such as international and domestic terrorism; cybercrime; child exploitation and obscenity; complicated fraud cases (health care, identity theft, public corruption, and bank and investment fraud); environmental crimes; drug cases; immigration matters; human trafficking; and all other federal crimes.

To determine FY 2026 FDO staffing requirements, a three-year average of weighted representations was used including actual caseload data² from statistical years³ (SYs) 2023 and 2024 and projected caseload data for SY 2025.⁴ As shown in the following table, FDO weighted representations⁵ peaked in SY 2020.⁶ Case openings briefly departed from historical trends because of the COVID-19 pandemic, illustrated by the lower SY 2021 weighted representation count. Though SY 2022 through 2024 data suggest a new equilibrium that is reflected in the SY 2025 forecasted total, a shift in prosecutorial priorities, such as a focus on federal capital prosecutions and executions, or a significant rise in immigration cases, may increase caseload beyond what has been forecast using historical data.

² Actual data reported in the FDO Weighted Representations table is based on case weights that were implemented October 1, 2023, and historical values shown are using the current case weights that have been retroactively applied.

³ The FDO SY is from April 1 through March 31 of the following calendar year. For example, SY 2024 started April 1, 2023, and ended March 31, 2024.

⁴ FDO workload forecasts, as with all other judiciary workload projections, are prepared by the AO's Judiciary Data and Analysis Office.

⁵ The traditional FDO staffing formulas use weighted cases opened instead of raw, or unweighted, cases.

⁶ As part of the cyclical FDO staffing formula review, revised case weights were approved for implementation in FY 2024. These weights better capture the magnitude of FDO client representation work. Each set of weights is unique and not directly comparable with past versions.

FDO Weighted Representations							
Workload	2020 Actual	2021 Actual	2022 Actual	2023 Actual	2024 Actual	2025 Projected	2026 Projected
FDO Weighted Representations – Non-capital	151,961	120,426	126,650	122,796	125,984	123,650	121,350
FDO Weighted Representations – Capital Prosecution	1,172	917	1,172	1,070	1,843	1,200	1,200
Total FDO Weighted Representations	153,133	121,343	127,822	123,866	127,827	124,850	122,550
Year-to-Year Change		-20.8%	5.3%	-3.1%	3.2%	-2.3%	-1.8%

New legislation, sentencing policy, and case law as well as advances in technology add to the challenge of providing representation to eligible individuals in federal courts. The Defender Services program must respond to changes in the law, such as those resulting from Supreme Court decisions, amendments to the U.S. Sentencing Guidelines, statutory changes, and shifting federal law enforcement priorities by quickly redirecting limited resources. Additional information about how shifting law enforcement priorities of the new administration affect resource needs is located in the “Significant Issues” section of this document on page 5.15. Given the workload trends described herein and the need for the Defender Services program to react to known and developing changes to the legal landscape, it is imperative that this constitutionally-mandated program be funded at the requested level.

In 2023, the United States Sentencing Commission (USSC) submitted amendments to the federal sentencing guidelines, including [Amendment 821](#), which took effect November 1, 2023. Amendment 821 affects a defendant’s criminal history by giving retroactive effect to Part A and subpart 1 of Part B, meaning an incarcerated individual could petition a court for a recalculation of their sentence based on the revised guidelines. Historically, FDOs have litigated most of the retroactive sentencing guidelines cases, opening thousands of cases in the applicable statistical years, increasing national caseload totals during those years. Through September 2024, FDOs opened over 14,800 Sentencing Guidelines Retroactivity cases for motions filed in response to Amendment 821. In its October

2024 [Retroactivity Reports](#), the USSC reported over 22,000 motions for retroactive application under Part A and Part B have been filed.

The chart below summarizes the annual number of representations in which panel attorneys were or are projected to be paid.⁷ Like FDOs, panel attorney representations increased in SY 2019 and SY 2020, then decreased due to the COVID-19 pandemic. The slowdown in prosecutions during the pandemic, combined with a decline in immigration prosecutions, resulted in decreased SY 2021 panel attorney representations. From SY 2022 to SY 2024, total panel attorney representations remained relatively steady. They are projected to increase slightly in both SY 2025 and SY 2026. To determine FY 2026 panel attorney requirements, SY 2026 projected workload was used (66,300 representations).

Workload	2019 Actual	2020 Actual	2021 Actual	2022 Actual	2023 Actual	2024 Actual	2025 Projected	2026 Projected
Panel Attorney Unweighted Representations	89,079	93,189	64,326	62,866	62,970	63,986	64,900	66,300
Year-to-Year Change		4.6%	-31.0%	-2.3%	0.2%	1.6%	1.4%	2.2%

The following chart reflects panel attorney representations and payments for FY 2023 and FY 2024, by offense type. Panel attorney payments decreased by \$3.4 million (0.7 percent) from \$441.4 million in FY 2023 to \$438.0 million in FY 2024. Total panel attorney representations increased by 78 (0.1 percent) from 63,210 in FY 2023 to 63,288 in FY 2024. Most offense types declined from FY 2023 to 2024 except for immigration cases which increased by 2,516 representations (25.8 percent). This increase offsets declines in other offense types from FY 2023 to FY 2024. In FY 2024, the \$3.4 million decrease in panel attorney payments is mostly due to lower capital habeas and capital prosecution costs.

⁷ CJA Panel representations are based on vouchers paid during the 12-month period (as reported from eVoucher, the electronic voucher management system used by court-appointed counsel to submit vouchers and judicial officers to review and approve payment of CJA vouchers). If no voucher is paid, no representation is counted.

Offense Type	FY 2023 Reps	FY 2023 Payments (\$ in millions)	FY 2024 Reps	FY 2024 Payments (\$ in millions)
Capital Prosecutions	594	\$38.3	528	\$32.8
Drugs	17,534	\$153.9	16,615	\$157.6
Immigration	9,751	\$24.6	12,267	\$25.5
Fraud	2,833	\$35.4	2,762	\$35.6
Weapons	4,702	\$40.0	4,285	\$38.9
Capital Habeas	280	\$12.2	242	\$8.2
Appeals	4,334	\$29.5	4,201	\$30.1
Criminal-Other	23,182	\$107.5	22,388	\$109.3
Total	63,210	\$441.4	63,288	\$438.0

FISCAL YEAR 2025 APPROPRIATIONS

Based on enactment of the FY 2025 Full-Year Continuing Appropriations and Extensions Act (P.L. 119-4), the judiciary's starting point for developing its FY 2026 budget request reflects bill language and appropriations levels enacted in the FY 2024 Financial Services and General Government appropriations bill (division B, title III, P.L. 118-47).

The FY 2025 enacted level for Defender Services is a hard freeze at the FY 2024 appropriations level, which will only fund onboard FDO staffing levels as of March 2025, and will require deferring approximately ten weeks of panel attorney payments totaling \$92.6 million to FY 2026. In addition, major physical infrastructure projects, an additional coordinating discovery attorney contract, and critical training enhancements cannot be supported within the FY 2025 hard freeze level.

SIGNIFICANT ISSUES FOR FISCAL YEAR 2026

FDO Staffing

The FY 2026 budget request includes 260 additional FDO positions. Of the 260 positions, 258 are FDO staffing formula-generated positions (representing 98.0 percent of formula requirements, an increase from the 93.0 percent of formula requirements funded in FY 2025), and two are new national positions based on the NITOAD branch formula. These staffing increases are necessary to ensure that federal defender organizations meet their constitutional mandate to provide effective assistance of counsel under the Sixth Amendment.

Law Enforcement Priorities of New Administration

Law enforcement priorities of the new administration may significantly increase workload for FDOs and CJA panel attorneys. The Attorney General has indicated that the administration intends to prioritize resources to investigate and prosecute transnational organized crime, cartels, gangs, border and immigration offenses, human trafficking and smuggling, fentanyl and opioid crimes, and terrorism. Prosecutors are expected to charge and pursue the most serious, readily provable offenses. These prosecutorial changes will require greater resources for the Defender Services program.

Increased costs associated with federal capital cases are also anticipated in light of the Attorney General's February 5, 2025, memorandum which lifted the temporary moratorium on federal executions and directed prosecutors to seek the death penalty for the most serious, readily provable offenses. The U.S. Department of Justice (DOJ) will reevaluate prior decisions not to seek the death penalty in pending capital-eligible cases (*i.e.*, death-eligible cases that have not yet resulted in a conviction) to assess whether additional capital charges are appropriate. DOJ's Office of Legal Policy staff were directed to review all internal policies and procedures concerning capital crimes, propose revisions to the Deputy Attorney General, and evaluate whether the Federal Bureau of Prisons should readopt the July 2019 lethal injection execution protocol or add other methods of execution.

Given the timing of formulating the judiciary's FY 2026 budget request and the recent transition to the new administration, the judiciary is not requesting resources in its initial FY 2026 request to address workload associated with changes in DOJ's law

enforcement priorities. The judiciary will closely monitor workload and Defender Services resource requirements and advise the Appropriations Committees of any additional FY 2026 resource needs in a budget re-estimate.

Reimbursable Positions

The FY 2026 request also includes two additional reimbursable positions to allow the AO's Defender Services Office (DSO) to address critical IT needs: an Information Security Officer (ISO) and a Director of Information Technology. These positions address concerns and recommendations made in the Judiciary IT Security Task Force Report, the Judiciary IT Modernization and Cybersecurity Strategy, the Judiciary Information Security Framework, and the National Institute of Standards and Technology requirements adopted by the judiciary as information systems best practices.

Cybersecurity and IT Modernization Efforts and other IT Requirements

Consistent with the rest of the judiciary, the Defender Services program is implementing a multiyear initiative for a comprehensive system modernization and IT services and security improvements. This plan, which covers FYs 2022-2027, was submitted to Congress and the resources associated with each year of the plan are included in the judiciary's annual budget requests.

Multiyear Plan Requirements

The FY 2026 request for the multiyear Cybersecurity and IT Modernization Plan is \$1.8 million. The table below provides funding details for FY 2022 to FY 2026.

Defender Services, Multiyear Cybersecurity and IT Modernization Plan Requirements¹

FY 2026 Request	(\$ in millions)
FY 2022 Approved	\$4.5
FY 2023 Approved	\$8.0
FY 2024 Approved	\$9.9
FY 2025 Approved	\$2.9
FY 2025 Base Total	\$25.3
FY 2026 Request	\$1.8
FY 2026 Request Total	\$27.1

¹An additional \$1.0 million is anticipated to be requested in the Defender Services FY 2027 budget request to complete the Multiyear Cybersecurity and IT Modernization Plan.

Other IT Requirements

A total of \$3.8 million is requested for other IT requirements beyond the scope of the multiyear cybersecurity and IT modernization plan. These requirements include expert consulting contracts to address cybersecurity vulnerabilities, case related discovery and computer assisted legal research, and increased data analysis capabilities.

Training

The CJA authorizes the use of appropriated funds to train persons furnishing representation pursuant to the statute 18 U.S.C. § 3006A(i). The DSO Training Division supplies substantial training and other resource support for those persons. The FY 2026 request includes funding to address increased training costs and the acquisition of a Continuing Legal Education (CLE) enabled platform. A CLE platform will streamline the process of managing and recording CLE credits by increasing efficiency and reducing administrative burden.

COST-CONTAINMENT INITIATIVES

The judiciary has implemented various cost-containment initiatives where appropriate, including in the Defender Services program, without compromising its constitutional mandate. Funding decisions are balanced between a keen awareness of federal budget challenges, the need for continuous assessment of existing and potential cost-containment measures across the Defender Services program, and dedication to effective representation by FDOs and CJA panel attorneys. Key cost-containment initiatives include, but are not limited to:

- promoting case budgeting to manage expenditures in capital and other high-cost CJA panel attorney representations;
- employing cost-effective means of handling large and complex discovery in CJA representations;
- collaborating with the DOJ to identify procedures that may reduce costs in death-eligible cases;
- providing distance learning; and
- coordinating with other judiciary and DOJ components about remote detention of pretrial detainees.

Case Budgeting of CJA Panel Attorney Representations

Defender Services funding continues to support 11 circuit case-budgeting attorney positions. These attorneys are assigned to federal judicial circuits across the country and identify cost drivers, monitor case expenditures, assist the courts and CJA panel attorneys with individual case budgeting and voucher review, and, in line with the Defender Services program's goals, promote representation consistent with the best practices of the legal profession.

Discovery Costs

Each year, data associated with individual CJA representations expands in size and complexity. Defense counsel must address several critical issues to manage and review eDiscovery, including the large volume of information, the variety of sources from a multitude of digital devices and locations, proprietary formats, hidden information such as metadata and embedded data, and software and hardware limitations.

Federal defenders and panel attorneys require litigation resources, including national staff, to meet the challenge presented by DOJ's eDiscovery and litigation support capabilities. Even in "simple," single defendant prosecutions, discovery includes electronically stored information (ESI) or eDiscovery extracted from client mobile devices and computers. Video discovery is common and frequently includes officer body-worn camera recordings and cellphone footage. It may also include pole-camera recordings, business security videos, and concealed camera footage. Besides frequently being in proprietary players, which are not easy to open and play on a typical computer, review of video recordings can be complicated because useful context (e.g., who did the recording, participants allegedly captured in the recording, or dates, times, or location of the recording) may not be easily discernable or included. Additional discovery that can be difficult to review include data from cell phone wiretaps, body wires, GPS tracking devices, or other law enforcement surveillance technologies.

To illustrate the volume and complexity of information that defense teams may face, court-appointed defense counsel recently represented 50 people charged with drug trafficking, money laundering, and wire fraud. The USAO prosecuting the 50 individuals filed six separate but related cases against the 50 defendants which were in front of several judges in the jurisdiction. Much of the discovery provided was common to the six multi-defendant cases, but some of the discovery was case- and defendant-specific. For the common discovery, the government provided three separate major productions over the course of a year. The discovery totaled over five terabytes of data. Beside the voluminous number of documents, GPS coordinates, photos, audio, video, and Facebook archive files, there were 37,425 wiretap interceptions and 2,159 jail call recordings. The discovery also included forensic images and

digital reports from 112 devices seized by law enforcement. Over 537 gigabytes of the discovery were suitable to be hosted in an eDiscovery review database, which improved attorney review, but much of the discovery needed to be reviewed through proprietary cellphone forensic players. As frequently happens with large amounts of cellphone data, the discovery productions had viruses and malware which the government had not identified prior to production which then had to be scanned for and neutralized by the defense teams.

Three major cost-containment initiatives are in place to address eDiscovery issues:

- (1) A years' long collaboration between DOJ and the AO (which originated from the DOJ/AO Joint Working Group on Electronic Technology in the Criminal Justice System) continues to address various issues related to eDiscovery and discovery production between the prosecution and the attorneys for defendants charged in federal criminal cases. An update to the *Criminal eDiscovery: A Pocket Guide for Judges* is in progress and expected to be complete by the end of 2025. In addition, the Defender Services National Litigation Support Team (NLST) has worked with DOJ staff to improve discovery management in federal cases.
- (2) Contracts with five national coordinating discovery attorneys (CDAs) are in place to advise panel attorneys and FDOs on cost-effective ways to manage large volumes of documents in the most complex cases to increase the quality of representation. As of October 2024, CDAs had been appointed by federal courts in every circuit to assist CJA counsel in over 117 active cases in more than 45 districts. Because most of these cases are large, multi-defendant prosecutions, CDAs are providing services to 1,339 CJA clients. Funds to support one additional CDA contract are included in the FY 2026 appropriation request.
- (3) The Defender Services program purchased national licenses for software applications and tools to allow for efficient capture, organization, analysis, review, and management of case-related electronic data by CJA panel attorneys and FDO staff, thereby avoiding the higher cost alternative of multiple software purchases for individual cases year after year.

Improvement in DOJ Procedures for Making Decisions Not to Seek the Death Penalty in Death-Eligible Cases

Until DOJ formally notifies counsel and the court that it does not intend to seek the death penalty for a death-eligible defendant, defense counsel must assume that the death penalty will be pursued. Pending DOJ's decision, the judiciary is obligated to bear the

substantial cost of two statutorily-required, capital-qualified defense counsel that are compensated at the higher capital panel attorney hourly rate of \$223, as of January 1, 2025. These attorneys must undertake the intensive, time-consuming work to advocate on behalf of the CJA client and present evidence that the death penalty should not be sought, as well as prepare for a capital trial and sentencing proceeding. An early decision by the Attorney General *not* to seek the death penalty could achieve significant cost savings for the Defender Services program, DOJ, and the courts. This is especially important given the anticipated workload demands and increased costs associated with an upturn in federal capital prosecution cases.

The previous administration modified its Death Penalty Authorization Protocol to streamline and accelerate the process by which it makes a formal determination that the death penalty will *not* be sought in cases where the local U.S. attorney recommends against seeking the death penalty, as well as other changes. However, the Attorney General's February 5, 2025, memorandum suspended the previous administration's revisions while the changes are reviewed and assessed for retention, amendment, or rescission. The Defender Services program will continue to collaborate with DOJ and support efforts that could reduce costs in federal capital prosecution cases.

Distance Learning

Consistent with the CJA's authorization of the use of appropriated funds to train persons furnishing representation, DSO provides training and other resource support to CJA panel attorneys and FDO staff.

While in-person, hands-on training remains necessary, in recent years DSO has begun to leverage its cost-effective distance learning. Through webinars and other virtual sessions, DSO has been able to offer timely, interactive training on rapidly evolving areas of the law and work-force management. In FY 2024, DSO presented 15 distance learning events attended by 5,808 participants. Virtual courses leverage educational opportunities by greatly increasing audience size and through self-paced recordings that may be accessed as necessary, resulting in a much greater national impact than may be achieved solely through in-person events.

Through its website www.fd.org, DSO Training Division maintains a library of CJA counsel training materials including 238 on-demand videos. Many FDOs are using these recorded webinars for local panel attorney training, further increasing the reach of training without additional cost. FDO staff also have access to the Judiciary Online University and Blackboard online courses.

Remote Detention Working Group

A joint AO/DOJ Remote Detention Working Group (RDWG) was established to enhance the lines of communication between the judiciary and components of the DOJ, including the United States Marshals Service and the Bureau of Prisons, around problems created by the remote pretrial detention of individuals charged with federal criminal offenses. Housing individuals detained pretrial at significant distances from defense counsel and federal courthouses has substantial operational and cost implications for the Defender Services program.

Additionally, remote pretrial detention raises fundamental concerns about the quality of representation provided under the CJA because often defense counsel is unable to meet and effectively communicate with their clients when facilities have inadequate confidential meeting spaces, telephone lines, video-conferencing technology, or means for reviewing eDiscovery.

The RDWG has focused on reducing detention rates as a strategy to combat remote detention, and, for those defendants who are detained pretrial, on improving conditions at detention facilities including providing detainees with better access to counsel and eDiscovery.

JUSTIFICATION OF CHANGES

The FY 2026 request for the Defender Services account is \$1,766.0 million, an increase of \$315.3 million, or 21.7 percent, over the FY 2025 appropriations level of \$1,450.7 million. Of the \$315.3 million increase, \$41.9 million is needed to maintain FY 2025 requirements due to a projected decrease in carryforward funding.

The request will fund adjustments to base and 260 additional staffing formula positions to allow the judiciary to support workload demands and implement CJA-related policies approved by the Judicial Conference. The request also funds projected deferred panel payments from FY 2025 (\$92.6 million), as well as restoring the FY 2025 panel attorney base (\$92.6 million).

This request also funds physical infrastructure needs, an additional coordinating discovery attorney contract, increased training costs, two reimbursable positions, and IT requirements, including infrastructure modernization and cybersecurity and IT for the Defender Services program.

ADJUSTMENTS TO BASE TO MAINTAIN CURRENT SERVICES

A. PERSONNEL

Pay and Benefit Adjustments

1. Annualization of 2025 pay adjustments

a. Federal pay adjustment

Requested Increase: \$3,126,000

The requested increase provides for the annualized costs of the 2025 pay adjustment of 2.0 percent, effective January 2025. The requested increase provides for the cost associated with three months of the 2025 pay increase (from October to December 2025) in FY 2026.

b. Panel attorney capital rate adjustment

Requested Increase: \$320,000

The requested funding annualizes the FY 2025 panel attorney capital rate increase from \$220 to \$223 per hour. An increase to the capital hourly rate impacts six months of costs in

FY 2025. The requested increase annualizes this rate increase for the first six months of FY 2026.

c. Panel attorney non-capital rate adjustment

Requested Increase: \$5,985,000

The requested increase annualizes the FY 2025 panel attorney non-capital rate increase from \$172 to \$175 per hour. An increase to the non-capital hourly rate impacts three months of costs in FY 2025. The requested increase annualizes this rate increase for the first nine months of FY 2026.

2. Promotions and within-grade increases

Requested Increase: \$4,711,000

The requested increase provides for promotions and within-grade increases for personnel. The FDO salary plan provides for periodic within-grade increases for staff who receive a performance rating of satisfactory or higher.

3. Benefits increases

a. Health benefits

Requested Increase: \$5,676,000

Based on information from the Office of Personnel Management, health benefit premium contributions are projected to increase by an average of 5.0 percent in January 2025 and 10.1 percent in January 2026. The requested increase annualizes the 2025 premium increase and includes a nine-month provision for the increase anticipated for FY 2026.

b. FICA adjustment

Requested Increase: \$572,000

Based on information from the Social Security Administration, employer contributions to the OASDI portion of the FICA tax increased in 2025. The salary cap for OASDI increased from \$168,600 to \$176,100 in January 2025. The requested amount is needed to pay the judiciary's contribution in FY 2026.

B. OTHER ADJUSTMENTS

General Inflationary Adjustments

4. Inflationary increases for contracts, services, supplies, and equipment

Requested Increase: \$8,826,000

Consistent with guidance from the Office of Management and

Budget, the requested increase of \$8.8 million is required to fund inflationary adjustments of 2.1 percent for operating expenses such as travel, communications, printing, contractual services, supplies and materials, and furniture and equipment.

5. Inflationary increase in GSA space rental costs

Requested Increase: \$1,399,000

This request represents an FY 2026 2.0 percent inflationary increase in the cost of General Services Administration (GSA) space rental charges.

Workload and Financing Adjustments

6. Change in projected panel attorney requirements

a. Change in projected panel attorney workload

Requested Increase: \$11,984,000

The increase is due to a projected change in panel attorney caseload and payment trends. Panel attorney representations are projected to increase from 64,900 in SY 2025 to 66,300 in SY 2026. Caseload and panel attorney payments are subject to variation due to prosecutorial priorities and case complexities. As the projected caseload and payment trends change, the

judiciary will advise the appropriations subcommittee staff of projected changes in the FY 2026 budget re-estimate process.

b. Restoration of FY 2025 panel attorney payment base

Requested Increase: \$92,640,000

The FY 2025 funding level provides \$376.8 million for panel attorney payments, which is \$92.6 million below FY 2025 requirements. The projected workload for FY 2026 requires FY 2025 base funding to be restored to meet panel attorney requirements in FY 2026.

c. Panel attorney deferred payments from FY 2025

Requested Increase: \$92,640,000

The FY 2025 funding level estimates a panel attorney payment shortfall in the amount of \$92.6 million. This shortfall would cause the judiciary to defer panel attorney payments for approximately ten weeks at the end of FY 2025. The amount requested will allow the judiciary to make the deferred payments from FY 2025 in FY 2026.

7. Increase in appropriation needed to maintain FY 2025 requirements due to a decrease in carryforward funding

Requested Increase: \$41,897,000

The Defender Services program reduces its annual appropriation request by applying unobligated no-year funds carried forward from prior fiscal years. In FY 2025, \$61.9 million in available funding was used to finance the Defender Services FY 2025 requirements. For FY 2026 the estimated carryforward is \$20.0 million, a decrease of \$41.9 million in estimated resources. Because the judiciary anticipates having less carryforward funding available, it requests \$41.9 million in direct appropriations to make up the shortfall. The judiciary will revise this line item in the FY 2026 budget re-estimate, as needed.

C. PROGRAM CHANGES

8. Change in positions for projected workload (re-request)

a. Federal Defender Organization staffing formula changes FTE: 44

Requested Increase: \$13,108,000

The requested increase supports implementation of FDO staffing formulas approved by the Judicial Conference in September 2023. The request is for 107 additional FDO staff⁸ (88 FPDO positions (44 FTE) and 19 CDO positions) and provides for the costs associated with six months of FY 2026. The increase will support positions not funded in FY 2025 to address critical workload requirements. Additional information on the FDO staffing formulas is on page 5.9.

b. National position FTE: 0.5

Requested Increase: \$122,000

The requested increase supports one IT staffing formula position for six months of FY 2026. The major workload driver of the IT staffing formula is the total number of FDO FTE. The increase will support the IT position not funded in FY 2025 to address cybersecurity and other IT requirements by

⁸ Includes funding for CDO positions not classified as FTE.

ensuring defender IT systems are mission-capable at or above judiciary standards.

9. Coordinating discovery attorney contract (re-request)

Requested Increase: \$730,000

Coordinating discovery attorneys work with defense counsel on cases in which there are numerous defendants, voluminous discovery, or complicated electronic discovery issues. This contract funding, which is unfunded in FY 2025, would address the increased demand for these types of services and improve defense teams' efficiency and effectiveness in reviewing discovery. Additional information on coordinating discovery attorney contracts is on pages 5.19 – 5.20.

10. Training operations (re-request)

Requested Increase: \$1,610,000

The judiciary is requesting \$1.6 million (unfunded FY 2025 program increases) to support training operations (\$0.8 million) with an updated Event Management System, a Learning Management System (to support the administration,

documentation, tracking, reporting, automation and delivery of educational courses and training programs to manage all its electronic learning), and a real-time polling/survey platform, to meet the demand for hybrid (in-person and virtual) training (\$0.8 million).

11. Major physical infrastructure requirements (partial re-request)

Requested Increase: \$5,000,000

This request includes \$5.0 million for increased cost of build-out and tenant improvement projects in FY 2026.

12. Change in positions for projected workload

a. Federal Defender Organization staffing formula changes

FTE: 59

Requested Increase: \$18,498,000

The requested increase supports implementation of FDO staffing formulas approved by the Judicial Conference in September 2023. The request is for 151 additional FDO staff⁹

⁹ Includes funding for CDO positions not classified as FTE.

(118 FPDO positions (59 FTE) and 33 CDO positions) and provides for six months of costs associated in FY 2026. The increase, along with the re-requested positions not funded in FY 2025, will allow for additional staffing up to 98.0 percent of the staffing formula to address critical workload requirements. Additional information on the FDO staffing formulas is on page 5.9.

b. National position

FTE: 0.5

Requested Increase: \$123,000

The requested increase supports one IT staffing formula position for six months of FY 2026. The major workload driver of the IT staffing formula is the total number of FDO FTE. The IT position will help to address cybersecurity and other IT requirements by ensuring defender IT systems are mission-capable at or above judiciary standards.

13. IT, cybersecurity, and IT modernization requirements

a. Multiyear cybersecurity and IT modernization requirements

Requested Increase: \$1,800,000

This \$1.8 million increase supports the judiciary's multiyear cybersecurity and IT modernization plan. The FY 2026 portion of the multiyear plan includes \$1.0 million to contract with industry experts to develop identity credential and access management security policies and implementation plans for FDOs and \$0.8 million to contract with experts to design a secure network segmentation strategy and implementation plan.

Additional information on the IT multiyear plan is on pages 5.16 – 5.17.

b. Other IT requirements

Requested Increase: \$3,773,000

This requested increase will support \$3.8 million of FY 2026 IT requirements. These requirements are in addition to and separate from requirements included in the multiyear cybersecurity and IT modernization plan previously referenced.

The FY 2026 request of \$3.8 million includes the following:

- \$1.8 million to address cybersecurity issues in the Defender Services Management Information System (DSMIS) which collects and integrates data from

multiple sources into a single database for various uses (including program analysis, support of the Defender Services appropriation, effective allocation of resources, and efforts to ensure the quality and cost-effectiveness of client representations) and is used by all 82 FDOs and DSO;

- \$1.0 million for an eDiscovery review database;
- \$0.3 million for an AI Transcription Audio Video File System;
- \$0.3 million for an AI Fact Chronology Cloud System;
- \$0.2 million for increased costs for the FY 2026 enterprise data warehouse contract; and
- \$0.2 million for projected increases in the cost of the national CALR contracts (LexisNexis and Westlaw) and for additional licenses consistent with staff increases.

14. Training operations

Requested Increase: \$540,000

The judiciary is requesting \$540,000 for increased costs relating to the provision of continuing education and training of persons who furnish representational services under the CJA.

This funding supports increased training costs and the acquisition of a continuing legal education (CLE) platform in FY 2026.

15. Reimbursable IT positions

Requested Increase: \$250,000

The request supports two reimbursable positions to allow DSO to address critical IT needs: an Information Security Officer (ISO) and a Director of Information Technology. These positions address concerns and recommendations made in the Judiciary IT Security Task Force Report, the Judiciary IT Modernization and Cybersecurity Strategy, the Judiciary Information Security Framework, and the National Institute of Standards and Technology requirements adopted by the judiciary as information systems best practices.

While complementary, these two positions would have distinct missions. The ISO would be responsible for overseeing Defender Services systems and data security and would focus on privacy concerns. In addition, the ISO would manage Defender Services IT security policy, planning, assessments, development, implementation, training, and support to ensure judiciary IT security practices are followed. The DSO Director

of Information Technology would be an operations position within DSO responsible for implementing CJA policies within broader judiciary IT mandates. The Director of IT would focus on managing Defender Services program IT projects, investments, and resources and aligning FDO IT strategy and initiatives with those of the judiciary. The DSO Director of IT would coordinate internal and external systems projects with the AO, FDOs, NITOAD, and NLST. The distinct missions of controls policy and operations implementation would avoid conflicts of interest and ensure effective information security and IT operations.

D. FINANCING THE FISCAL YEAR 2026 REQUEST

16. Anticipated carryforward from FY 2025 into FY 2026

Estimated funds available: \$20,000,000

The judiciary projects \$20.0 million will be available to offset the FY 2026 appropriation request through carryforward from FY 2025. The judiciary will advise the appropriations subcommittee staff of changes to this estimate.