

Long Range Financial Plan

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Office of the State Public Defender

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Colorado State Public Defender

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SECTION 1: Introduction to the State Agency

Mission

The mission of the Office of the State Public Defender (OSPD) is to defend and protect the rights, liberties, and dignity of those accused of crimes who cannot afford to retain counsel. We do so by providing constitutionally and statutorily mandated representation that is effective, zealous, inspired and compassionate.

OSPD Enabling Legislation:

The general assembly hereby declares that the state public defender at all times shall serve his clients independently of any political considerations or private interest, provide legal services to indigent persons accused of crime that are commensurate with those available to nonindigents, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association standards relating to the administration of criminal justice, the defense function. C.R.S. 21-1-101(1).

Vision

The Office of the State Public Defender's vision is to develop, maintain and support our passionate and dedicated team so that they can provide the best possible quality of effective and efficient criminal defense representation for each and every one of our clients.

Goals

1. Provide effective legal representation in both trial and appellate courts.
2. Hire and retain a sufficient number of high quality staff to effectively manage the assigned caseload.
3. Provide a both high quality and quantity of staff development, training, new technology and other resources to adapt our response to the ever-changing criminal justice system so that our legal services are commensurate with what is available for non-indigent persons.

SECTION 2: Program and Goal Evaluation

The OSPD reports performance measures as part of the SMART Act, although projections have been expanded for purposes of this report.

Performance Measures

		FY 17-18 (actual)	FY 18-19 (actual)	FY 19-20 (projected)	FY 20-21 (projected)	FY 21-22 (projected)	FY 22-23 (projected)	FY 23-24 (projected)
MEASURE 1:		Target	141,907	148,664	147,479	150,852	154,342	157,955
Number of new trial court cases.		Actual	143,552	144,219				
MEASURE 2:		Target	181,112	189,075	189,760	194,419	199,249	204,258
Number of active trial court cases.		Actual	183,078	185,772				
MEASURE 3:		Target	100%	100%	100%	100%	100%	100%
Percent of trial court attorney staff allocated vs. total required for closed trial court cases.		Actual	80%	81%				
MEASURE 4:		Target	475	485	500	500	500	500
Number of attorney applications received.		Actual	521	520				
MEASURE 5:		Target	100%	100%	100%	100%	100%	100%
Percent of total attorney staff allocated vs. total required for closed trial court cases and appellate cases.		Actual	81%	81%				
MEASURE 6:		Target	12%	12%	12%	12%	12%	12%
Annual rates of attrition:								
Attorneys	Actual	18%	18%					
Investigators	Actual	8%	7%					
Administrative Assistants	Actual	24%	26%					
Total All Employees	Actual	16%	17%					
MEASURE 7:		Target	70%	70%	70%	70%	70%	70%
Percent of experienced, fully capable staff (journey level or higher):								
Attorneys	Actual	43%	39%					
Investigators	Actual	49%	52%					
Administrative Assistants	Actual	43%	46%					
Total All Employees	Actual	46%	44%					
MEASURE 8:		Target	100%	100%	100%	100%	100%	100%
Percent compliance with minimum standards for total staffing requirements.		Actual	81%	82%				

MEASURE 9: Maintain established standard percentages for reasonable staff supervision, management and development.	Target	12%						
	Actual	11%	9%					
MEASURE 10: Number of new appellate cases.	Target	535	528	574	586	592	598	603
	Actual	523	563					
MEASURE 11: Number of active appellate cases.	Target	2,001	1,887	1,938	1,906	1,907	1,912	1,922
	Actual	1,989	1,922					
MEASURE 12: Percent of appellate attorney staff allocated vs. total required for appellate cases awaiting filing of initial brief.	Target	100%						
	Actual	85%	82%					
MEASURE 13: Number of trial court cases closed.	Target	140,395	145,909	145,337	148,817	152,468	156,304	160,345
	Actual	141,511	141,876					
MEASURE 14: Days of training provided.	Target	130	133	144	144	144	144	144
	Actual	135	179					
MEASURE 15: Number of CLE credits provided to all attorneys.	Target	15						
	Actual	15	16					
MEASURE 16: Hours of ethics training provided, focusing on Colorado criminal law.	Target	3						
	Actual	4	3					
MEASURE 17: Number of administrative processes and organizational infrastructure evaluations performed.	Target	15						
	Actual	15	15					
MEASURE 18: Number of appellate cases for which an Opening Brief has been filed.	Target	468	451	447	447	447	447	447
	Actual	421	381					
MEASURE 19: Number of backlogged appellate cases.	Target	531	486	592	590	592	599	599
	Actual	539	603					

SECTION 3: Financial Structure

The OSPD functions as a single program devoted to providing effective criminal defense representation. Our funding received over the past five years is as follows.

Appropriation	General Fund	General Fund Exempt	Cash Funds	Reappropriated Funds	Federal Funds	Total
FY 2015-16	\$ 86,669,239	\$ -	\$ 150,000	\$ -	\$ -	\$ 86,819,239
FY 2016-17	\$ 86,423,321	\$ -	\$ 150,000	\$ -	\$ -	\$ 86,573,321
FY 2017-18	\$ 89,573,459	\$ -	\$ 150,000	\$ -	\$ -	\$ 89,723,459
FY 2018-19	\$ 97,248,793	\$ -	\$ 205,000	\$ -	\$ -	\$ 97,453,793
FY 2019-20	\$ 107,337,414	\$ -	\$ 55,000	\$ -	\$ -	\$ 107,392,414

We do not have any capital construction projects or ongoing debt obligations.

SECTION 4: Financial Forecast

Baseline Forecast: Budget Drivers for FY20-FY24

Appropriation	Baseline	Caseload Growth	Operational	Total
FY 2019-20	\$ 107,392,414	\$ -	\$ -	\$ 107,392,414
FY 2020-21	\$ 109,703,380	\$ 5,598,850	\$ 2,083,720	\$ 117,385,950
FY 2021-22	\$ 117,385,950	\$ 2,412,714		\$ 119,798,664
FY 2022-23	\$ 119,798,664	\$ 2,423,214		\$ 122,221,878
FY 2023-24	\$ 122,221,878	\$ 2,564,950		\$ 124,786,828

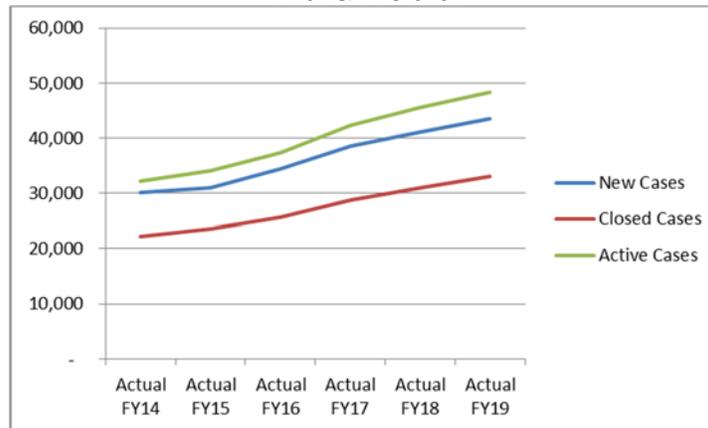
Narrative: Agency Budget Drivers/Agency Environment

The OSPD functions as a single program devoted to providing criminal defense representation to indigent persons charged with crimes where incarceration is a possibility, except where there is a conflict of interest. Courts appoint the OSPD when a defendant qualifies for public defender services pursuant to statute, applicable case law and Chief Justice Directives. In FY 2018-19, the OSPD received 144,219 new trial and 563 new appellate cases, closed 141,876 trial and 499 appellate cases, and carried a total of 185,772 active trial and approximately 1,922 active appellate cases.

Because our mission is to provide legal representation to the poor in criminal cases, we are a service-oriented agency. Eighty-seven percent of our budget is spent on personal services, with the remaining thirteen percent supporting mandated and operational costs. Accordingly, any changes to our personal services budget, such as those made through legislative action on common policies and for new legislation, have a tremendous effect on our overall appropriation.

In addition, our personal services budget is driven by attorney FTE need as a result of workload associated with the increase in the agency's caseload. Over the past five years, the OSPD has experienced significant increases in its felony cases. Felony cases, primarily the Trial and Pre-trial cases (those brought to final disposition), require the greatest attorney effort, time and dedication of resources. This is the primary factor driving our projections and budget request.

OSPD Felony Cases Trial & Pre-trial



Since FY 1999-20 the OSPD has experienced an annual caseload rate of growth (CRG) of approximately four percent. Although the increase in felony filings has been higher over the past five years, the projections in the table below were calculated at this lower, more long-term established rate. Both Misdemeanor and Juvenile cases have stabilized and the projected caseloads reflect this.

In addition, during the 2019 session, the legislature passed HB 19-1263. This bill reclassifies several existing drug felonies as drug misdemeanors and makes several other changes to sentencing for drug offenses, penalties and jail terms. We took the effective date of March 1, 2020 into account and modified our projections to reflect the expected changes.

OSPD CLOSED CASES	FY20 Proj Cases	FY21 Proj Cases	FY22 Proj Cases	FY23 Proj Cases	FY24 Proj Cases
Total Felony	68,125	60,257	62,611	65,097	67,729
Total Misdemeanor	68,995	80,285	81,523	82,813	84,160
Total Juvenile	8,217	8,274	8,333	8,394	8,456
Total All	145,337	148,817	152,468	156,304	160,345
100% FTE Need	602	619	637	655	675
Current Staffing Level	489	489	489	489	489
FTE (Shortage)/Overage	(113)	(130)	(148)	(166)	(186)
% Staffed	80%	79%	77%	75%	72%
85% FTE Need	511	525	541	557	574
Current Staffing Level	489	489	489	489	489
FTE (Shortage)/Overage	(22)	(36)	(52)	(68)	(85)

Starting in FY21 - The above numbers have been adjusted to reflect the reclassification of drug felony cases (DF4's) to drug misdemeanors pursuant to HB 19-1263, effective 03/01/20

The OSPD's consistent application of an independently developed set of statewide workload standards has allowed us to demonstrate consistency and fairness in our staff allocations. Our caseload standards are a key component of our ability to manage our offices in a manner that demonstrates the highest level of responsibility to the State of Colorado and to our clients.

We use these standards to calculate attorney staffing percentages and support staff. Current projections show our attorney staffing level falling to 80 percent this year and 79 percent by FY 2020-21. Although 100 percent staffing is an enduring goal – and one necessary to truly meet our constitutional and statutory mandate – we base our requests on a more conservative 85 percent staffing level.

While our primary function of providing criminal defense representation will not change, the criminal justice environment in which we operate is changing. For example, caseload continues to grow and the cases that we handle are becoming more complex. This is reflected in an increase in both the number and severity of charges.

Many other factors have compounded these case growth trends adding increasing complexity to the types of cases and the workload required to represent these cases. These changes compound existing workload conditions to make it more difficult and time consuming for attorneys to provide effective representation, including changes in the court such as:

- staffing;
- docket organization;
- the use of specialty courts
- changes in prosecutorial practice and procedures;
- newly enacted criminal offenses;
- changes in classes of criminal offenses;
- changes in criminal penalties;
- changes to the time it takes to process a case;
- changes in the types, quality, complexity and quantity of evidence; and
- the history and documentation associated with a case.

This changing environment presents a compounding challenge to the OSPD's need to achieve the staffing levels that are required to provide effective representation.

Scenario Evaluation: Downturn

Any reduction in funding will have direct effects on staffing. The statutory function of the OSPD is to "provide legal services to indigent persons accused of crime that are commensurate with those available to non-indigents, and conduct the office in accordance with the Colorado rules of Professional Conduct and with the American Bar Association standards relating to the administration of criminal justice, the defense function."

In order to comply with our constitutional and statutory mandates, the OSPD must have resources and staffing levels to meet the requirements of providing effective representation. If the OSPD is not adequately funded, caseloads will exceed both our internal standards and national standards relating to the number of cases an attorney can effectively handle without impairing quality or breaching professional obligations. The Guidelines for Legal Defense Systems in the United States, developed under a grant from the U.S. Department of Justice, provide that public defender systems should establish maximum caseloads for individual attorneys and that such standards reflect national standards and take into consideration objective statistical data and factors related to local practice.

The Office of Attorney Regulation states an attorney is not competent to provide effective representation if his or her caseload is too high. There are serious implications to overly high caseloads per attorney, including that the attorney may be subject to disciplinary action for accepting more cases than can be competently handled. In addition, overly high caseloads may result in rulings of ineffective representation for Public Defender clients. If a Public Defender is found ineffective, the result could be a new trial causing an exponential increase in the number of cases processed in our system.

Scenario Evaluation: Department-Specific Contingency

Current projections show our staffing level falling to 80 percent this year and 79 percent by FY 2020-21. This current and growing staffing deficit presents a threat to the Public Defender's ability to ethically, responsibly and effectively meet its constitutionally and statutorily mandated mission.

There is another potential urgency to our request: forecasts indicating a slowdown in Colorado's economy in the very near future. Historically, such economic conditions negatively affect income levels, thereby increasing the number of people who qualify for our services. If this forecast holds true, the number of cases and workload requirements will rise at an even faster rate than currently projected.

SECTION 5: Anticipated Funding Decreases

The OSPD does not receive any funding from federal funds and/or gifts or donations.