

Legislative Appropriations Request

For Fiscal Years 2024 and 2025

Submitted to the Office of the Governor, Budget and Policy Division,
and the Legislative Budget Board

by the

Office of Capital and Forensic Writs

August 1, 2022

(revised)

FY 2024-25 LEGISLATIVE APPROPRIATIONS REQUEST
Office of Capital and Forensic Writs

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ADMINISTRATOR'S STATEMENT

Since 2010, the Office of Capital and Forensic Writs (OCFW) has proudly served as Texas' office of conviction integrity and worked to ensure that capital and non-capital convictions are constitutional, reliable, and untainted by questionable forensic science.

OCFW does this through two programs:

- Capital Post-conviction representation.
 - OCFW represents death-sentenced Texans in mandated proceedings that determine the constitutionality of convictions and death sentences.
 - OCFW safeguards the constitutionality of death penalty convictions and sentences and the reliability of Texas criminal justice system by investigating and litigating constitutional claims in post-conviction litigation in Texas courts, ensuring that these fundamental claims are fully aired, and Texas courts can consider them efficiently and fairly.
 - OCFW represents approximately 70% of persons sentenced to death in mandated initial capital post-conviction proceedings, ensuring that claims are investigated consistent with professional norms and statutory requirements, and that courts are well equipped to decide all possible claims in one full and fair court proceeding soon after conviction, rather than years later in successive rounds of litigation.
- Forensic Science post-conviction representation.
 - OCFW represents incarcerated Texans in cases where questionable forensic science contributed to their conviction.
 - The Texas Forensic Science Commission refers OCFW these cases following an investigation into professional negligence, misconduct of forensic analysts, or unsupported forensic scientific analysis.
 - The only forensic cases OCFW handles are those of wrongful conviction or innocence, where the Texas Forensic Science Commission has identified potentially problematic or unsupportable forensic science that may have affected the reliability of a conviction.

OCFW GOVERNANCE

The Court of Criminal Appeals appoints the Executive Director of OCFW. The court appointed the current Director in 2015 and reappointed him in 2019. The 87th Legislature, Regular Session, passed SB 280, which established an oversight board for OCFW to ensure continued institutional success, independence, and good governance. The role of the Oversight Board is to provide oversight and strategic guidance to OCFW, including recommending a candidate for appointment as agency head to the Court of Criminal Appeals when a vacancy exists, setting office policy, and developing a budget proposal. The Oversight Board has five members: three appointed by the Executive Director of the Texas Indigent Defense Commission; two appointed by the State Bar of Texas. The members of the OCFW Oversight Board are:

James Bethke, Esq., Chair, San Antonio, TX (2021-2025)

Marcy Greer, Esq., Vice Chair, Austin, TX (2021-2025)

Alma Lagarda, Esq., Secretary, El Paso, TX (2021-2025)

Hon. Terry Shamsie, Esq., Corpus Christi, TX (2021-2025)

Phillip Yates, Esq., Houston, TX (2021-2025)

OCFW IS A SMALL JUDICIAL AGENCY, WITH A BIG IMPACT.

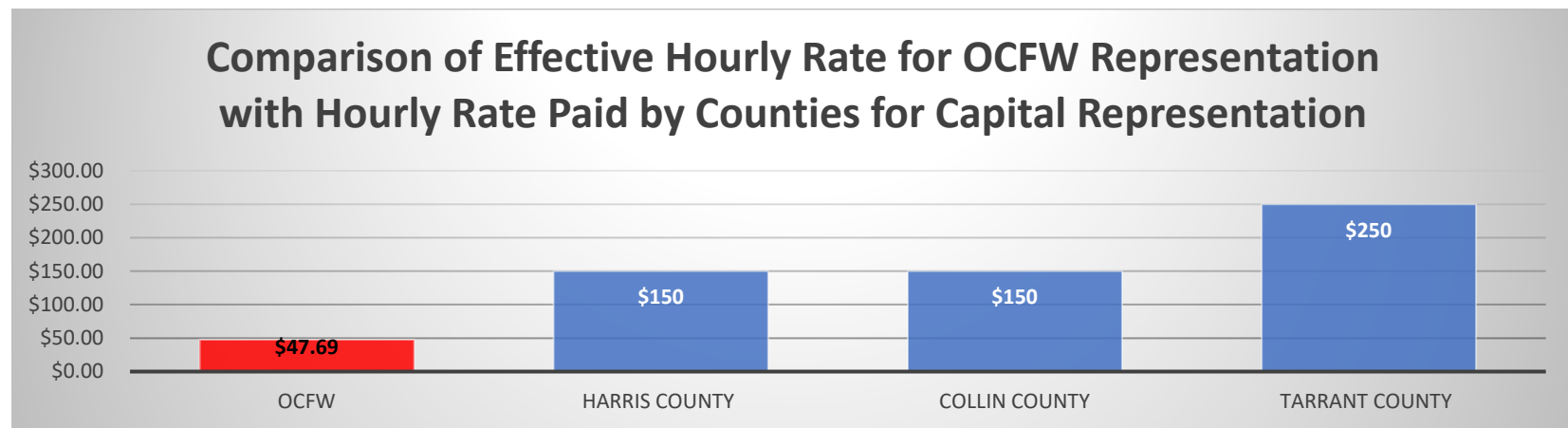
- With 12 attorneys, seven mitigation specialists (one of whom is temporarily authorized by SB8), a director, and two accountants, OCFW represents approximately 70% of death-sentenced individuals in capital post-conviction proceedings.
- Death-penalty representation and forensic science post-conviction representation are highly skilled and highly technical areas of the law.
- OCFW practices statewide, focusing narrowly on constitutional issues, forensic science, and wrongful convictions. Capital and forensic writ cases are extraordinarily complex and require post-conviction specialists to provide this highly technical and often resource-intensive representation. OCFW's caseload comes from counties big and small across the State of Texas.
- As a public defender, OCFW provides the State great benefits, including economies of scale, skilled and specialized experience, and supervised, high-quality work.

OCFW PROTECTS THE RELIABILITY OF THE TEXAS CRIMINAL JUSTICE SYSTEM. Meritorious constitutional claims are fully investigated and litigated early on, avoiding last-minute, successive litigation later. Over the last two years:

- The Court of Criminal Appeals overturned one client's capital murder conviction and death sentence agreeing with OCFW that flawed forensic evidence was misrepresented at trial and used to convict him.
- Another client's death sentence was held unconstitutional due to incompetence to be executed.
- Trial courts have found clients' conviction or sentence to be unconstitutional in 4 cases.
- OCFW work exposed significant flaws in the work of a forensic analyst, prompting notifications and ongoing review of over 1,400 cases of potentially tainted convictions.

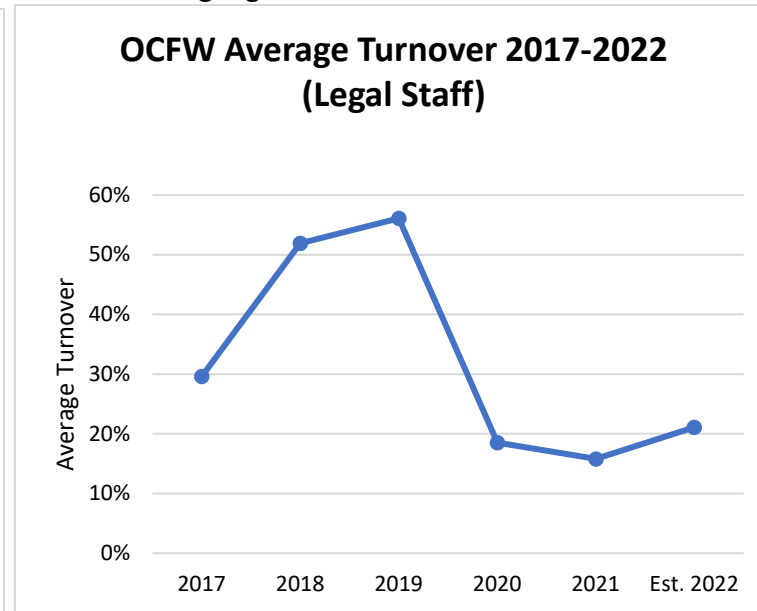
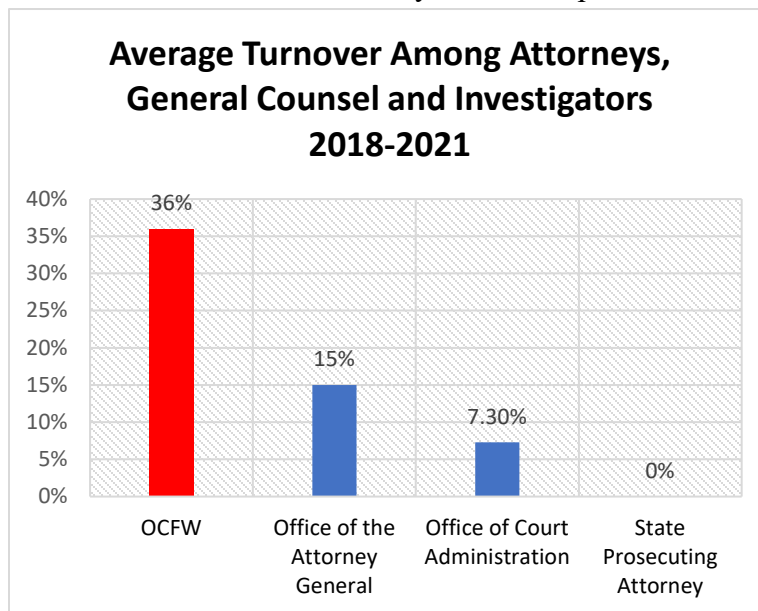
OCFW IS ECONOMICAL, EFFICIENT, AND SAVES TEXAS COUNTIES MONEY

- OCFW is entirely funded by the General Revenue-Dedicated Fair Defense Account (5073), funds from court fees and related sources that can only be spent on indigent defense. OCFW shares the Fair Defense Account with the Texas Indigent Defense Commission, the only other agency funded from this account. As an independent state agency, OCFW is the only public defender in the state that is ineligible to receive funding from TIDC. TIDC supports OCFW’s funding request.
- When OCFW is unable to provide representation, the cost of representation is shifted to Texas counties: counties are forced to bear the entire cost of representation by paying appointed attorneys, mitigation specialists, investigators, and experts, often on an hourly basis. When this happens, property taxes pay for representation, not GR-D.
- This is a burden for smaller counties where capital post-conviction representation needs arise, because they may not have the resources or capability to provide the requisite level of representation.
- **OCFW saved Texas counties and property taxpayers at least \$4,800,000 during 2021**
 - In 2021, OCFW provided the State of Texas over 24,000 hours of legal representation and 12,000 of mitigation investigation, through the work of its salaried employees. (This conservative estimate does not include legal work provided by the Director, legal fellows, or interns.)
 - If OCFW did not provide this representation, Texas counties would bear the cost of this representation, paying, on average, \$150 per hour for attorney work and \$100 per hour for mitigation specialists through property taxes. If counties were responsible for providing 24,000 hours of legal representation and 12,000 of mitigation investigation at \$150 and \$100 per hour, respectively, it would cost them \$4,800,000.



SIGNIFICANT CHALLENGES AND EXTERNALITIES

- **OCFW has experienced 200% turnover since opening.** In the last 12 years, OCFW has lost 44 valuable employees—the equivalent of losing 200% of current staff.
- OCFW’s effectiveness and impact has been limited by uncompetitive salaries that drive rates of attrition. Over the last five years, OCFW has experienced a 36% attrition rate among legal staff (attorneys and mitigation specialists), 41% average attrition rate among mitigation specialists, including 100% in 2019, and a 29% attrition rate among attorneys.
- Over the same time frame, the State Prosecuting Attorney experienced 0%, the Office of Court Administration experienced 7.3%, and the Office of Attorney General experienced 15% turnover among legal staff.

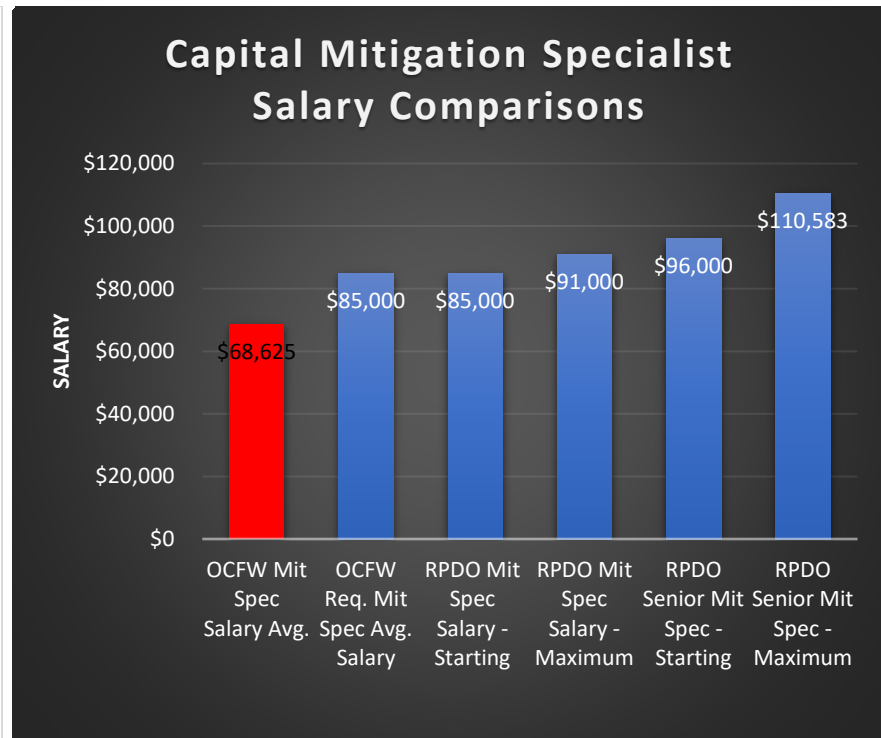
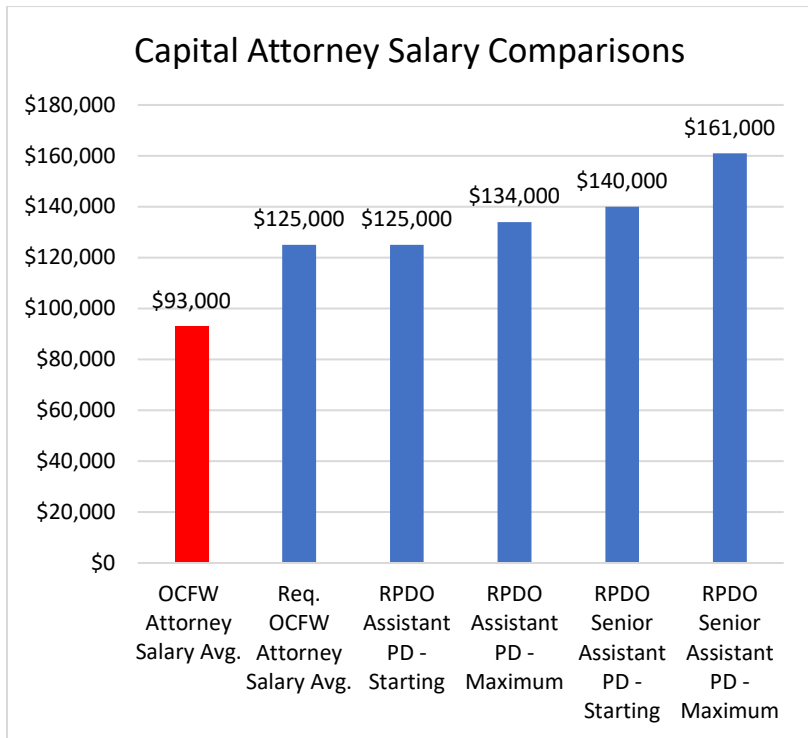


- OCFW has made significant progress at reducing damaging rates of attrition over the present biennium to a more manageable rate, but more work remains.
- The business costs of turnover are steep. Economists estimate that that the direct replacement costs for salaried employees can exceed 50% to 60% of an employee’s annual salary.
- Less reliable adjudication results when OCFW is only able to retain staff for a fraction of the 5-8 years that state-post-conviction litigation can take. Given the complexity of capital and forensic post-conviction work, there is a steep learning

curve to each post-conviction matter that OCFW handles. Former attorneys' caseloads must be assumed by remaining staff, who must start their review of the voluminous, complex records from scratch. Being shorthanded means that OCFW cannot accept as many new cases, or efficiently staff and litigate existing cases.

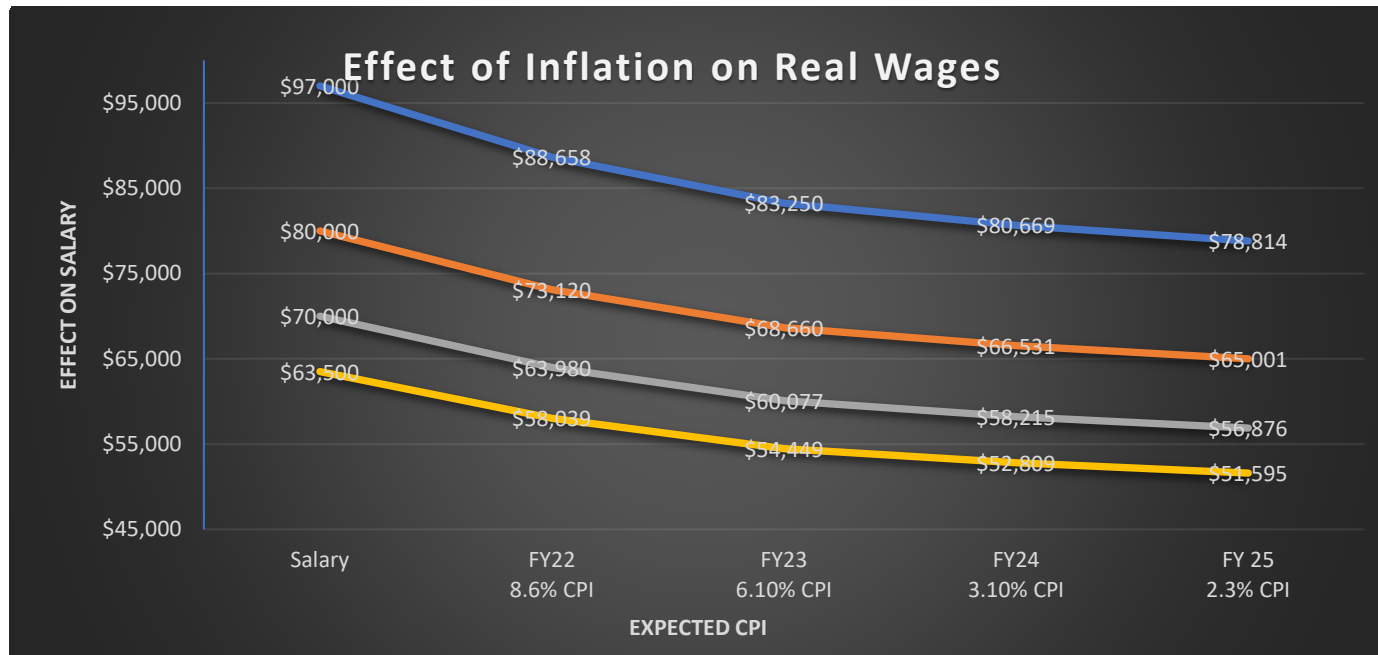
- **OCFW's Uncompetitive Salaries Have Driven High Rates of Turnover**

- A 2018 external audit identified high caseloads and low salaries as drivers of attrition at OCFW. Recognizing OCFW's excessive caseloads, the 86th Legislature took action, reducing caseloads to national standards. The 87th Legislature recognized a similar need with regard to OCFW salaries but was unable to fully close the gap.
- Damaging rates of attrition will be a problem so long as OCFW employees can leave state employment and walk a few blocks to join a different governmental agency and earn substantially more performing similar or even less-complex, lower-stakes work.
- OCFW staff leave for other governmental or public defender employment that pays better. Many former OCFW staff now populate different capital public defender offices across the state; after getting training and experience at OCFW, they leave for other, better paying jobs in the federal and state criminal justice field.
- Comparison between the salaries paid to OCFW staff and those paid to staff of the Texas Regional Public Defender for Capital cases (RPDO), a Lubbock-based capital trial public defender that receives 2/3 of its funding from the Texas Indigent Defense Commission and practices statewide, illustrates this problem.
 - The starting OCFW attorney salary is \$70,000, while the *starting* RPDO Assistant Public Defender salary is \$125,000 and Senior Assistant Public Defenders can earn \$161,000.
 - The average OCFW attorney salary is \$93,000, and the average salary of non-supervising attorneys at OCFW is \$84,000.
 - Mitigation specialists employed by the RPDO earn between \$85,000 and \$110,000, while those at OCFW earn just \$68,685 on average for the *same* work.
- Attorney Salaries at other public defender offices are also higher.
 - Attorneys at the Travis County Public Defender with just six years of experience can earn up to \$124,000, while those with eight years of experience can earn up to \$132,000 (based on information provided by the Chief Public Defender, Travis County).
 - Assistant Federal Public Defenders who do similarly specialized post-conviction, habeas corpus representation can earn up to \$170,000 in salaries tied to the earnings of similarly situated Assistant United States Attorneys.
 - Dallas County Public Defender Capital Trial Unit Attorneys earn \$165,000.



- The OCFW Director salary (\$148,500) is also uncompetitive in comparison to the salaries paid to the leaders of other Texas public defender offices.
 - Executive Director of the RPDO, \$185,000 to \$198,000.
 - Chief Public Defender, Harris County: \$207,000
 - Chief Public Defender, Dallas County: \$198,012
 - Chief Public Defender, Concho Valley Public Defender (San Angelo): \$170,000

- Inflation has compounded the problem of uncompetitive salaries and resulted in increased operations costs**
 - High rates of inflation can expect to compound the problem of uncompetitive wages, since inflation will drive down the real wages of OCFW staff.
 - The current consumer price index is 8.6%, and the Congressional Budget Office optimistically estimates that it will go down to 6.1%, 3.1%, and then 2.3% in subsequent years.
 - Even if inflation subsides over the next several years, absent salary increases the real wages of OCFW staff can be expected to decline as follows:



Effect of Inflation on Real Wages								
Salary	CPI	FY22	CPI	FY23	CPI	FY24	CPI	FY25
\$ 97,000.00	8.6%	\$ 88,658	6.1%	\$ 83,250	3.1%	\$ 80,669	2.3%	\$ 78,814
\$ 80,000.00	8.6%	\$ 73,120	6.1%	\$ 68,660	3.1%	\$ 66,531	2.3%	\$ 65,001
\$ 70,000.00	8.6%	\$ 63,980	6.1%	\$ 60,077	3.1%	\$ 58,215	2.3%	\$ 56,876
\$ 63,500.00	8.6%	\$ 58,039	6.1%	\$ 54,499	3.1%	\$ 52,809	2.3%	\$ 51,595

- **Inflation has driven up OCFW operations costs.**
 - OCFW travel costs have risen dramatically over the last year, due in part to the increased cost of travel. Notwithstanding state-negotiated travel rates, with the increased cost of fuel, a one-day trip to Collin County or Corpus Christi might cost \$100 now, when it previously would have cost \$60.
 - OCFW expects other essential operating costs such as legal research services and legal file storage to increase with inflation, or even outpacing inflation. By way of example, Adobe told the Office of Court Administration (which supports OCFW I.T.) that it was increasing the cost of its software package by 150%. While that is likely an outlier price increase, OCFW expects substantial price increases to be sought by providers of essential services to OCFW.
- **Case Backlog.** Texas district courts, however, have been working hard to reduce their COVID-19-related backlogs. OCFW anticipates the number of capital trials and potential death sentences—and potential new cases—to increase over the next biennium. In addition, OCFW’s case litigation was slowed by the pandemic. TDCJ closed its prisons to all visitation for 14 months, and legal visitation remains very limited. OCFW staff have travelled more than ever before trying to make up for lost time. Mitigation specialists routinely spend 50% of their work week away from home. To make up for lost time and limited mitigation specialist staffing, attorneys have been spending substantial amounts of time conducting necessary investigation, rather than lawyering.
 - SB8. The 87th Legislature appropriated OCFW \$200,000 in federal ARPA funds to hire a temporary mitigation specialist and cover increased travel costs associated with addressing the capital case backlog. OCFW, however, has so far been unable to access these funds due to registration problems with the federal system for award management. This has compounded OCFW’s case backlog: unable to afford necessary staff travel, OCFW has adjourned evidentiary hearings and postponed necessary field work into subsequent fiscal years.
- **Case Size and Complexity Are Increasing, but OCFW Does Not Have Any Legal Support Staff.**
 - Over the last 12 years, the size and complexity of OCFW cases has grown. Records from one case alone exceeded 25 TB of data. Other cases approach 1 TB. Data experts estimate that one single terabyte is the equivalent of 80 million pages of Microsoft word documents, or up to 500 hours of video.
 - The Office of Court Administration, which supports OCFW IT needs, reports that OCFW cloud file storage outstrips all other judicial agencies and courts it supports.
 - OCFW currently has a staff of 22, but does not have a single paralegal, legal assistant, or legal secretary to help legal staff manage their sprawling dockets. OCFW previously had a single legal assistant but was forced to relinquish that position in order to hire a much-needed accountant. There is probably no other law office of 22 without legal support staff. Indeed, among Texas public defender law offices, there is an average attorney to legal/administrative ratio of 3.5 to 1.

- TIDC has done a number of public defender planning studies for trial-level public defender offices (which is much, much less document-heavy legal work). TIDC recommends that new public defender offices be staffed at a ratio of attorneys to support staff of at least 5:1.
 - 20% of OCFW attorney and mitigation specialist time is spent on paralegal tasks, at a cost of \$338,000 per year. In the absence of paralegal assistance, OCFW attorneys and mitigation specialists are doing paralegal work at a higher cost, which also limits their ability to do the highly skilled legal work or mitigation investigation for which they are trained and qualified.
 - In the absence of paralegals on staff at OCFW, counties have been forced to fill the gap where necessary. In just one case, a county has paid a paralegal appointed to assist OCFW \$35,000 on an hourly basis so far.
- **The Texas Facilities Commission Has Assigned OCFW Much Needed Professional Office Space**
 - OCFW's 22 highly skilled, qualified, and hardworking staff work in sub-par, cramped, non-private spaces ill-suited to the sensitive work of capital and forensic post-conviction litigation or a professional law office:
 - 18 employees work out of just 1900 square feet of office space.
 - 6 mitigation specialists work in the office of the former Executive Director.
 - 3 attorneys work out of a small former conference room.
 - Other attorneys work from cubicles, which lack space, privacy and confidentiality.
 - OCFW relies heavily on volunteer work provided by law student and college interns; however, the presence of multiple interns compounds the lack of office space for staff.
 - A 2018 assessment of OCFW by the National Association for Public Defense identified the lack of professionally appropriate office space and recommended that OCFW be provided space that allowed for confidential attorney-client communication and legal work.
 - Recognizing the problem, the Texas Facilities Commission recently decided to provide OCFW new office space on another floor in the Stephen F. Austin Building, in space being vacated by the Texas Veterans Commission (which is moving into a newly constructed building in the Capitol Complex).
 - The Facilities Commission indicates that the new office space will require minor drywall subdivision, the addition of a secondary means of egress, and paint.

OVERVIEW OF OCFW'S FY2024-2025 LEGISLATIVE FUNDING REQUEST

OCFW is not requesting General Revenue; rather OCFW seeks appropriations exclusively from the General Revenue-Dedicated Fair Defense Account (Fund 5073), which can only be spent on indigent defense purposes. The Texas Indigent Defense Commission, the only other agency funded from this account, supports OCFW's budgetary requests.

In addition to the amounts submitted in OCFW's baseline request, OCFW respectfully requests the following exceptional items:

Exceptional Item #1: Salary Increases to Account for Inflation. The staff positions within the Article IV Courts and Agencies require a unique level of skill. From attorneys, to clerks and interpreters, to researchers and IT professionals, the expertise needed to keep the third branch of government running is vast. Recruiting and retaining qualified staff is challenging, even more so with inflation at 8.6 percent and rising. In FY 2021, the Judiciary had the third highest turnover rate in the state by General Appropriations Act Article at 14.5 percent. Salaries within the judiciary are not keeping up with inflation and are not competitive with other agencies or the private sector. Over the past year, Article IV Courts and Agencies have noticed a concerning trend of positions remaining open for lengthy periods of time and a steep decline in qualified applicants. Some entities have resorted to paying for recruiting tools to get a small pool of qualified candidates. Salary compression is also a major issue, where out of necessity, positions are posted at higher salaries than what current employees are making. The Article IV Courts and Agencies request a 10 percent salary increase for staff to maintain and recruit a strong and experienced judicial workforce.

OCFW turnover dramatically outstrip the high rate of turnover in the Texas judiciary. From 2018 to 2021, OCFW turnover averaged 36% among legal staff. OCFW cannot retain valuable staff while paying low, uncompetitive salaries, the real value of which declines as inflation increases.

As such, along with the Article IV Courts and Agencies, OCFW requests a 10% increase to keep pace with inflation and to retain valuable staff. The total amount requested for this purpose is \$327,294 (biennially). This request would increase the salaries of all OCFW staff by 10% except for the Director, whose position is exempt from the State classification plan.

Exceptional Item #2: Exempt Position Changes

This is the priority request of the OCFW Oversight Board, which believes it vitally important that the OCFW Director be paid a market competitive salary. For OCFW to continue to reliably safeguard the integrity of convictions and death sentences for the State of Texas, it is essential that the agency be adequately funded from the top down. The OCFW Director is currently set at Exempt Salary Group 4. The OCFW Oversight Board requests that the salary group for the OCFW Director, who has successfully guided the agency for nearly seven years after the Court of Criminal Appeals appointed him, be increased to Salary Group 5, and the salary cap be

increased to \$185,000, which is more appropriate for this position as the only leader of the only independent statewide public defender agency whose docket includes the most serious and complicated cases in the State of Texas. As such, the Oversight Board of OCFW seeks \$74,442 over the biennium to increase the salary of the Director from \$148,510 to \$185,000, the lowest end of the range paid to Executive Director of the Regional Public Defender for Capital Cases.

Exceptional Item #3: Closing the Gap: Salary Equity and Parity

OCFW cannot fulfill its mission when it cannot retain knowledgeable, experienced staff. And it cannot retain experienced staff when staff can walk down the street join a different governmental or public defender office and earn substantially more. Low salaries at OCFW are a source of institutional instability.

As such, OCFW requests an additional \$684,708 in general revenue-dedicated funds from Fund 5073 over the biennium to address low staff salaries that serve as a source of institutional instability as follows:

- i. OCFW seeks \$278,137 per year (\$556,274 biennially) to increase the average OCFW attorney salary to the minimum salary paid to Assistant Public Defenders from the Regional Public Defender for Capital Cases--\$125,000.
- ii. OCFW seeks \$ 57,489 per year (\$114,978 biennially) to increase the average OCFW mitigation specialist salary to the minimum salary paid to Mitigation Specialists from the Regional Public Defender for Capital Cases--\$85,000.
- iii. OCFW seeks \$6,728 (\$13,456 biennially) to increase the salary of two accountants by an additional 5%, so that they are paid more competitive wages, while also keeping pace with inflation.

Exceptional Item #4: Enhanced Office Efficiencies and Effectiveness.

- i. Three Legal Assistants. OCFW is an office of 22 without a single paralegal or legal assistant (or secretary or receptionist). There is probably no other law office of 22 anywhere without legal support staff. Absent paralegal help, attorneys and mitigation specialists have been spending 20% of their time on non-legal and non-investigative tasks, that could be accomplished more efficiently and at a lower cost by legal assistants. Additionally, within the forensic practice, once the Forensic Science Commission refers a case, OCFW attorneys are spending many hours tracking down old court and case files on the case, something that could be accomplished more efficiently by a non-lawyer and which would also permit lawyers to focus more on lawyering. As such, OCFW requests \$373,506 over the biennium to hire three legal assistants (two Legal Assistant IIIs; one Legal Assistant V), one of whom would be dedicated to OCFW's forensic cases.
- ii. Make Temporary Mitigation Specialist Permanent. OCFW is experiencing a COVID-related backlog in case investigation, due to our inability to conduct much field investigation for over a year. During the Third Special Session of the previous session, the Legislature recognized this problem and appropriated federal funds for a temporary mitigation specialist.

OCFW anticipates the case backlog to persist throughout the next biennium. As such, OCFW requests the FTE authority granted by SB8 be made permanent, and funding for this position in the amount of \$172,550 (biennially).

- iii. Additional Money For Travel, Professional Fees And Services, And Other Operating Expenses. OCFW travel costs have skyrocketed as OCFW has sought to address its case backlog and confronted inflation. OCFW staff are travelling more than ever, attempting to make up for lost time, but notwithstanding state-negotiated rates, travel costs more than ever before and OCFW cannot pay for increased travel costs out of its baseline budget. Consequently, capital hearings have been adjourned to the next fiscal year, because OCFW has lacked the funds to pay for necessary staff travel in this fiscal year. Likewise, capital and forensic litigation are highly complicated areas of the law, invariably involve specialized expertise, and require the retention of outside experts. OCFW cases also commonly have hundreds of hours of video, jail calls, and other media that have to be reviewed. A huge amount of time—and money in the form of salaried staff time—can be saved by investing in an artificial intelligence program that can create a searchable transcript of video and audio recordings in seconds. Likewise, OCFW anticipates the cost of other operating expenses such as Westlaw, copy machine rental, and office supplies will increase. To address these needs, OCFW seeks an additional \$150,000 for travel, \$160,000 in additional professional fees and services, and an additional \$73,338 in other operating expenses over the biennium.

Exceptional Item #5: Buildout Expenses Associated with Office Move Recommended by the Texas Facilities Commission.

After conducting an audit of OCFW’s current office space, the Texas Facilities Commission concluded the space currently occupied by OCFW was inadequate for its needs. With the new Capital Complex, the Texas Veterans Commission is moving out of the Stephen F. Austin Building, freeing up additional office space for other state agencies. The Texas Facilities Commission has allocated a larger office space within the Stephen F. Austin Building to OCFW. The new space consists of 15 private offices and 13 cubicles, and will accommodate OCFW existing staff and modest growth, while providing more professional workspaces for the sensitive legal work of OCFW. TFC estimates that the minor construction required to adapt the office space to OCFW’s use will cost \$101,433 as a one-time expenditure. In addition, OCFW estimates that to move into the new space will require the additional one-time expenditure of \$30,000 for furniture and moving expenses.

Other Matters:

- Unexpended Balance Authority. Uncertainty exists with respect to investigation and litigation costs because they vary based on the particulars of the case being filed, and whether a district court holds a live evidentiary hearing. Authority to carry forward unexpended balances within the biennium provides greater flexibility in managing expenses that may vary greatly from year to year. Unexpended balances authority was given to the OCFW by the 82nd, 83rd, 84th, 85th, 86th, and 87th Legislatures. OCFW requests unexpended balance budget authority again in FY 2024-25.

- Office of Court Administration. The Office of Court Administration receives funding to support the information technology needs of OCFW and other judicial agencies. Apart from IT, OCFW relies on OCA in many ways, big and small, official and unofficial, to perform effectively and efficiently. OCFW is deeply appreciative of the support OCA offers OCFW and other judicial agencies and respectfully urges the Legislature to favorably consider the OCA appropriations request.
- Texas Indigent Defense Commission. The Texas Indigent Defense Commission also receives funding from the Fair Defense Account (Fund 5073) to provide its essential work of funding, overseeing, and improving indigent defense throughout the State of Texas. OCFW supports the TIDC baseline and exceptional budgetary requests.
- Background checks. OCFW has the authority under Government Code §411.1405(b) to obtain criminal history information on an individual who is an employee, applicant for employment, contractor, subcontractor, intern, or other volunteer who has access to information resources or technology, other than a desktop computer or telephone station assigned to the individual. OCFW request this information for individuals working with OCFW's technology resources where necessary to ensure safety of personnel and property. If requested, criminal history information is destroyed after review. In addition, OCFW is entitled to obtain criminal history information maintained by the Texas Department of Public Safety that relates to a criminal case in which OCFW has been appointed. *See* Tex. Govt. Code § 411.1272.

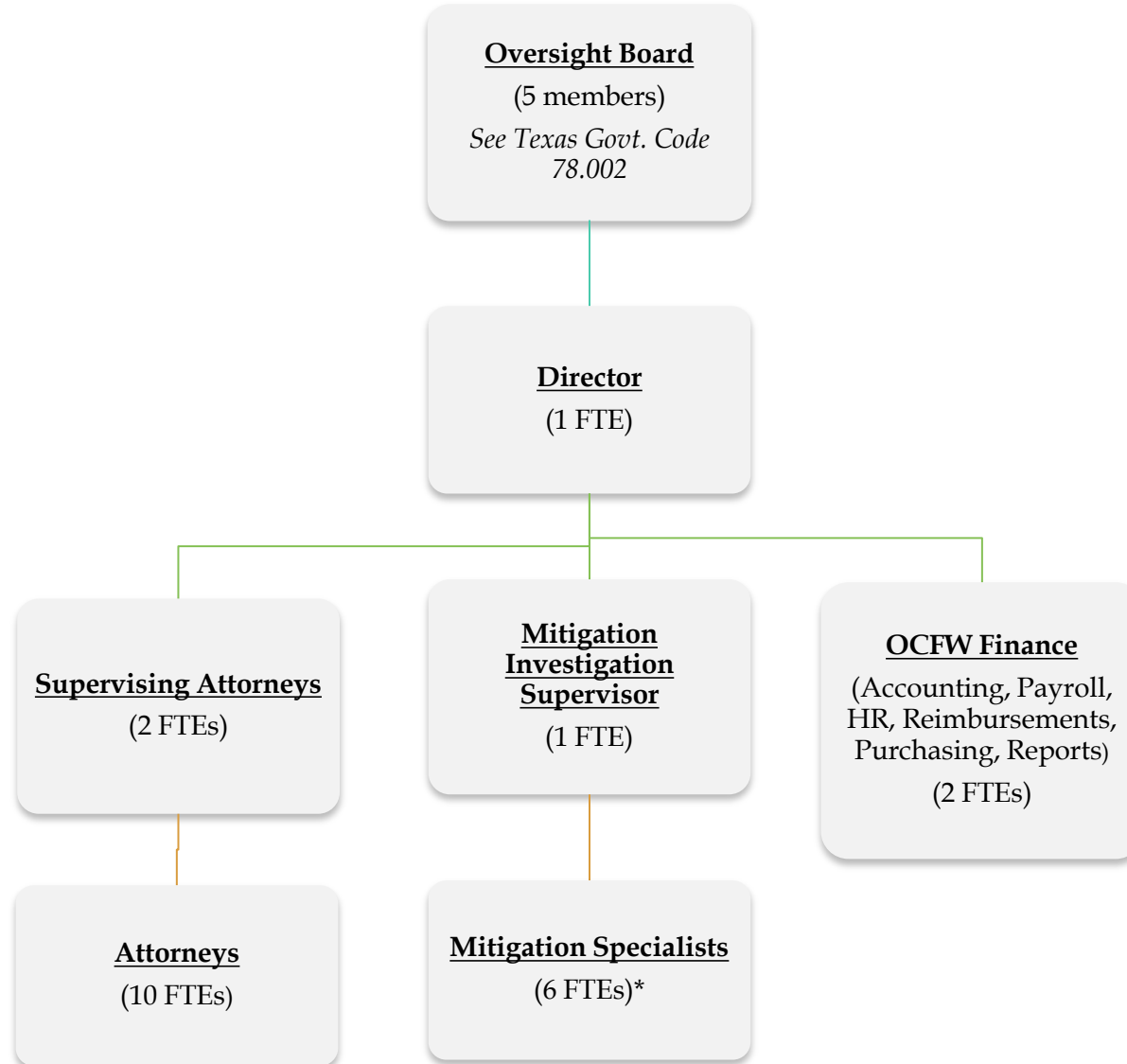
Summary

To continue to meet its mandate of ensuring that capital and non-capital convictions are constitutional, reliable, and untainted by questionable forensic science, OCFW respectfully asks that its appropriations request receive favorable consideration.

Respectfully,

Benjamin Wolff
Director
Office of Capital and Forensic Writs

OCFW ORGANIZATION CHART



* Includes mitigation specialist hired under the temporary authority granted to OCFW by SB8, 87th Leg., 3rd S.S. (2021)



CERTIFICATE

Agency Name Office of Capital and Forensic Writs

This is to certify that the information contained in the agency Legislative Appropriations Request filed with the Legislative Budget Board (LBB) and the Governor's Office Budget Division (Governor's Office) is accurate to the best of my knowledge and that the electronic submission to the LBB via the Automated Budget and Evaluation System of Texas (ABEST) and the PDF file submitted via the LBB Document Submission application are identical.

Additionally, should it become likely at any time that unexpended balances will accrue for any account, the LBB and the Governor's Office will be notified in writing in accordance with Article IX, Section 7.01 (2022-23 GAA).

Chief Executive Officer or Presiding Judge

Handwritten signature of Benjamin B. Wolff in blue ink.

Signature

Benjamin B. Wolff

Printed Name

Director

Title

August 1, 2022

Date

Board or Commission Chair

Handwritten signature of James D. Bethke in blue ink.

Signature

James D. Bethke

Printed Name

Chair

Title

August 1, 2022

Date

Chief Financial Officer

Handwritten signature of Olga Right in blue ink.

Signature

Olga Right

Printed Name

Senior Accountant

Title

August 1, 2022

Date

Budget Overview - Biennial Amounts
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs
Appropriation Years: 2024-25

	GENERAL REVENUE FUNDS		GR DEDICATED		FEDERAL FUNDS		OTHER FUNDS		ALL FUNDS		EXCEPTIONAL ITEM FUNDS
	2022-23	2024-25	2022-23	2024-25	2022-23	2024-25	2022-23	2024-25	2022-23	2024-25	2024-25
	Goal: 1. Post-Conviction Representation										
1.1.1. Capital Representation			3,838,160	3,838,160	200,000				4,038,160	3,838,160	1,799,216
1.1.2. Non-Capital Representation			463,260	463,260					463,260	463,260	348,055
Total, Goal			4,301,420	4,301,420	200,000				4,501,420	4,301,420	2,147,271
Total, Agency			4,301,420	4,301,420	200,000				4,501,420	4,301,420	2,147,271
Total FTEs									23.0	20.5	4.0

SUMMARIES OF REQUEST

2.A. Summary of Base Request by Strategy

88th Regular Session, Agency Submission, Version 1

Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

Goal / Objective / STRATEGY	Exp 2021	Est 2022	Bud 2023	Req 2024	Req 2025
1 Post-Conviction Representation					
1 <i>Post-Conviction Representation</i>					
1 CAPITAL REPRESENTATION	1,770,212	1,997,547	2,040,613	1,919,080	1,919,080
2 NON-CAPITAL REPRESENTATION	170,844	231,630	231,630	231,630	231,630
TOTAL, GOAL 1	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710
TOTAL, AGENCY STRATEGY REQUEST	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710
TOTAL, AGENCY RIDER APPROPRIATIONS REQUEST*				\$0	\$0
GRAND TOTAL, AGENCY REQUEST	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710

2.A. Summary of Base Request by Strategy

88th Regular Session, Agency Submission, Version 1

Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

Goal / Objective / STRATEGY	Exp 2021	Est 2022	Bud 2023	Req 2024	Req 2025
<u>METHOD OF FINANCING:</u>					
General Revenue Dedicated Funds:					
5073 Fair Defense	1,941,056	2,150,710	2,150,710	2,150,710	2,150,710
SUBTOTAL	\$1,941,056	\$2,150,710	\$2,150,710	\$2,150,710	\$2,150,710
Federal Funds:					
325 Coronavirus Relief Fund	0	78,467	121,533	0	0
SUBTOTAL	\$0	\$78,467	\$121,533	\$0	\$0
TOTAL, METHOD OF FINANCING	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710

*Rider appropriations for the historical years are included in the strategy amounts.

2.B. Summary of Base Request by Method of Finance
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

METHOD OF FINANCING	Exp 2021	Est 2022	Bud 2023	Req 2024	Req 2025
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GENERAL REVENUE FUND - DEDICATED

5073 GR Dedicated - Fair Defense Account No. 5073

REGULAR APPROPRIATIONS

Regular Appropriations from MOF Table (2020-21 GAA)

\$1,858,802	\$0	\$0	\$0	\$0
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Regular Appropriations from MOF Table (2022-23 GAA)

\$0	\$2,150,710	\$2,150,710	\$0	\$0
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Regular Appropriations from MOF Table (2024-25 GAA)

\$0	\$0	\$0	\$2,150,710	\$2,150,710
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SUPPLEMENTAL, SPECIAL OR EMERGENCY APPROPRIATIONS

HB 2, 87th Leg, Regular Session

\$(185,535)	\$0	\$0	\$0	\$0
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Comments: Five Percent Reduction

LAPSED APPROPRIATIONS

Regular Appropriations from MOF Table (2020-21 GAA)

\$(15,156)	\$0	\$0	\$0	\$0
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UNEXPENDED BALANCES AUTHORITY

2.B. Summary of Base Request by Method of Finance

88th Regular Session, Agency Submission, Version 1

Automated Budget and Evaluation System of Texas (ABEST)

Agency code: 215		Agency name: Office of Capital and Forensic Writs				
METHOD OF FINANCING		Exp 2021	Est 2022	Bud 2023	Req 2024	Req 2025
<u>GENERAL REVENUE FUND - DEDICATED</u>						
Art IX, Sec 14.05, UB Authority within the Same Biennium (2020-21 GAA)						
		\$282,945	\$0	\$0	\$0	\$0
TOTAL,	GR Dedicated - Fair Defense Account No. 5073	\$1,941,056	\$2,150,710	\$2,150,710	\$2,150,710	\$2,150,710
TOTAL, ALL	GENERAL REVENUE FUND - DEDICATED	\$1,941,056	\$2,150,710	\$2,150,710	\$2,150,710	\$2,150,710
TOTAL,	GR & GR-DEDICATED FUNDS	\$1,941,056	\$2,150,710	\$2,150,710	\$2,150,710	\$2,150,710
<u>FEDERAL FUNDS</u>						
325	Coronavirus Relief Fund	<i>SUPPLEMENTAL, SPECIAL OR EMERGENCY APPROPRIATIONS</i>				
	SB 8, 87th Leg, Third Called Session	\$0	\$200,000	\$0	\$0	\$0
	<i>UNEXPENDED BALANCES AUTHORITY</i>					
	SB 8, 87th Leg, Third Called Session	\$0	\$(121,533)	\$121,533	\$0	\$0
TOTAL,	Coronavirus Relief Fund	\$0	\$78,467	\$121,533	\$0	\$0

2.B. Summary of Base Request by Method of Finance

88th Regular Session, Agency Submission, Version 1

Automated Budget and Evaluation System of Texas (ABEST)

Agency code: 215	Agency name: Office of Capital and Forensic Writs				
METHOD OF FINANCING	Exp 2021	Est 2022	Bud 2023	Req 2024	Req 2025
TOTAL, ALL FEDERAL FUNDS	\$0	\$78,467	\$121,533	\$0	\$0
GRAND TOTAL	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710
FULL-TIME-EQUIVALENT POSITIONS					
REGULAR APPROPRIATIONS					
Regular Appropriations from MOF Table (2020-21 GAA)	20.5	0.0	0.0	0.0	0.0
Regular Appropriations from MOF Table (2022-23 GAA)	0.0	20.5	20.5	0.0	0.0
Regular Appropriations from MOF Table (2024-25 GAA)	0.0	0.0	0.0	20.5	20.5
SUPPLEMENTAL, SPECIAL OR EMERGENCY APPROPRIATIONS					
SB 8, 87th Leg, Third Called Session	0.0	1.0	1.0	0.0	0.0
UNAUTHORIZED NUMBER OVER (BELOW) CAP					
Unauthorized Number	1.5	0.5	1.5	0.0	0.0
Comments: Unauthorized Number Over(Below) Cap					
TOTAL, ADJUSTED FTES	22.0	22.0	23.0	20.5	20.5

2.B. Summary of Base Request by Method of Finance

88th Regular Session, Agency Submission, Version 1

Automated Budget and Evaluation System of Texas (ABEST)

Agency code: 215	Agency name: Office of Capital and Forensic Writs					
METHOD OF FINANCING	Exp 2021	Est 2022	Bud 2023	Req 2024	Req 2025	
NUMBER OF 100% FEDERALLY FUNDED FTEs	0.0	1.0	1.0	0.0	0.0	

2.C. Summary of Base Request by Object of Expense

88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

OBJECT OF EXPENSE	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
1001 SALARIES AND WAGES	\$1,516,139	\$1,860,773	\$1,898,843	\$1,830,019	\$1,830,019
1002 OTHER PERSONNEL COSTS	\$175,403	\$27,964	\$41,102	\$17,155	\$17,155
2001 PROFESSIONAL FEES AND SERVICES	\$72,651	\$48,515	\$41,477	\$41,530	\$41,530
2003 CONSUMABLE SUPPLIES	\$11,066	\$5,400	\$5,427	\$7,700	\$7,700
2004 UTILITIES	\$2,890	\$2,520	\$2,743	\$3,870	\$3,870
2005 TRAVEL	\$48,090	\$159,030	\$158,000	\$136,244	\$136,244
2006 RENT - BUILDING	\$3,664	\$4,000	\$3,400	\$2,168	\$2,168
2007 RENT - MACHINE AND OTHER	\$5,544	\$6,000	\$6,000	\$7,500	\$7,500
2009 OTHER OPERATING EXPENSE	\$105,609	\$114,975	\$115,251	\$104,524	\$104,524
5000 CAPITAL EXPENDITURES	\$0	\$0	\$0	\$0	\$0
OOE Total (Excluding Riders)	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710
OOE Total (Riders)					
Grand Total	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710

2.D. Summary of Base Request Objective Outcomes
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation system of Texas (ABEST)

215 Office of Capital and Forensic Writs

Goal/ Objective / Outcome	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
1 Post-Conviction Representation 1 Post-Conviction Representation					
KEY 1 Percentage of Capital Writs Filed on a Timely Basis	100.00%	100.00%	100.00%	100.00%	100.00%

2.E. Summary of Exceptional Items Request
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: 215

Agency name: Office of Capital and Forensic Writs

Priority	Item	2024			2025			Biennium	
		GR and GR/GR Dedicated	All Funds	FTEs	GR and GR Dedicated	All Funds	FTEs	GR and GR Dedicated	All Funds
1	Salary Increases due to Inflation	\$163,647	\$163,647	0.0	\$163,647	\$163,647	0.0	\$327,294	\$327,294
2	Exempt Position Salary increase	\$37,222	\$37,222		\$37,220	\$37,220		\$74,442	\$74,442
3	Salary Equity and Parity	\$342,352	\$342,352	0.0	\$342,356	\$342,356	0.0	\$684,708	\$684,708
4	Office Enhancement	\$464,697	\$464,697	4.0	\$464,697	\$464,697	4.0	\$929,394	\$929,394
5	Office Space Relocation	\$131,433	\$131,433	0.0	\$0	\$0	0.0	\$131,433	\$131,433
Total, Exceptional Items Request		\$1,139,351	\$1,139,351	4.0	\$1,007,920	\$1,007,920	4.0	\$2,147,271	\$2,147,271

Method of Financing

General Revenue

General Revenue - Dedicated

Federal Funds

Other Funds

General Revenue - Dedicated	1,139,351	1,139,351		1,007,920	1,007,920		2,147,271	2,147,271
Total	\$1,139,351	\$1,139,351		\$1,007,920	\$1,007,920		\$2,147,271	\$2,147,271

Full Time Equivalent Positions

4.0

4.0

Number of 100% Federally Funded FTEs

0.0

0.0

2.F. Summary of Total Request by Strategy
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Goal/Objective/STRATEGY	Base 2024	Base 2025	Exceptional 2024	Exceptional 2025	Total Request 2024	Total Request 2025
1 Post-Conviction Representation						
1 <i>Post-Conviction Representation</i>						
1 CAPITAL REPRESENTATION	\$1,919,080	\$1,919,080	\$958,752	\$840,464	\$2,877,832	\$2,759,544
2 NON-CAPITAL REPRESENTATION	231,630	231,630	180,599	167,456	412,229	399,086
TOTAL, GOAL 1	\$2,150,710	\$2,150,710	\$1,139,351	\$1,007,920	\$3,290,061	\$3,158,630
TOTAL, AGENCY STRATEGY REQUEST	\$2,150,710	\$2,150,710	\$1,139,351	\$1,007,920	\$3,290,061	\$3,158,630
TOTAL, AGENCY RIDER APPROPRIATIONS REQUEST						
GRAND TOTAL, AGENCY REQUEST	\$2,150,710	\$2,150,710	\$1,139,351	\$1,007,920	\$3,290,061	\$3,158,630

2.F. Summary of Total Request by Strategy
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Goal/Objective/STRATEGY	Base 2024	Base 2025	Exceptional 2024	Exceptional 2025	Total Request 2024	Total Request 2025
General Revenue Dedicated Funds:						
5073 Fair Defense	\$2,150,710	\$2,150,710	\$1,139,351	\$1,007,920	\$3,290,061	\$3,158,630
	\$2,150,710	\$2,150,710	\$1,139,351	\$1,007,920	\$3,290,061	\$3,158,630
Federal Funds:						
325 Coronavirus Relief Fund	0	0	0	0	0	0
	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL, METHOD OF FINANCING	\$2,150,710	\$2,150,710	\$1,139,351	\$1,007,920	\$3,290,061	\$3,158,630
FULL TIME EQUIVALENT POSITIONS	20.5	20.5	4.0	4.0	24.5	24.5

2.G. Summary of Total Request Objective Outcomes
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation system of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

Goal/ Objective / Outcome

	BL 2024	BL 2025	Excp 2024	Excp 2025	Total Request 2024	Total Request 2025
1 Post-Conviction Representation						
1 <i>Post-Conviction Representation</i>						
KEY 1 Percentage of Capital Writs Filed on a Timely Basis						
	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

STRATEGY SCHEDULES

3.A. Strategy Request
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL: 1 Post-Conviction Representation
OBJECTIVE: 1 Post-Conviction Representation
STRATEGY: 1 Post-Conviction Capital Representation

Service Categories:

Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
Output Measures:						
KEY 1	Number of New Capital Cases Accepted	2.00	6.00	4.00	4.00	4.00
KEY 2	Number Of Capital Cases Refused	1.00	1.00	3.00	3.00	3.00
Explanatory/Input Measures:						
1	Number of Capital Cases Pending	33.00	32.00	35.00	35.00	35.00
Objects of Expense:						
1001	SALARIES AND WAGES	\$1,361,782	\$1,687,833	\$1,724,537	\$1,655,713	\$1,655,713
1002	OTHER PERSONNEL COSTS	\$161,721	\$26,764	\$39,902	\$15,955	\$15,955
2001	PROFESSIONAL FEES AND SERVICES	\$72,651	\$23,678	\$16,640	\$10,000	\$10,000
2003	CONSUMABLE SUPPLIES	\$11,066	\$2,700	\$2,727	\$5,000	\$5,000
2004	UTILITIES	\$2,890	\$1,520	\$1,373	\$2,500	\$2,500
2005	TRAVEL	\$47,151	\$155,000	\$155,000	\$133,244	\$133,244
2006	RENT - BUILDING	\$3,664	\$3,400	\$3,400	\$2,168	\$2,168
2007	RENT - MACHINE AND OTHER	\$5,544	\$3,000	\$3,000	\$4,500	\$4,500
2009	OTHER OPERATING EXPENSE	\$103,743	\$93,652	\$94,034	\$90,000	\$90,000
5000	CAPITAL EXPENDITURES	\$0	\$0	\$0	\$0	\$0
TOTAL, OBJECT OF EXPENSE		\$1,770,212	\$1,997,547	\$2,040,613	\$1,919,080	\$1,919,080

3.A. Strategy Request
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL: 1 Post-Conviction Representation
OBJECTIVE: 1 Post-Conviction Representation
STRATEGY: 1 Post-Conviction Capital Representation

Service Categories:

Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
Method of Financing:						
5073	Fair Defense	\$1,770,212	\$1,919,080	\$1,919,080	\$1,919,080	\$1,919,080
SUBTOTAL, MOF (GENERAL REVENUE FUNDS - DEDICATED)		\$1,770,212	\$1,919,080	\$1,919,080	\$1,919,080	\$1,919,080
Method of Financing:						
325	Coronavirus Relief Fund					
	21.019.119 COV19 Coronavirus Relief Fund	\$0	\$78,467	\$121,533	\$0	\$0
CFDA Subtotal, Fund	325	\$0	\$78,467	\$121,533	\$0	\$0
SUBTOTAL, MOF (FEDERAL FUNDS)		\$0	\$78,467	\$121,533	\$0	\$0
TOTAL, METHOD OF FINANCE (INCLUDING RIDERS)					\$1,919,080	\$1,919,080
TOTAL, METHOD OF FINANCE (EXCLUDING RIDERS)		\$1,770,212	\$1,997,547	\$2,040,613	\$1,919,080	\$1,919,080
FULL TIME EQUIVALENT POSITIONS:		20.0	20.1	21.1	18.6	18.6

STRATEGY DESCRIPTION AND JUSTIFICATION:

3.A. Strategy Request
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL: 1 Post-Conviction Representation
 OBJECTIVE: 1 Post-Conviction Representation Service Categories:
 STRATEGY: 1 Post-Conviction Capital Representation Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
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Since 2010, the Office of Capital and Forensic Writs (OCFW) has proudly served as the office of conviction integrity for the State of Texas, ensuring that capital and non-capital convictions are constitutional, reliable, and untainted by questionable forensic science.

OCFW represents death-sentenced Texans in mandated proceedings that determine the constitutionality of convictions and death sentences. Capital post-conviction representation and investigation are mandated by statute, see Texas Code of Criminal Procedure, Article 11.071 sec. 2, 3, and OCFW provides this service to the State pursuant to the authority granted to it by section 78.054 of the Texas Government Code.

OCFW safeguards the constitutionality of death penalty convictions and sentences and the reliability of Texas criminal justice system by investigating and litigating constitutional claims in post-conviction litigation in Texas courts, ensuring that these fundamental claims are fully aired, and Texas courts can consider them efficiently and fairly.

OCFW represents approximately 70% of persons sentenced to death in mandated capital post-conviction proceedings, ensuring that claims are investigated consistent with professional norms and statutory requirements, and all courts are well equipped to decide all possible claims in one full and fair court proceeding soon after conviction, rather than years later or in successive rounds of litigation.

Where OCFW is unable to provide representation, Texas counties bear the cost of appointed private representation.

EXTERNAL/INTERNAL FACTORS IMPACTING STRATEGY:

3.A. Strategy Request
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL: 1 Post-Conviction Representation
OBJECTIVE: 1 Post-Conviction Representation Service Categories:
STRATEGY: 1 Post-Conviction Capital Representation Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
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Texas law guarantees capital post-conviction applicants the right to competent representation. Where OCFW is unable to provide this representation, Texas counties bear the cost of representation, paying \$150 per hour for attorney work and \$100 per hour for mitigation specialists through property taxes. In 2021, by providing the State of Texas over 24,000 hours of legal representation and 12,000 of mitigation investigation, OCFW saved Texas counties and property taxpayers at least \$4,800,000.

The effectiveness of OCFW is hampered by high rates of attrition caused by uncompetitive salaries. Over the last 12 years, OCFW has lost the equivalent of 200% of its present staff. OCFW experienced a 36% average attrition rate among legal staff from 2018 to 2021. OCFW is unable to retain employees when they receive offers to perform rewarding work at similar governmental agencies at rates higher levels. The number of new cases OCFW accepts depends on the number of referrals, the availability of staff, and financial resources. The number may fluctuate depending on litigation schedules set by courts and the rate at which courts make decisions, factors outside of OCFW's control. Texas Government Code section 78.054 provides that OCFW may not accept an appointment if OCFW has insufficient resources to provide adequate representation. When OCFW is only able to retain staff for a fraction of the 5-8 years that state-post-conviction litigation can take, it limits the number of cases OCFW can handle, and costs more to the State because the State pays multiple lawyers to do the same work.

EXPLANATION OF BIENNIAL CHANGE (includes Rider amounts):

<u>STRATEGY BIENNIAL TOTAL - ALL FUNDS</u>		<u>BIENNIAL</u>	<u>EXPLANATION OF BIENNIAL CHANGE</u>	
Base Spending (Est 2022 + Bud 2023)	Baseline Request (BL 2024 + BL 2025)	CHANGE	\$ Amount	Explanation(s) of Amount (must specify MOFs and FTEs)
\$4,038,160	\$3,838,160	\$(200,000)	\$(200,000)	Decrease due to federal fund
			<u>\$(200,000)</u>	Total of Explanation of Biennial Change

3.A. Strategy Request
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL: 1 Post-Conviction Representation
OBJECTIVE: 1 Post-Conviction Representation Service Categories:
STRATEGY: 2 Post-Conviction Non-capital Representation Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
Output Measures:						
KEY 1	Number of New Non-capital Cases Accepted	0.00	3.00	4.00	4.00	4.00
KEY 2	Number Of Non-capital Cases Refused	0.00	1.00	2.00	2.00	1.00
KEY 3	Number Of Non-capital Cases Reviewed	0.00	3.00	4.00	4.00	4.00
Explanatory/Input Measures:						
1	The Number of Non-capital Cases Pending	6.00	8.00	10.00	12.00	12.00
Objects of Expense:						
1001	SALARIES AND WAGES	\$154,357	\$172,940	\$174,306	\$174,306	\$174,306
1002	OTHER PERSONNEL COSTS	\$13,682	\$1,200	\$1,200	\$1,200	\$1,200
2001	PROFESSIONAL FEES AND SERVICES	\$0	\$24,837	\$24,837	\$31,530	\$31,530
2003	CONSUMABLE SUPPLIES	\$0	\$2,700	\$2,700	\$2,700	\$2,700
2004	UTILITIES	\$0	\$1,000	\$1,370	\$1,370	\$1,370
2005	TRAVEL	\$939	\$4,030	\$3,000	\$3,000	\$3,000
2006	RENT - BUILDING	\$0	\$600	\$0	\$0	\$0
2007	RENT - MACHINE AND OTHER	\$0	\$3,000	\$3,000	\$3,000	\$3,000
2009	OTHER OPERATING EXPENSE	\$1,866	\$21,323	\$21,217	\$14,524	\$14,524
5000	CAPITAL EXPENDITURES	\$0	\$0	\$0	\$0	\$0

3.A. Strategy Request
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL: 1 Post-Conviction Representation
OBJECTIVE: 1 Post-Conviction Representation
STRATEGY: 2 Post-Conviction Non-capital Representation

Service Categories:

Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
TOTAL, OBJECT OF EXPENSE		\$170,844	\$231,630	\$231,630	\$231,630	\$231,630
Method of Financing:						
5073	Fair Defense	\$170,844	\$231,630	\$231,630	\$231,630	\$231,630
SUBTOTAL, MOF (GENERAL REVENUE FUNDS - DEDICATED)		\$170,844	\$231,630	\$231,630	\$231,630	\$231,630
TOTAL, METHOD OF FINANCE (INCLUDING RIDERS)					\$231,630	\$231,630
TOTAL, METHOD OF FINANCE (EXCLUDING RIDERS)		\$170,844	\$231,630	\$231,630	\$231,630	\$231,630
FULL TIME EQUIVALENT POSITIONS:		2.0	1.9	1.9	1.9	1.9

STRATEGY DESCRIPTION AND JUSTIFICATION:

3.A. Strategy Request
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL:	1	Post-Conviction Representation	
OBJECTIVE:	1	Post-Conviction Representation	Service Categories:
STRATEGY:	2	Post-Conviction Non-capital Representation	Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
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OCFW represents a limited number of incarcerated persons serving sentences for non-capital crimes, where questionable forensic science tainted their conviction. See Tex. Govt. Code sec. 78.054. All of these cases involve wrongful convictions or innocence, and the integrity of the criminal justice systems depends on the funding of lawyers to identify and litigate these cases.

The Texas Forensic Science Commission refers OCFW these cases following an investigation into professional negligence, misconduct of forensic analysts, or unsupported forensic scientific analysis.

The only forensic cases OCFW handles are those of wrongful conviction or innocence, where the Texas Forensic Science Commission has identified potentially problematic or unsupportable forensic science that may have affected the reliability of a conviction.

EXTERNAL/INTERNAL FACTORS IMPACTING STRATEGY:

The 84th Legislature expanded OCFW's mandate include these cases, but this priority was not funded until the current biennium.

OCFW work in this area is limited what attorneys in the two funded FTE positions can reasonably accomplish.

The number of new cases OCFW can accept depends on how many cases are referred to it, the availability of staff with the capacity to provide professionally appropriate representation, and the financial resources of the agency.

OCFW cannot accept referrals of cases directly; its jurisdiction is limited to cases involving undermined forensic science that were referred in writing by the Forensic Science Commission. As such, OCFW's ability to handle cases involving forensic science is limited to those over which the Forensic Science Commission has jurisdiction.

3.A. Strategy Request
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

215 Office of Capital and Forensic Writs

GOAL: 1 Post-Conviction Representation
 OBJECTIVE: 1 Post-Conviction Representation Service Categories:
 STRATEGY: 2 Post-Conviction Non-capital Representation Service: 01 Income: NA Age: NA

CODE	DESCRIPTION	Exp 2021	Est 2022	Bud 2023	BL 2024	BL 2025
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EXPLANATION OF BIENNIAL CHANGE (includes Rider amounts):

<u>STRATEGY BIENNIAL TOTAL - ALL FUNDS</u>		<u>BIENNIAL</u>	<u>EXPLANATION OF BIENNIAL CHANGE</u>	
Base Spending (Est 2022 + Bud 2023)	Baseline Request (BL 2024 + BL 2025)	CHANGE	\$ Amount	Explanation(s) of Amount (must specify MOFs and FTEs)
\$463,260	\$463,260	\$0	\$0	Total of Explanation of Biennial Change

3.A. Strategy Request
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

SUMMARY TOTALS:

OBJECTS OF EXPENSE:	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710
METHODS OF FINANCE (INCLUDING RIDERS):				\$2,150,710	\$2,150,710
METHODS OF FINANCE (EXCLUDING RIDERS):	\$1,941,056	\$2,229,177	\$2,272,243	\$2,150,710	\$2,150,710
FULL TIME EQUIVALENT POSITIONS:	22.0	22.0	23.0	20.5	20.5

RIDER REVISION REQUEST

3.B. Rider Revisions and Additions Request

Agency Code: 215	Agency Name: Office of Capital and Forensic Writs	Prepared By: Olga Right	Date: July 28, 2022	Request Level: Baseline
Current Rider Number	Page Number in 2022-23 GAA	Proposed Rider Language		

1

IV-28

1. Performance Measure Targets. The following is a listing of the key performance target levels for the Office of Capital and Forensic Writs. It is the intent of the Legislature that appropriations made by this Act be utilized in the most efficient and effective manner possible to achieve the intended mission of the Office of Capital and Forensic Writs. In order to achieve the objectives and service standards established by this Act, the Office of Capital and Forensic Writs shall make every effort to attain the following designated key performance target levels associated with each item of appropriation.

2024 2025

A. Goal: Post Conviction Representation

Outcome (Results/Impact):

Number of Capital Writ Applications

for Which Hearings Are Granted by the Trial Court	14	14
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Percentage of Capital Writs Filed on a Timely Basis	100%	100%
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A.1.1. Strategy: CAPITAL REPRESENTATION

Output (Volume):

The Number of Writ Applications Filed in Capital Cases	6	6
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The Number of New Capital Cases Accepted	4	4
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A.1.2. Strategy: NON-CAPITAL REPRESENTATION

Output (Volume):

Number of New Non-capital Cases Accepted	3	4
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This rider is being updated to account for the revision to certain performance measures approved by the LBB and the Office of the Governor during strategic planning.

EXCEPTIONAL ITEM REQUEST

4.A. Exceptional Item Request Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
	Item Name: Salary Increases to Account for Inflation Item Priority: 1 IT Component: No Anticipated Out-year Costs: No Involve Contracts > \$50,000: No Includes Funding for the Following Strategy or Strategies: 01-01-01 Post-Conviction Capital Representation 01-01-02 Post-Conviction Non-capital Representation		
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	160,403	160,403
1002	OTHER PERSONNEL COSTS	811	811
2009	OTHER OPERATING EXPENSE	2,433	2,433
TOTAL, OBJECT OF EXPENSE		\$163,647	\$163,647
METHOD OF FINANCING:			
5073	Fair Defense	163,647	163,647
TOTAL, METHOD OF FINANCING		\$163,647	\$163,647

DESCRIPTION / JUSTIFICATION:

The staff positions within the Article IV Courts and Agencies require a unique level of skill. From attorneys to clerks and interpreters, to researchers and IT professionals, the expertise needed to keep the third branch of government running is vast. Recruiting and retaining qualified staff is challenging, even more so with inflation at 8.6 percent and rising. In FY 2021, the Judiciary had the third highest turnover rate in the state by General Appropriations Act Article at 14.5 percent. Salaries within the judiciary are not keeping up with inflation and are not competitive with other agencies or the private sector. Over the past year, Article IV Courts and Agencies have noticed a concerning trend of positions remaining open for lengthy periods of time and a steep decline in qualified applicants. Some entities have resorted to paying for recruiting tools to get a small pool of qualified candidates. Salary compression is also a major issue, where out of necessity, positions are posted at higher salaries than what current employees are making.

As such, along with the Article IV Courts and Agencies, OCFW requests a 10% increase to keep pace with inflation and to retain existing valuable staff. The total amount requested for this purpose is \$327,294 (biennially). This request would increase the salaries of all OCFW staff by 10% except for the Director, whose position is exempt from the State classification plan.

EXTERNAL/INTERNAL FACTORS:

Inflation is 8.6%. Absent a salary increase, inflation will have the effect of driving down the real value of OCFW staff salaries

OCFW turnover dramatically outstrip the high rate of turnover in the Texas judiciary. From 2018 to 2021, OCFW turnover averaged 36% among legal staff. OCFW cannot retain

4.A. Exceptional Item Request Schedule
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
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valuable staff while paying low, uncompetitive salaries, the real value of which declines as inflation increases.

The cost of living in Austin has skyrocketed. Multiple OCFW staff have reported that landlords have increased rent by \$1,000 per month.

PCLS TRACKING KEY:

4.A. Exceptional Item Request Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
	Item Name: Exempt Position Salary increase Item Priority: 2 IT Component: No Anticipated Out-year Costs: No Involve Contracts > \$50,000: No Includes Funding for the Following Strategy or Strategies: 01-01-01 Post-Conviction Capital Representation 01-01-02 Post-Conviction Non-capital Representation		
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	36,490	36,490
1002	OTHER PERSONNEL COSTS	183	182
2009	OTHER OPERATING EXPENSE	549	548
TOTAL, OBJECT OF EXPENSE		\$37,222	\$37,220
METHOD OF FINANCING:			
5073	Fair Defense	37,222	37,220
TOTAL, METHOD OF FINANCING		\$37,222	\$37,220

DESCRIPTION / JUSTIFICATION:

The Director of OCFW leads the only statewide public defender in Texas, and manages an office that handles the most serious, complicated cases in Texas, ensuring that capital and non-capital convictions are constitutional, reliable, and untainted by questionable forensic evidence. The current Director has been in his position for approximately seven years, following appointment by the Court of Criminal Appeals. His salary, however, is uncompetitive in comparison with leaders of analogous public defense offices or prosecutors.

OCFW Oversight Board believes it vitally important that the OCFW Director be paid a market competitive salary. For OCFW to continue to reliably safeguard the integrity of convictions and death sentences for the State of Texas, the OCFW oversight board believes it is essential that the agency be adequately funded from the top down. The OCFW Director is currently set at Exempt Salary Group 4. The OCFW Oversight Board requests that the salary group for the OCFW Director, who has successfully guided the agency for nearly seven years be increased to Salary Group 5, which is more appropriate for this position as the only leader of the only independent statewide public defender agency whose docket includes the most serious and complicated cases in the State of Texas.

The OCFW Oversight Board asks that the Director's salary be raised so that it matches the starting salary of the Chief Public Defender of the Regional Public Defender for Capital Cases, a capital trial-level public defender located in Lubbock that is funded by the Texas Indigent Defense Commission.

As such, the Oversight Board of OCFW seeks \$72,980 over the biennium to increase the salary of the Director from \$148,510 to \$185,000, the lowest end of the range paid to

4.A. Exceptional Item Request Schedule
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency code: 215

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
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Executive Director of the Regional Public Defender for Capital Cases.

EXTERNAL/INTERNAL FACTORS:

The OCFW Director salary (\$148,500) is uncompetitive in comparison to the salaries paid to the leaders of other Texas public defender offices.

The starting salary of the Executive Director of the Regional Public Defender for Capital Cases (RPDO) is \$185,000 and ranges to \$198,000.

The OCFW Director's salary is also below that of supervisors at the RPDO, including the Deputy Chief Public Defender (salary range \$167,000 to \$179,046.60) and Managing Attorney (salary range: \$150,000 to \$160,820.30).

The OCFW Director's salary also is uncompetitive with the salaries paid to leaders of different non-capital indigent defense programs in Texas:

- Chief Public Defender, Harris County: \$207,000
- Executive Director, Harris County Managed Assigned Counsel: \$185,000
- Chief Public Defender, Bexar County: \$179,000
- Chief Public Defender, Dallas County: \$198,012
- Chief Public Defender, Concho Valley Public Defender (San Angelo): \$170,000

If Exceptional Item #1 is funded to increase OCFW salaries to account for inflation, the OCFW's Director's salary would remain unchanged since it is an Exempt position.

Absent a salary increase, the real value of the OCFW Director's salary would decrease as inflation as reflected by the consumer price index continues to rise, compounding the uncompetitive salary paid for this important position.

PCLS TRACKING KEY:

4.A. Exceptional Item Request Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
	Item Name: Closing the Gap: Salary Equity and Parity Item Priority: 3 IT Component: No Anticipated Out-year Costs: No Involve Contracts > \$50,000: No Includes Funding for the Following Strategy or Strategies: 01-01-01 Post-Conviction Capital Representation 01-01-02 Post-Conviction Non-capital Representation		
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	335,677	335,677
1002	OTHER PERSONNEL COSTS	1,668	1,670
2009	OTHER OPERATING EXPENSE	5,007	5,009
TOTAL, OBJECT OF EXPENSE		\$342,352	\$342,356
METHOD OF FINANCING:			
5073	Fair Defense	342,352	342,356
TOTAL, METHOD OF FINANCING		\$342,352	\$342,356

DESCRIPTION / JUSTIFICATION:

This exceptional item asks for the additional money that is necessary to increase the salaries of OCFW existing staff to more equitable levels beyond what is requested in exceptional item #1. High rates of turnover destabilize OCFW and render OCFW less able to provide representation in as many cases, shifting costs of representation to Texas counties. Damaging rates of attrition will be a problem so long as OCFW employees can leave state employment and walk a few blocks to join a different governmental agency and earn substantially more performing similar or even less-complex, lower-stakes work.

OCFW is unable to retain its employees when they receive offers at 30 or 40% higher than what OCFW can pay them. Through this exceptional item, OCFW seeks funding sufficient to pay, in conjunction with the inflation-related salary increase exceptional item request (see #1), salaries to attorneys that average the starting salary paid to RPDO attorneys, \$125,000, and salaries to mitigation specialists that average the starting salary paid to RPDO mitigation specialists, \$85,000.

EXTERNAL/INTERNAL FACTORS:

OCFW has experienced 200% turnover since opening. In the last 12 years, OCFW has lost 44 valuable employees—the equivalent of losing 200% of current staff. From 2018 to 2021, OCFW turnover among legal staff averaged 36%.

When OCFW is unable to handle representation due to lack of resources or staffing, costs of representation are shifted to Texas counties, which must pay on average \$150 per hour for attorney work and \$100 per hour for mitigation specialist work.

4.A. Exceptional Item Request Schedule
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
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OCFW saved Texas counties and property taxpayers at least \$4,800,000 during 2021, providing the State of Texas over 24,000 hours of legal representation and 12,000 of mitigation investigation.

OCFW staff leave for better paying, similar employment elsewhere. OCFW salaries are uncompetitive with other public defenders in Texas. The average OCFW attorney salary is \$93,000, while the starting RPDO Assistant Public Defender salary is \$125,000 and Senior Assistant Public Defenders can earn \$161,000.

Mitigation specialists employed by the RPDO earn between \$85,000 and \$110,000, while those at OCFW earn just \$68,685 on average for the same work.

Attorney Salaries at other public defender offices are also higher. Attorneys at the Travis County Public Defender with just six years of experience can earn up to \$124,000, while those with eight years of experience can earn up to \$132,000. Assistant Federal Public Defenders who do similarly specialized post-conviction, habeas corpus representation can earn up to \$170,000. Dallas County Public Defender Capital Trial Unit Attorneys earn \$165,000.

PCLS TRACKING KEY:

4.A. Exceptional Item Request Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
	Item Name: Enhanced Office Efficiencies and Effectiveness		
	Item Priority: 4		
	IT Component: No		
	Anticipated Out-year Costs: No		
	Involve Contracts > \$50,000: No		
	Includes Funding for the Following Strategy or Strategies:		
	01-01-01 Post-Conviction Capital Representation		
	01-01-02 Post-Conviction Non-capital Representation		
 OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	268,993	268,993
1002	OTHER PERSONNEL COSTS	1,345	1,345
2001	PROFESSIONAL FEES AND SERVICES	80,000	80,000
2003	CONSUMABLE SUPPLIES	2,100	2,100
2004	UTILITIES	900	900
2005	TRAVEL	75,000	75,000
2006	RENT - BUILDING	1,200	1,200
2007	RENT - MACHINE AND OTHER	2,100	2,100
2009	OTHER OPERATING EXPENSE	33,059	33,059
TOTAL, OBJECT OF EXPENSE		\$464,697	\$464,697
 METHOD OF FINANCING:			
5073	Fair Defense	464,697	464,697
TOTAL, METHOD OF FINANCING		\$464,697	\$464,697
 FULL-TIME EQUIVALENT POSITIONS (FTE):		 4.00	 4.00

DESCRIPTION / JUSTIFICATION:

Three Legal Assistants. OCFW is an office of 22 without a single paralegal or legal assistant (or secretary or receptionist). Absent paralegal help, attorneys and mitigation specialists have been spending 20% of their time on non-legal and non-investigative tasks, that could be accomplished more efficiently and at a lower cost by legal assistants. OCFW attorneys are spending many hours tracking down old court and case files, something that could be accomplished more efficiently by a non-lawyer. OCFW requests \$373,506 over the biennium to hire three legal assistants, one of whom would be dedicated to OCFW's forensic cases.

Make Temporary Mitigation Specialist Permanent. OCFW is experiencing a COVID-related backlog in case investigation, due to the COVID-related inability to conduct much field investigation for over a year. OCFW also expects the rate of capital trials to increase, due to trial courts clearing out their own backlogs. OCFW anticipates the case backlog to persist throughout the next biennium. OCFW requests the FTE authority granted by SB8 be made permanent, and funding for this position in the amount of \$172,550 (biennially).

4.A. Exceptional Item Request Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
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Additional Money for Travel, Experts, And Operating Expenses. Staff is travelling more than ever, but OCFW cannot pay for increased travel costs out of its baseline budget, resulting in capital hearings being adjourned. Capital and forensic litigation invariably involve specialized expertise and require outside experts. OCFW cases commonly have hundreds of hours of video, jail calls, and other media that must be reviewed. A huge amount of salaried staff time—can be saved by investing in an artificial intelligence program, such as Justice Text (<https://justicetext.com/>). OCFW anticipates the cost of necessities like Westlaw, copiers, and office supplies will increase. As such, OCFW seeks an additional \$150,000 for travel, \$160,000 in professional fees and services, and an \$73,339 in other operating expenses over the biennium

EXTERNAL/INTERNAL FACTORS:

20% of OCFW attorney and mitigation specialist time is spent on paralegal tasks, at a cost of \$338,000 per year. In the absence of paralegal assistance, OCFW attorneys and mitigation specialists are doing paralegal work at a higher cost, which also limits their ability to do the highly skilled legal work or mitigation investigation for which they are trained and qualified.

In the absence of paralegals on staff at OCFW, counties have been forced to fill the gap, paying appointed paralegals at higher rates.

Over the last 12 years, the size and complexity of OCFW cases has grown. One case was over 25 TB of data. Other cases approach 1TB. These data and document heavy cases highlight the necessity of legal support staff.

Mitigation specialists routinely spend 50% of their work week away from home, highlighting the demands on our staff of mitigation specialists post-pandemic.

Due to high rates of travel, inflationary pressures, and difficulties in accessing appropriated ARPA funds, in FY2022, OCFW ran out money it can spend on staff travel. As a result, OCFW was forced to defer evidentiary hearings and necessary investigation into FY2023.

With OCFW's growing forensic practice, additional expert funds are needed. The difficulty of paying for necessary expert assistance has slowed the litigation of these cases. The current CPI is 8.6%. OCFW anticipates that other operating costs will increase at levels that outstrip inflation.

PCLS TRACKING KEY:

4.A. Exceptional Item Request Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

<u>CODE</u>	<u>DESCRIPTION</u>	<u>Excp 2024</u>	<u>Excp 2025</u>
	Item Name: Buildout Expenses Associated with Office Move Recommended by the Texas Facilities Commission		
	Item Priority: 5		
	IT Component: No		
	Anticipated Out-year Costs: No		
	Involve Contracts > \$50,000: No		
	Includes Funding for the Following Strategy or Strategies:		
	01-01-01 Post-Conviction Capital Representation		
	01-01-02 Post-Conviction Non-capital Representation		
 OBJECTS OF EXPENSE:			
2009	OTHER OPERATING EXPENSE	39,540	0
5000	CAPITAL EXPENDITURES	91,893	0
	TOTAL, OBJECT OF EXPENSE	\$131,433	\$0
 METHOD OF FINANCING:			
5073	Fair Defense	131,433	0
	TOTAL, METHOD OF FINANCING	\$131,433	\$0

DESCRIPTION / JUSTIFICATION:

The Texas Facilities Commission has recommended that OCFW move into large space on another floor in the same building, space that is being vacated by another agency that is moving into a newly constructed building in the Capitol Complex.

The space that the Facilities Commission wishes to allocate to us, however, requires some minor modifications. It must be separated from an adjoining workspace (that is being allocated to another state agency), and must have a new means of egress, and be repainted.

OCFW obtained estimates from the Facilities Commission for necessary work. The Facilities Commission has estimated that the total construction cost is \$39,541, while the estimate for necessary repainting is \$61,893, for a total of \$101,434. OCFW would gladly provide these estimates upon request.

In addition, OCFW requests \$30,000 in additional funding for costs, related to office furniture (\$25,000) and moving expenses (\$5,000).

EXTERNAL/INTERNAL FACTORS:

OCFW's 22 highly skilled, qualified, and hardworking staff work in sub-par, cramped, non-private spaces ill-suited to the sensitive work of capital and forensic post-conviction litigation or a professional law office:

- 18 employees work out of just 1900 square feet of office space.
- 6 mitigation specialists work in the office of the former Executive Director

4.A. Exceptional Item Request Schedule
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

CODE	DESCRIPTION	Excp 2024	Excp 2025
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- 3 attorneys work out of a small former conference room.
- Other attorneys work from cubicles, which lack privacy and confidentiality.

OCFW routinely relies heavily on the free labor provided by law student and college interns; however, the presence of multiple interns compounds the lack of office space for staff.

The Texas Facilities Commission has deemed OCFW current office space to be inadequate for office needs and has recommended that OCFW move into a larger space that is being vacated by another agency within the same building. The new space consists of 15 private offices and 13 cubicles, and will accommodate OCFW existing staff and modest growth, while providing more professional workspaces for the sensitive legal work of OCFW.

PCLS TRACKING KEY:

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name: Salary Increases to Account for Inflation			
Allocation to Strategy: 1-1-1 Post-Conviction Capital Representation			
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	147,992	147,992
1002	OTHER PERSONNEL COSTS	749	749
2009	OTHER OPERATING EXPENSE	2,247	2,247
TOTAL, OBJECT OF EXPENSE		\$150,988	\$150,988
METHOD OF FINANCING:			
5073	Fair Defense	150,988	150,988
TOTAL, METHOD OF FINANCING		\$150,988	\$150,988
FULL-TIME EQUIVALENT POSITIONS (FTE):		0.0	0.0

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name: Salary Increases to Account for Inflation			
Allocation to Strategy: 1-1-2 Post-Conviction Non-capital Representation			
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	12,411	12,411
1002	OTHER PERSONNEL COSTS	62	62
2009	OTHER OPERATING EXPENSE	186	186
TOTAL, OBJECT OF EXPENSE		\$12,659	\$12,659
METHOD OF FINANCING:			
5073	Fair Defense	12,659	12,659
TOTAL, METHOD OF FINANCING		\$12,659	\$12,659
FULL-TIME EQUIVALENT POSITIONS (FTE):		0.0	0.0

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name:		Exempt Position Salary increase	
Allocation to Strategy:		1-1-1	Post-Conviction Capital Representation
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	32,841	32,841
1002	OTHER PERSONNEL COSTS	165	164
2009	OTHER OPERATING EXPENSE	494	493
TOTAL, OBJECT OF EXPENSE		\$33,500	\$33,498
METHOD OF FINANCING:			
5073	Fair Defense	33,500	33,498
TOTAL, METHOD OF FINANCING		\$33,500	\$33,498

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name:			
	Exempt Position Salary increase		
Allocation to Strategy:			
	1-1-2 Post-Conviction Non-capital Representation		
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	3,649	3,649
1002	OTHER PERSONNEL COSTS	18	18
2009	OTHER OPERATING EXPENSE	55	55
TOTAL, OBJECT OF EXPENSE		\$3,722	\$3,722
METHOD OF FINANCING:			
5073	Fair Defense	3,722	3,722
TOTAL, METHOD OF FINANCING		\$3,722	\$3,722

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name: Closing the Gap: Salary Equity and Parity			
Allocation to Strategy: 1-1-1 Post-Conviction Capital Representation			
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	298,480	298,480
1002	OTHER PERSONNEL COSTS	1,482	1,484
2009	OTHER OPERATING EXPENSE	4,449	4,451
TOTAL, OBJECT OF EXPENSE		\$304,411	\$304,415
METHOD OF FINANCING:			
5073	Fair Defense	304,411	304,415
TOTAL, METHOD OF FINANCING		\$304,411	\$304,415
FULL-TIME EQUIVALENT POSITIONS (FTE):		0.0	0.0

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name: Closing the Gap: Salary Equity and Parity			
Allocation to Strategy: 1-1-2 Post-Conviction Non-capital Representation			
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	37,197	37,197
1002	OTHER PERSONNEL COSTS	186	186
2009	OTHER OPERATING EXPENSE	558	558
TOTAL, OBJECT OF EXPENSE		\$37,941	\$37,941
METHOD OF FINANCING:			
5073	Fair Defense	37,941	37,941
TOTAL, METHOD OF FINANCING		\$37,941	\$37,941

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name:		Enhanced Office Efficiencies and Effectiveness	
Allocation to Strategy:		1-1-1	Post-Conviction Capital Representation
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	200,552	200,552
1002	OTHER PERSONNEL COSTS	1,003	1,003
2001	PROFESSIONAL FEES AND SERVICES	40,000	40,000
2003	CONSUMABLE SUPPLIES	1,890	1,890
2004	UTILITIES	810	810
2005	TRAVEL	75,000	75,000
2006	RENT - BUILDING	1,080	1,080
2007	RENT - MACHINE AND OTHER	1,890	1,890
2009	OTHER OPERATING EXPENSE	29,338	29,338
TOTAL, OBJECT OF EXPENSE		\$351,563	\$351,563
METHOD OF FINANCING:			
5073	Fair Defense	351,563	351,563
TOTAL, METHOD OF FINANCING		\$351,563	\$351,563
FULL-TIME EQUIVALENT POSITIONS (FTE):		3.0	3.0

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name:		Enhanced Office Efficiencies and Effectiveness	
Allocation to Strategy:		1-1-2	Post-Conviction Non-capital Representation
OBJECTS OF EXPENSE:			
1001	SALARIES AND WAGES	68,441	68,441
1002	OTHER PERSONNEL COSTS	342	342
2001	PROFESSIONAL FEES AND SERVICES	40,000	40,000
2003	CONSUMABLE SUPPLIES	210	210
2004	UTILITIES	90	90
2005	TRAVEL	0	0
2006	RENT - BUILDING	120	120
2007	RENT - MACHINE AND OTHER	210	210
2009	OTHER OPERATING EXPENSE	3,721	3,721
TOTAL, OBJECT OF EXPENSE		\$113,134	\$113,134
METHOD OF FINANCING:			
5073	Fair Defense	113,134	113,134
TOTAL, METHOD OF FINANCING		\$113,134	\$113,134
FULL-TIME EQUIVALENT POSITIONS (FTE):		1.0	1.0

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215**

Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name: Buildout Expenses Associated with Office Move Recommended by the Texas Facilities Commission			
Allocation to Strategy: 1-1-1 Post-Conviction Capital Representation			
OBJECTS OF EXPENSE:			
2009	OTHER OPERATING EXPENSE	35,586	0
5000	CAPITAL EXPENDITURES	82,704	0
TOTAL, OBJECT OF EXPENSE		\$118,290	\$0
METHOD OF FINANCING:			
5073	Fair Defense	118,290	0
TOTAL, METHOD OF FINANCING		\$118,290	\$0
FULL-TIME EQUIVALENT POSITIONS (FTE):		0.0	0.0

4.B. Exceptional Items Strategy Allocation Schedule
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency code: **215** Agency name: **Office of Capital and Forensic Writs**

Code	Description	Excp 2024	Excp 2025
Item Name: Buildout Expenses Associated with Office Move Recommended by the Texas Facilities Commission			
Allocation to Strategy: 1-1-2 Post-Conviction Non-capital Representation			
OBJECTS OF EXPENSE:			
2009	OTHER OPERATING EXPENSE	3,954	0
5000	CAPITAL EXPENDITURES	9,189	0
TOTAL, OBJECT OF EXPENSE		\$13,143	\$0
METHOD OF FINANCING:			
5073	Fair Defense	13,143	0
TOTAL, METHOD OF FINANCING		\$13,143	\$0
FULL-TIME EQUIVALENT POSITIONS (FTE):		0.0	0.0

4.C. Exceptional Items Strategy Request
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: **215** Agency name: **Office of Capital and Forensic Writs**

GOAL: 1 Post-Conviction Representation

OBJECTIVE: 1 Post-Conviction Representation

STRATEGY: 1 Post-Conviction Capital Representation

Service Categories:

Service: 01 Income: NA Age: NA

CODE DESCRIPTION	Exp 2024	Exp 2025
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STRATEGY IMPACT ON OUTCOME MEASURES:

<u>1</u> Percentage of Capital Writs Filed on a Timely Basis	100.00 %	100.00 %
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OUTPUT MEASURES:

<u>1</u> Number of New Capital Cases Accepted	1.00	1.00
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<u>2</u> Number Of Capital Cases Refused	(1.00)	(1.00)
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EXPLANATORY/INPUT MEASURES:

<u>1</u> Number of Capital Cases Pending	36.00	36.00
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OBJECTS OF EXPENSE:

1001 SALARIES AND WAGES	679,865	679,865
1002 OTHER PERSONNEL COSTS	3,399	3,400
2001 PROFESSIONAL FEES AND SERVICES	40,000	40,000
2003 CONSUMABLE SUPPLIES	1,890	1,890
2004 UTILITIES	810	810
2005 TRAVEL	75,000	75,000
2006 RENT - BUILDING	1,080	1,080
2007 RENT - MACHINE AND OTHER	1,890	1,890
2009 OTHER OPERATING EXPENSE	72,114	36,529
5000 CAPITAL EXPENDITURES	82,704	0

Total, Objects of Expense	\$958,752	\$840,464
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METHOD OF FINANCING:

5073 Fair Defense	958,752	840,464
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Total, Method of Finance	\$958,752	\$840,464
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4.C. Exceptional Items Strategy Request
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: **215** Agency name: **Office of Capital and Forensic Writs**

GOAL: 1 Post-Conviction Representation

OBJECTIVE: 1 Post-Conviction Representation

Service Categories:

STRATEGY: 1 Post-Conviction Capital Representation

Service: 01 Income: NA Age: NA

CODE DESCRIPTION	Exp 2024	Exp 2025
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FULL-TIME EQUIVALENT POSITIONS (FTE):	3.0	3.0
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EXCEPTIONAL ITEM(S) INCLUDED IN STRATEGY:

Salary Increases to Account for Inflation

Exempt Position Salary increase

Closing the Gap: Salary Equity and Parity

Enhanced Office Efficiencies and Effectiveness

Buildout Expenses Associated with Office Move Recommended by the Texas Facilities Commission

4.C. Exceptional Items Strategy Request
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: **215** Agency name: **Office of Capital and Forensic Writs**

GOAL: 1 Post-Conviction Representation

OBJECTIVE: 1 Post-Conviction Representation

STRATEGY: 2 Post-Conviction Non-capital Representation

Service Categories:

Service: 01 Income: NA Age: NA

CODE DESCRIPTION	Exp 2024	Exp 2025
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OUTPUT MEASURES:

<u>1</u> Number of New Non-capital Cases Accepted	1.00	1.00
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<u>3</u> Number Of Non-capital Cases Reviewed	1.00	1.00
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EXPLANATORY/INPUT MEASURES:

<u>1</u> The Number of Non-capital Cases Pending	14.00	14.00
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OBJECTS OF EXPENSE:

1001 SALARIES AND WAGES	121,698	121,698
1002 OTHER PERSONNEL COSTS	608	608
2001 PROFESSIONAL FEES AND SERVICES	40,000	40,000
2003 CONSUMABLE SUPPLIES	210	210
2004 UTILITIES	90	90
2006 RENT - BUILDING	120	120
2007 RENT - MACHINE AND OTHER	210	210
2009 OTHER OPERATING EXPENSE	8,474	4,520
5000 CAPITAL EXPENDITURES	9,189	0
Total, Objects of Expense	\$180,599	\$167,456

METHOD OF FINANCING:

5073 Fair Defense	180,599	167,456
Total, Method of Finance	\$180,599	\$167,456

FULL-TIME EQUIVALENT POSITIONS (FTE):

1.0	1.0
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EXCEPTIONAL ITEM(S) INCLUDED IN STRATEGY:

4.C. Exceptional Items Strategy Request
 88th Regular Session, Agency Submission, Version 1
 Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: **215** Agency name: **Office of Capital and Forensic Writs**

GOAL: 1 Post-Conviction Representation

OBJECTIVE: 1 Post-Conviction Representation

Service Categories:

STRATEGY: 2 Post-Conviction Non-capital Representation

Service: 01 Income: NA Age: NA

CODE DESCRIPTION	Exp 2024	Exp 2025
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Salary Increases to Account for Inflation

Exempt Position Salary increase

Closing the Gap: Salary Equity and Parity

Enhanced Office Efficiencies and Effectiveness

Buildout Expenses Associated with Office Move Recommended by the Texas Facilities Commission

**HISTORICALLY UNDERUTILIZED BUSINESS
SUPPORTING SCHEDULE**

6.A. Historically Underutilized Business Supporting Schedule
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: 215 Agency: Office of Capital and Forensic Writs

COMPARISON TO STATEWIDE HUB PROCUREMENT GOALS

A. Fiscal Year - HUB Expenditure Information

Statewide HUB Goals	Procurement Category	% Goal	HUB Expenditures FY 2020			Total Expenditures FY 2020		HUB Expenditures FY 2021			Total Expenditures FY 2021	
			% Actual	Diff	Actual \$	% Goal	% Actual	Diff	Actual \$	% Goal	% Actual	Diff
11.2%	Heavy Construction	0.0 %	0.0%	0.0%	\$0	\$0	0.0 %	0.0%	0.0%	0.0%	\$0	\$0
21.1%	Building Construction	0.0 %	0.0%	0.0%	\$0	\$0	0.0 %	0.0%	0.0%	0.0%	\$0	\$0
32.9%	Special Trade	0.0 %	0.0%	0.0%	\$0	\$0	0.0 %	0.0%	0.0%	0.0%	\$0	\$0
23.7%	Professional Services	0.0 %	0.0%	0.0%	\$0	\$0	0.0 %	0.0%	0.0%	0.0%	\$0	\$0
26.0%	Other Services	26.0 %	0.0%	-26.0%	\$0	\$79,643	26.0 %	0.0%	-26.0%	0.0%	\$0	\$48,502
21.1%	Commodities	21.1 %	23.5%	2.4%	\$4,520	\$19,226	21.1 %	35.5%	14.4%	35.5%	\$9,523	\$26,814
	Total Expenditures		4.6%		\$4,520	\$98,869		12.6%			\$9,523	\$75,316

B. Assessment of Attainment of HUB Procurement Goals

Attainment:

The agency attained one of two goals of the applicable agency HUB procurement goals in FY 2020 and FY 2021.

Applicability:

The agency does not have real property and therefore the agency does not have expenditures in the Heavy Construction, Building Construction, or Special Trade HUB categories. No professional Services were reported in FY 2020 and FY 2021.

Factors Affecting Attainment:

The agency did not meet the Statewide HUB Goal in the "other Services" category in FY 2020 and FY 2021. The agency expends this procurement category on judicial-related items, so many of the "other services" vendors were persons providing specialized legal or expert witness services which are difficult to procure through the HUB procurement process and that cannot be sourced elsewhere.

C. Good-Faith Efforts to Increase HUB Participation

Outreach Efforts and Mentor-Protégé Programs:

OCFW has made efforts to purchase from certified HUB vendors to the extent possible, both directly and through TexasSmartBuy, and will continue to do so. Based on available financial data, OCFW met its HUB goals for commodities in FY 2020 and FY 2021.

HUB Program Staffing:

OCFW is a small state agency and has no HUB staff or staff dedicated to procurement.

6.A. Historically Underutilized Business Supporting Schedule
88th Regular Session, Agency Submission, Version 1
Automated Budget and Evaluation System of Texas (ABEST)

Agency Code: **215** Agency: **Office of Capital and Forensic Writs**

Current and Future Good-Faith Efforts:

OCFW will continue to prioritize HUB vendors and utilize TexasSmartBuy for procurement needs.