



OFFICE OF THE STATE PUBLIC DEFENDER
FY 2019-20 JOINT BUDGET COMMITTEE HEARING

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QUESTIONS FOR THE OSPD

OSPD-1. Provide a recent history of OSPD staffing, including estimates of understaffing or overstaffing. Is the OSPD currently under or over staffed? How many additional FTE did you receive this year?

The OSPD is currently understaffed, as the charts below show. Along with the continued increase in felony filings, the OSPD is seeing an increase in its attorney attrition rate. Taken together, the increased felony filings and increased attrition has created a critical staffing issue where the OSPD is losing attorneys with the experience and skills necessary to provide effective representation in felony cases. Most OSPD attorneys start right out of law school and we invest a great deal of time and resources in their training. Yet, without the funding to compensate them fairly as they become experienced felony-level attorneys, they leave for better paying opportunities.

The OSPD currently employs 525 attorneys, 474 of whom are trial attorneys. In FY 2013-14, we received FTE pursuant to the Rothgery legislation and our trial offices were staffed at 96%. Since that time, however, our staffing percentages have decreased dramatically, dropping to 80% in FY 2017-18. This year, the OSPD received 34 additional attorney FTE, which was projected to improve staffing levels to 85%, but our most recent projections show staffing will drop to 83% in FY 2018-19 and drop further to 81% staffing in FY 2019-20.

OSPD Staffing and Closed Caseload Summary								
	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
	Actual	Actual	Actual	Actual	Actual	Actual	Approp. (Est.)	Request (Est.)
Total Closed Cases	97,872	110,044	124,416	129,764	136,321	141,511	145,909	150,461
Trial Attorney Appropriation	381	400	430	438	438	439	474	474
Trial Attorney Need for Full Staffing Based on Caseload/Workload Model	407	416	473	497	525	549	568	585
Trial Attorney Deficit	(25)	(16)	(43)	(59)	(87)	(109)	(94)	(111)
% of Trial Attorney Need Met	94%	96%	91%	88%	83%	80%	83%	81%

Of the 93 FTE the OSPD received over the past five years, 59 of the positions were pursuant to fiscal notes tied to bills and 34 were to address the workload increase related to the felony filings.

Trial Attorney Staffing, FY13 - FY19	
SB 13-1210 - Rothgery	46.0
SB 13-1160 - Criminal Theft	(2.0)
HB 14-1266 - Value Based Offenses	(1.0)
HB 14-1050 - Judges Bill - 18th District	1.0
HB 14-1032 - Juvenile Defense	12.0
HB 15-1034 - Judges Bill - 12th District	1.0
HB 15-1043 - Felony DUI	2.3
Total received from legislation	59.3
OSPD - Workload Increase	
Total received from Decision Items	34.1
Total	93.4

The OSPD, in coordination with the Department of Law, contracted with an independent compensation firm, Gallagher Human Resources and Consulting Practice, to conduct a 2018 salary study of public attorneys. The study surveyed attorney salary ranges and actual salaries paid at Colorado public sector attorney organizations at the local, city and county, state, and federal government levels. The OSPD has previously conducted such joint surveys; the latest was in 2015 and, at that time, OSPD attorney pay was 3.2% below the public attorney market.

The 2018 survey findings showed that, overall, the Public Defender’s average salaries have not kept pace with the market and the OSPD is not in a competitive position. Over the past three years, average OSPD attorney salaries have dropped an additional 10% below the market. Public Defenders are now paid on average 13.1% below what the market currently pays public attorneys in corresponding positions. In the entry level Public Defender classification, both the average salary and range minimum are well below the market at 20.9% and 16.7% respectively.

The last pay parity the legislature provided the OSPD to address below-market attorney salaries was in July 2013. Our attrition rate dropped to 8.5% that year and leveled out for the next couple of years, to an average of just under 12%. In FY 2016-17, however, the attrition rate rose to 14% and grew to 18% in FY2017-18. In that year, the office lost 87 attorneys with an average of 5.6 years of service. Approximately 85% (74) of those attorneys had received a significant investment of training from the OSPD and had the skills and experience required to handle felony cases.

The chart below shows that, in FY2016-17, the FTE need to handle the OSPD felony workload was staffed at 82%. This past year, the office was only staffed at 66%, far below the goal of 85%, which puts additional stress on staff and further contributes to the attrition rate.

OSPD FELONY STAFFING				
	FY 16-17	FY 17-18	FY 18-19	FY 19-20
	Actual	Actual	Proj.	Proj.
Total Closed Felony Cases	59,012	63,285	65,588	67,985
Felony FTE Need Based on Caseload/Workload Model	333	356	369	381
# Trial Atty with 3+ yrs	272	238	245	
% Staffed for felony cases	82%	67%	66%	

OSPD-2. Have there been any changes of the law that have changed misdemeanors to felonies or otherwise increased felonies? Has that driven any of the OSPD’s increase in felony caseload?

The increase in felony filings from 2012 to 2016 has been analyzed by the Colorado Commission on Criminal and Juvenile Justice. That data indicates the most significant increase in felony filings is for drug possession crimes. The numbers from the Judicial Branch indicate that an increased filing trend in drug possession cases is continuing into 2017 and 2018. Notably, however, the law has not increased any drug misdemeanors to drug felonies.

Felony assaults filings have increased. House Bill 16-1080 did address the crime of assault by strangulation and resulted in a change of many misdemeanor cases to felony cases. This did, most likely, drive an increase in OSPD felony caseload.

There are no other changes in the law that would have driven the OSPD's increase in felony caseload. Filing decisions by district attorney offices could have impacted OSPD felony caseload.

OSPD-3. OSPD R3 Arapahoe Courtroom Staffing. Why are you asking for additional staff based on the addition of half a criminal court in Arapahoe County when you based your staffing request last year on caseload?

The response to this question is closely related to that for question #4, so we combined our responses. Please see this response under question #4.

OSPD-4. Judicial request R1 (District Court Judges and Supporting Staff) is likely to increase the number of criminal courts. Will OSPD request more funding for this? Why?

The OSPD will, as it has done historically, examine the Judicial Department request for additional judges and request staffing as necessary. OSPD staffing needs result from a combination of caseload, workload and logistics. While additional judge positions ease the burden on the courts, they can add to the burden of public defenders, depending on how the additional judges are used to run court dockets and case assignments. When judicial districts create more courtrooms, the individual judges expect public defenders to be present and keep pace in their courtrooms. That can only happen with adequate staffing. Further, each judicial district allocates its judge positions differently and the number and types of cases assigned to those judges can change over the course of time at the direction of the Chief Judge. For example, the OSPD R3 request for additional staffing in Arapahoe County is being made because the Chief Judge in Arapahoe County changed the courtroom created in 2016 from half-criminal to a full criminal court.

OSPD-5. Is part of OSPD's increasing caseload due to the marijuana industry?

OSPD has no data to support the concept that the marijuana industry has impacted OSPD's increasing caseload. The October 2018 study by the Department of Public Safety, Division of Criminal Justice (pursuant to SB13-283), reports on certain impacts of legalization of marijuana on public safety. That analysis does not suggest that marijuana legalization has had any impact on OSPD caseload.

OSPD-6. What is the relative workload of the State Public Defender and the Director of the Office of the Alternate Defense Counsel?

It is not appropriate for us to assess workload factors that may be used by the Office of the Alternate Defense Counsel. The legislature may want to consider salary adjustments for both positions.

**ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN
RESPONSES ARE REQUIRED**

1. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

We have fully implemented all legislation.

2. Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? PLEASE INDICATE WHERE IN THE DEPARTMENT'S BUDGET REQUEST ACTIONS TAKEN TOWARDS RESOLVING HIGH PRIORITY OUTSTANDING RECOMMENDATIONS CAN BE FOUND. <http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

The OSPD does not have any outstanding audit recommendations.

3. If the Department receives federal funds of any type, please respond to the following:
 - a. Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?
 - b. Does the Department have a contingency plan if federal funds are eliminated?
 - c. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

The OSPD does not receive any federal funds.

4. Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?

The OSPD does not spend any money on public awareness campaigns.

5. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

Over the past decade, our attrition rate has averaged approximately 11.5% but, of particular concern, the attrition rate for our attorneys has been quickly escalating, reaching 18% in FY

2017-18. As of the first quarter of the current year, we have lost 26 attorneys. If this trend continues, we expect to lose over 100 attorneys by the end of the year, pushing our attrition rate to 20% in FY 2018-19.

While we have seen many reasons why attorneys leave the OSPD, a consistent theme has been the opportunity for higher pay in other jobs, including government jobs. Over the last several years, funding for salary survey and merit pay has not been consistent and, as a result, OSPD attorney salaries have not kept up with the market. This in turn has contributed to our turnover issues.

The statewide compensation policies administered by the Department of Personnel can help, somewhat, with our agency's vacancy and turnover issues, but only if the funding provided is truly enough to keep the OSPD at what is deemed to be a market level.

6. Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

The OSPD does not promulgate rules.

7. What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

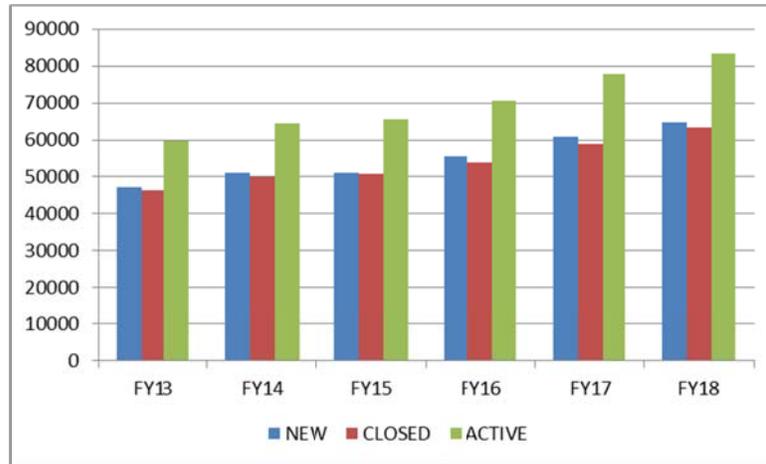
As stated previously, our largest cost increases are tied directly to the surge in felony cases. An increase in felony cases requires more resources and thus additional FTE. Since we are a service-oriented agency with 85% of our appropriation devoted to personal services, any increase in FTE will have a direct impact on our budget.

8. How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

Over the past five years, the OSPD has seen its active felony cases increase from 59,891 cases in FY 2012-13 to 83,494 cases in FY 2017-18, nearly a 40% increase. The Judicial Department District Courts are also reporting significant increases and, over the same timeframe, have experienced an approximate 44% increases in felony filings.

Felony cases, primarily the trial and pre-trial cases, require the greatest attorney effort, time and dedication of resources. They cost the State the most money and increasingly draw OSPD resources away from misdemeanor and juvenile defendant cases. Felony cases make up approximately 45% of our cases yet require 65% of our trial FTE resources.

Felony Case Trends



9. Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department's interactions with the public.

The Office of the State Public Defender is currently working on a project to revamp its public website to be released this fiscal year. The focus of the project is to make information for the public easier to find and understand, in particular for those that need our services. The new website will also make information regarding our budget and our mission clearer in describing the extent and quality of services we provide to indigent Coloradans. We will also be looking at options for making the application process for a public defender available electronically; however, those forms are owned and maintained by the Judicial Department.