

# Performance Plan

July 01, 2023



**Office of the State Public Defender**

**MEGAN A. RING**  
**Colorado State Public Defender**

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**Performance Plan**

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# Strategic Component

## Mission

The mission of the Office of the State Public Defender 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.

## Vision

It is the vision of the Office of the State Public Defender that every OSPD client served receives excellent legal representation through the delivery of high-quality legal services and compassionate support from a team of dedicated Public Defenders.

## Statutory Authority

Statutory authority and Constitutional Authority form the basis of Office of State Public Defender's work.

C.R.S. § 21-1-101(1) demonstrates the need for the public defender to be **independent of political considerations, provide legal services to indigent people**, and states in part:

"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. § 21-1-103 mandates that the state public defender shall represent each indigent person who is arrested for or charged with a felony, a misdemeanor when the charged offense includes a possible jail sentence, juveniles upon whom a delinquency petition is filed or who are restrained by court order, process, or otherwise, person who are held in any institution against their will for treatment of disease or disorder (meaning people who have been found not guilty by reason of insanity) when the person applies for a public defender or when appointed by the court.

## History

In 1963, the United States Supreme Court decided *Gideon v. Wainwright*, 372 U.S. 335 (1963), ensuring the indigent accused the right to representation of counsel in criminal cases. That same year, the Colorado General Assembly passed the Colorado Defender Act in response to the *Gideon* decision. This Act authorized Colorado counties to either establish a public defender office or remain under the previous ad hoc system of appointing counsel for indigent citizens accused of criminal offenses. Four county public defender offices were established under the Act in Denver, Brighton, Pueblo and Durango.

In 1969, the State Legislature passed the Administrative Reorganization Act. Pursuant to this act, the State began to oversee the court system, which assumed responsibility for the appointment and funding of counsel for indigent people. The Office of the State Public Defender was created by statute and became an independent state agency in 1970.

## **Description**

The Office of the State Public Defender (OSPD) devotes itself to providing effective criminal defense representation to indigent persons charged with crimes. Our clients are people who, faced with the possibility of incarceration, are unable to afford private counsel and without counsel would otherwise be denied their constitutional right to representation throughout the criminal proceedings. Attorneys, investigators, social workers, paralegals and legal support staff are necessary to provide effective representation of counsel as mandated by the federal and state constitutions, Colorado Revised Statutes, Colorado Court Rules, American Bar Association standards, and the Colorado Rules of Professional Conduct. The OSPD system is the most efficient means of meeting these requirements.

The OSPD is an independent agency within the Judicial Branch of Colorado state government. Judges appoint the OSPD when a client qualifies for public defender services pursuant to statute, applicable case law and Chief Justice Directives. Megan A. Ring is the current Colorado State Public Defender and was appointed in 2018.

OSPD represents clients handling cases at the trial court level and the appellate court level. The OSPD maintains 21 regional trial offices which cover Colorado's 22 judicial districts and 64 counties. The OSPD appellate office handles statewide indigent criminal cases heard at the Court of Appeals and the Supreme Court. The staff in these offices are entirely devoted to representing clients in cases as assigned by the courts. System-wide administrative and support functions for these offices are handled centrally through the State Administrative Office in Denver.

The State Administrative Office houses the leadership team for the system. OSPD's mission and performance expectations are guided and monitored by this leadership team. The office coordinates all support functions to assist our regional trial offices and the Appellate Division in providing competent and zealous legal services to our clients. The administrative functions delivered by the administrative office include:

- Program direction, analysis and planning, including statistical compilation and development.
- Workforce development, training personnel, policy, compensation analysis, and practice development.
- Providing guidance to trial office teams in complex cases, and statewide litigation strategies.
- Facilitating and fostering a culture of DEIB in all offices throughout the state.
- Providing and identifying resources to support employees in enhancing long-term sustainability and job satisfaction.
- Payroll and benefits coordination and administration.
- Legislative affairs and statutory analysis.

- Intergovernmental and intragovernmental affairs.
- Budget analysis, development, allocation and management.
- Financial management analysis tracking, transaction processing, procurement and accounting.
- Facilities, planning development and lease negotiation.
- Contracts and grants management.
- IT support and development.
- Development, distribution and maintenance of the agency's computer information and telecommunications systems.
- Human Resources.

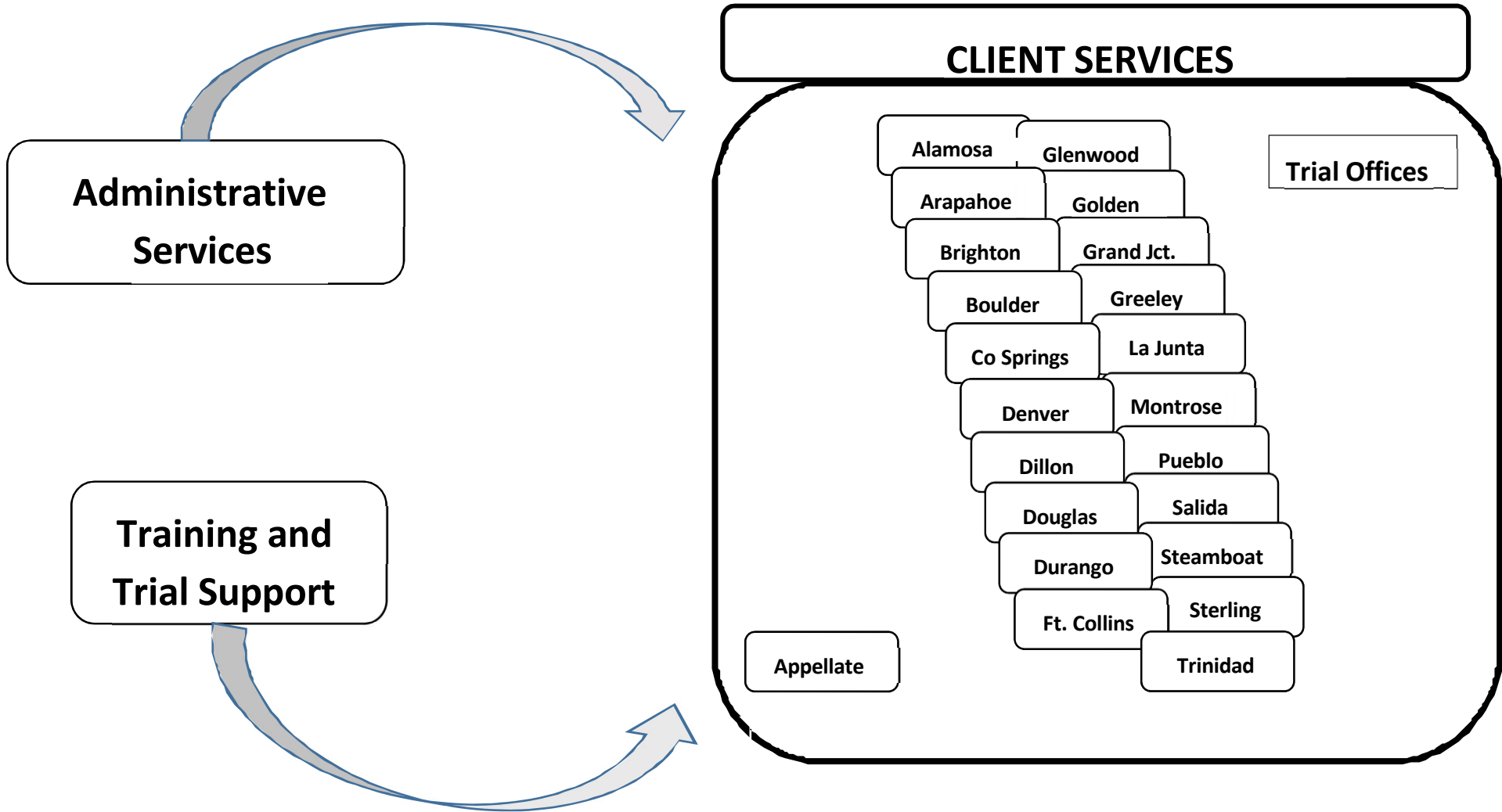
To support the OSPD in the representation of their FY 2023-24 projected caseload, the OSPD was appropriated \$155,572,694 and approximately 1098 FTE. This is comprised of approximately 577 attorneys; 167 investigators, 110 paralegals; 23 social workers; 154 administrative assistants and 67 centralized management and support positions.

### **Constitutional, Statutory and Other Authority**

Constitutional, statutory and other authority for the OSPD system and its work is established pursuant to:

- U.S. Const. amend. VI;
- Colo. Const. art. II, §16;
- C.R.S. §§ 21-1-101 to 21-1-107;
- Chief Justice Directive 04-04;
- ABA Criminal Justice Standards;
- Colo. Rules of Professional Conduct (Colo. RPC);
- *Gideon v. Wainwright*, 372 U.S. 335 (1963);
- *Alabama v. Shelton*, 535 U.S. 654 (2002);
- *Rothgery v. Gillespie County*, 554 U.S. 191 (2008);
- *Nikander v. District Court*, 711 P.2d 1260 (Colo. 1986);
- *Allen v. People*, 157 Colo. 582, 404 P.2d 266 (1965);
- *In Re Gault*, 387 U.S. 1 (1967); and
- *Powell v. Alabama*, 287 U.S. 45 (1932).

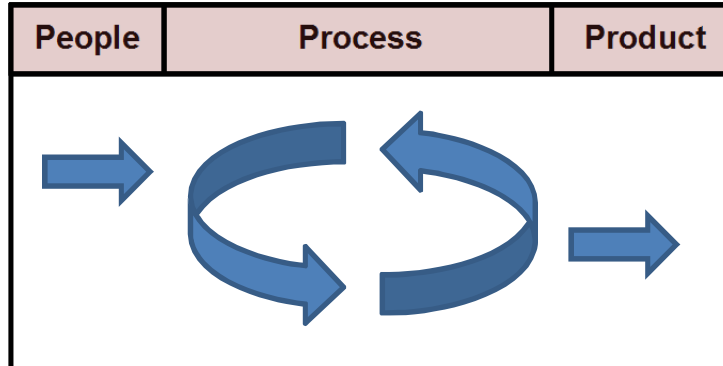
**COLORADO STATE PUBLIC DEFENDER**



# Operational Component/Processes

## Goals, Strategies and Measures

In order to achieve our mission of providing high-quality, effective criminal defense representation for each of our clients, the OSPD ensures that our goals, strategies and measures support our people, our process and the end product of client representation.



To this end, we have developed three overarching goals, five strategies and nineteen measures, all focused on improving service to our clients. We continue to analyze and further refine the concepts included in this document throughout the year using a variety of methods.

Our goals, strategies and measures all tie directly to our vision and our mission. Furthermore, as part of our organizational infrastructure planning, these components are continually reviewed and further refined.

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### Goals:

1. Provide effective attorney services and advocacy in both the trial and appellate courts throughout the state of Colorado for indigent clients.
2. Hire and retain a sufficient number of quality staff to effectively manage the ever- increasing workload in each office in the state.
3. Provide a high quality and quantity of staff development, training, technology support and other resources to adapt our response to the constantly changing criminal legal system so that our advocacy and legal services are commensurate with those available for non-indigent persons as is required by our statute.

### Strategies:

4. Hire a sufficient number of high quality staff and retain an adequate level of experienced staff in order to effectively manage the assigned caseload.
5. Track and analyze trends in caseloads and adjust staffing levels.
6. Provide training to address the changing legal climate.
7. Continually evaluate administrative processes and organizational infrastructure needs such as office space, technology and staffing.
8. Work all cases as efficiently as possible, while retaining a high quality of effective and reasonable representation.

## **Measures:**

### Input

1. Number of new trial court cases.
2. Number of active trial court cases.
3. Percent of trial court attorney staff allocated vs. total required for closed trial court cases.
4. Number of attorney applications received.
5. Percent of total attorney staff allocated versus total required for closed trial court cases and active appellate cases.
6. Annual rates of attrition.
7. Percent of experienced, fully capable staff.
8. Percent compliance with minimum standards for total staffing requirements.
9. Established standard percentages for reasonable staff supervision, management and development.
10. Number of new appellate cases.
11. Number of active appellate cases (cases awaiting filing of Opening Brief).
12. Percent of appellate attorney staff allocated vs. total required for active appellate cases.

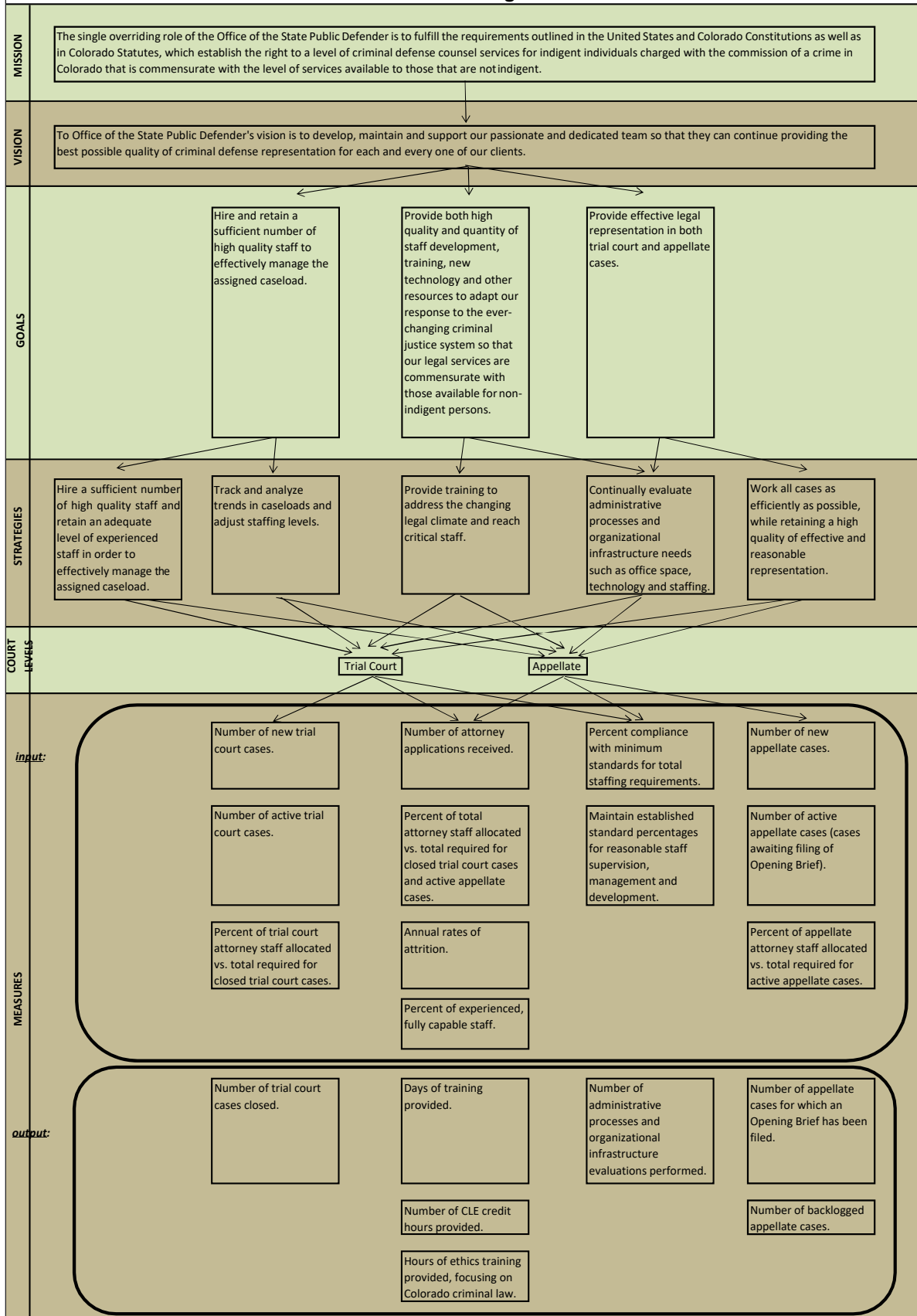
### Output

13. Number of trial court cases closed.
14. Days of training provided.
15. Number of CLE credit hours provided.
16. Ethics training hours provided, focus on Colorado criminal law.
17. Number of administrative processes and organizational infrastructure evaluations performed.
18. Number of appellate cases for which an Opening Brief has been filed.
19. Number of backlogged appellate cases.

To see a pictorial representation of the relationships among our mission, vision, goals, strategies and measures, see *Performance Planning Structure* on page 9.



# Performance Planning Structure

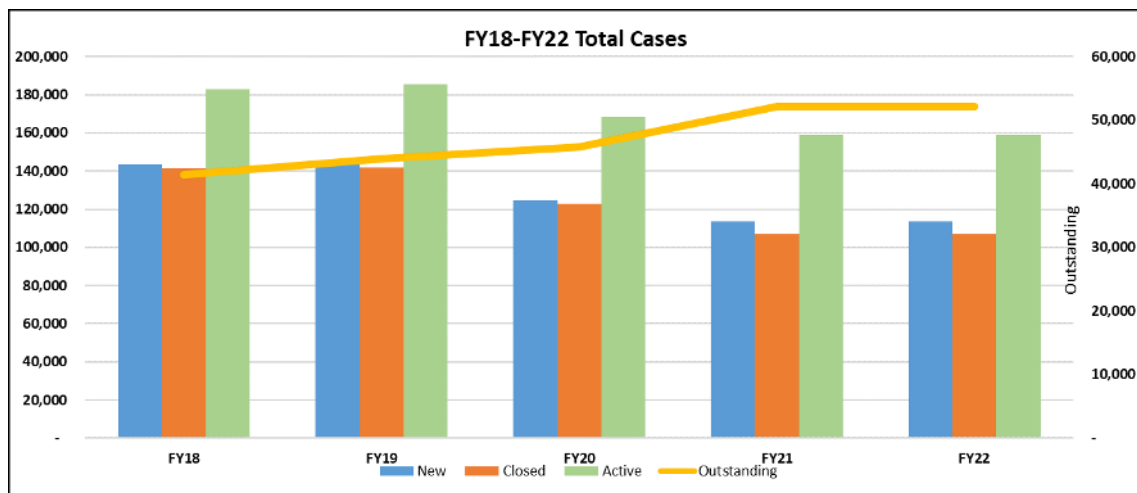


# Performance Evaluation

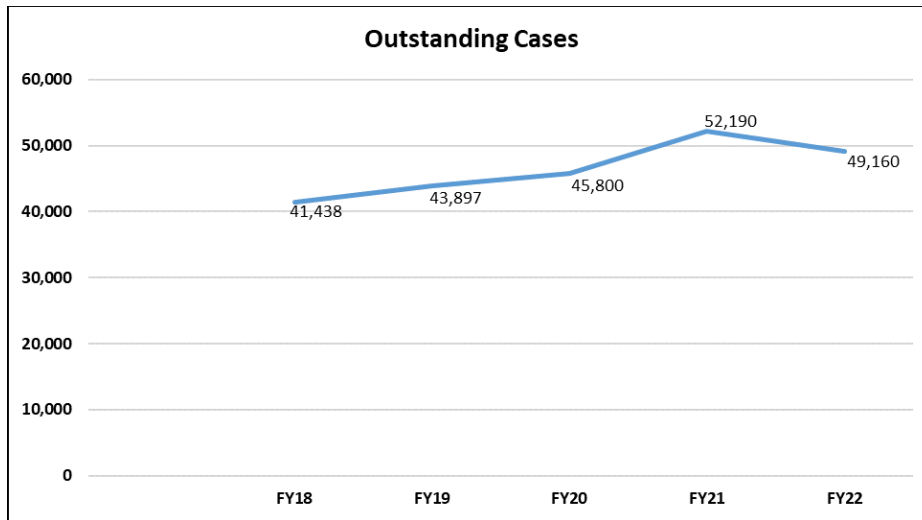
## REGIONAL TRIAL OFFICE CASELOAD

### OVERALL OSPD CASE TRENDS

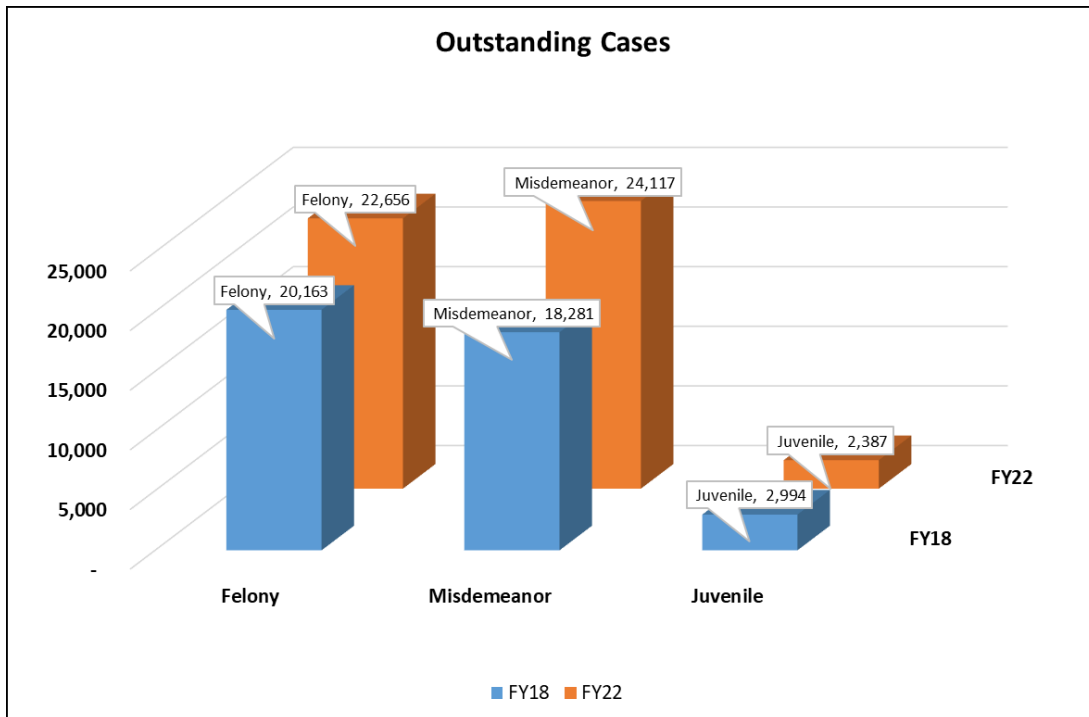
**Total Cases.** The Office of the State Public Defender tracks and monitors its caseload in four distinct categories: new, closed, active, and outstanding cases. In FY 2021-22, the OSPD actively worked on 179,581 cases. Active caseload incorporates all cases in which the OSPD is actively representing clients in a given year: the total new cases, plus the remaining unfinished cases from prior years and therefore carried forward into the current year. In FY 2021-2022, the OSPD was appointed on 127,391 new cases, closed 130,421 cases and at the end of the fiscal year, the OSPD had 49,160 outstanding cases.



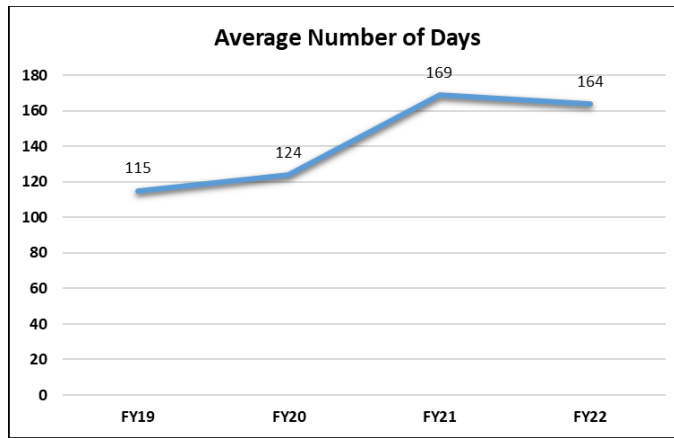
**Outstanding Cases.** As the chart above shows, in the first two years, as the number of new cases increased, there was a corresponding increase in the outstanding cases trend line which is to be expected. Between FY 2016-17 and FY 2020-21, the number of outstanding cases had increased 32 percent from 39,551 to 52,190 cases. In FY 2021-22, the number of outstanding cases slightly decreased to 49,160 cases as the OSPD was able to process cases that had been delayed due to the pandemic.



The predominant increase in outstanding cases is in felony and misdemeanor cases, which accounts for 95% of our total cases and is shown in the chart below.



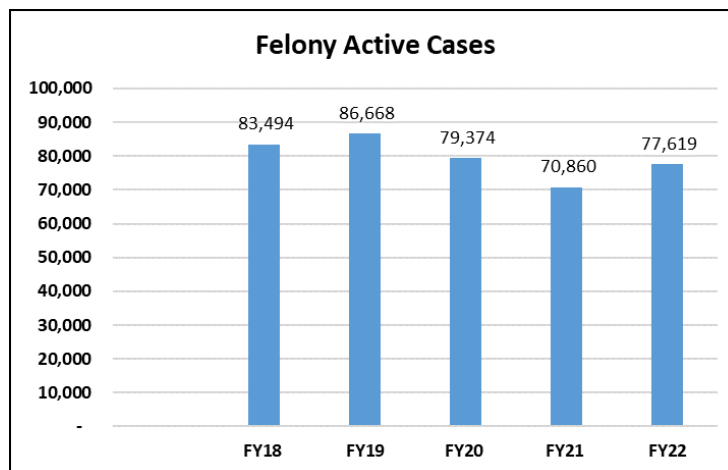
The chart below shows the OSPD experienced a dramatic 48 percent increase in the average days needed to close a case in FY 2020-21 when compared to FY 2018-19. In FY 2021-22, we have seen a slight decrease of 5 days in this average number of days, yet it is still 42 percent higher than four years ago.



## CASE TYPES

**Felony Cases.** Through FY 2018-19, the OSPD had experienced significant increases each year in active felony cases reaching 86,668 cases, which was over a 50 percent increase since FY 2011-12. In FY 2019-20 the number of cases dropped to 79,374 and, by the end of FY 2020-21, the OSPD had 70,860 active felony cases. Felony cases in FY2021-22 are rebounding in a significant way with an increase of 9.5 percent from FY2020-21 to 77,619 cases.

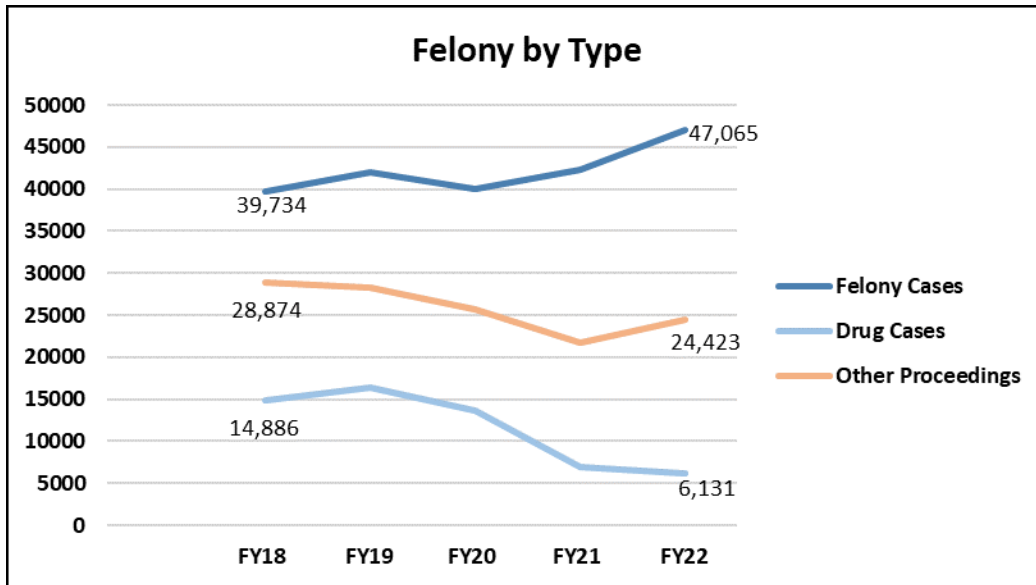
Although felony cases make up approximately 43 percent of our trial cases, they require 66 percent of our trial FTE resources.



While it appears felony cases were on the downturn in FY 2020-21, this decrease is somewhat misleading and is likely the result of a couple of changes. First, in March 2020, House Bill 19-1263, took effect and reduced the classification of possession drug charges. As a result, cases historically charged as a drug felony (DF4) are now charged as misdemeanors. However, that change does not include possession of synthetic opiates, which is now a felony in most instances due to the passage of House Bill 22-1326. Second, the number of Other Proceedings handled by OSPD, which consists largely of revocations, had declined as well. The drop in jail admissions and reduced in-person probation activities that occurred during the pandemic, as well as fewer technical violations being pursued, had contributed to a drop in revocation numbers across the state.

After taking into account the above changes and analyzing the remaining cases, the reality is that certain felony cases continue to increase. Specifically, many OSPD offices have experienced a significant increase in the number of higher level felony cases since FY18, including a 33.8 percent

increase in class 1 felonies, which carry a mandatory life sentence upon conviction, and a 22.5 percent increase in class 2 felonies, which also typically carry significant mandatory prison sentences. In addition, the number of class 5-6 felonies has surpassed pre-pandemic levels. Since FY18, the OSPD has experienced a nearly 18.5 percent increase in active felony cases, increasing from 39,734 to 47,065 cases this past year. This increase in felony cases puts a greater strain on OSPD resources because the most serious cases require more work by experienced employees, specially trained staff members, and outside forensic experts contracted by OSPD.

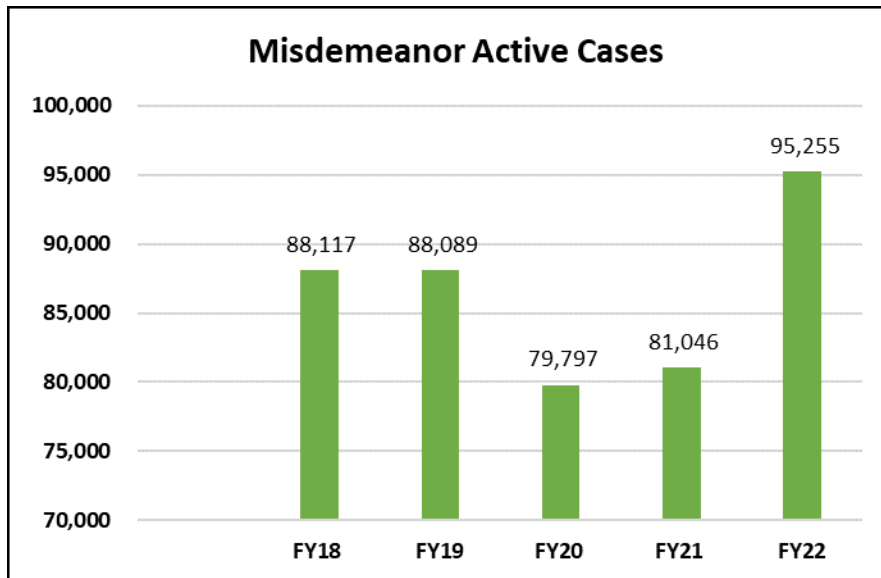


| Felony - Active Cases              |               |               |               |               |               |
|------------------------------------|---------------|---------------|---------------|---------------|---------------|
| FY18-FY22                          |               |               |               |               |               |
| CASE TYPE                          | FY18          | FY19          | FY20          | FY21          | FY22          |
| Felony 1                           | 325           | 360           | 368           | 381           | 435           |
| Felony 2                           | 586           | 515           | 527           | 649           | 718           |
| Sex Assault Felony 2, 3, 4, 5 or 6 | 2,744         | 2,863         | 2,762         | 2,720         | 2,462         |
| Felony 3 or 4 (COV)                | 5,224         | 5,372         | 5,119         | 5,509         | 5,421         |
| Felony 3 or 4 (non-COV)            | 12,304        | 13,111        | 12,603        | 12,339        | 13,447        |
| Felony 5 or 6                      | 17,386        | 18,600        | 17,533        | 19,603        | 23,462        |
| DUI Felony 4                       | 1,165         | 1,172         | 1,115         | 1,111         | 1,120         |
| <b>subttl without Drug cases</b>   | <b>39,734</b> | <b>41,993</b> | <b>40,027</b> | <b>42,312</b> | <b>47,065</b> |
| Drug Felony 1, 2, 3 or 4           | 14,886        | 16,327        | 13,591        | 6,862         | 6,131         |
| <b>Felony Cases</b>                | <b>54,620</b> | <b>58,320</b> | <b>53,618</b> | <b>49,174</b> | <b>53,196</b> |
| Misc. Proceedings                  | 6,884         | 6,745         | 6,092         | 4,447         | 4,135         |
| Revocations                        | 21,937        | 21,539        | 19,592        | 17,168        | 20,211        |
| Appeals                            | 53            | 64            | 72            | 71            | 77            |
| <b>Felony Other Proceedings</b>    | <b>28,874</b> | <b>28,348</b> | <b>25,756</b> | <b>21,686</b> | <b>24,423</b> |
| <b>Total Felony</b>                | <b>83,494</b> | <b>86,668</b> | <b>79,374</b> | <b>70,860</b> | <b>77,619</b> |

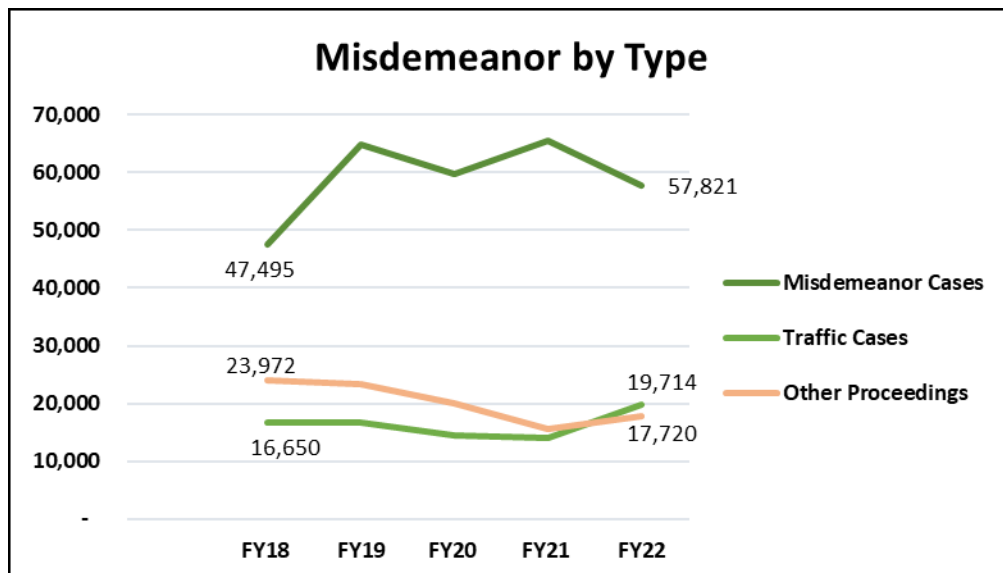
**Misdemeanor Cases.** In FY 2018-19, misdemeanor caseloads seemed to have stabilized with the OSPD handling 88,089 cases. Caseloads were consistent through the first eight months of FY 2019-20 but dropped in the final 3 months of the fiscal year resulting in 79,797 active cases in FY 2019-20. In FY 2020-21, the OSPD had 81,046 active misdemeanor cases, a slight increase over the previous year. In FY 2021-22, misdemeanor cases have surpassed pre-pandemic levels, totaling 95,255

cases. This increase is in part due to the changes in legislation impacting drug felony (DF4) cases as well as a significant increase in the number of traffic cases.

Misdemeanor cases represent about 53 percent of our total cases and require about 30 percent of our trial FTE resources.

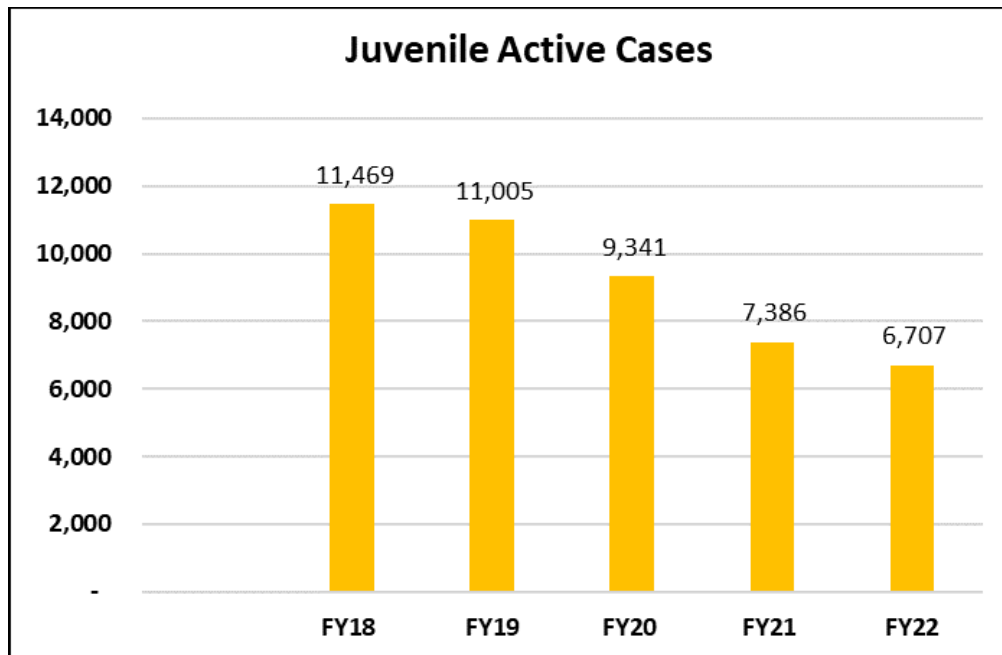


As discussed in the felony section above, House Bill 19-1263 changed the classification of possession drug charges (DF4) from a felony to a misdemeanor and that change has impacted the number of active misdemeanor cases. When separating out the Traffic and Other Proceedings cases, the remaining higher level misdemeanor cases have increased from 47,495 cases in FY 2017-18 to 57,821 cases this past year, a 21.7 percent increase. The chart below shows this change.

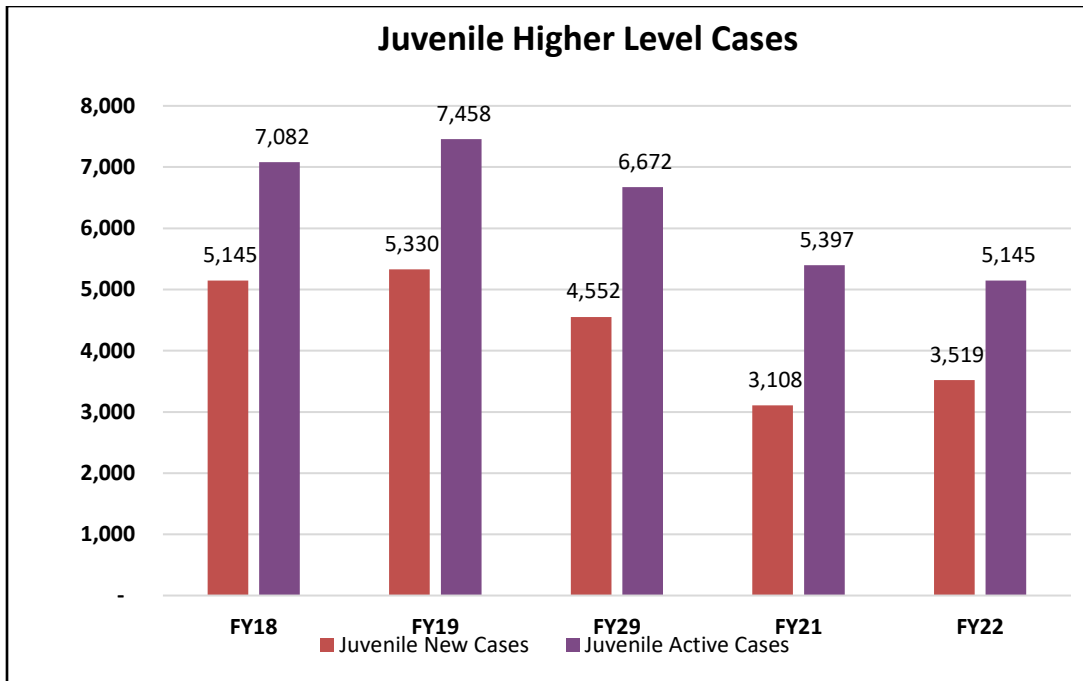


| <b>Misdemeanor - Active Cases</b>    |                                  |                                  |                                  |                                  |                                  |
|--------------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| <b>FY18-FY22</b>                     |                                  |                                  |                                  |                                  |                                  |
| <b>CASE TYPE</b>                     | <b>FY18<br/>Active<br/>Cases</b> | <b>FY19<br/>Active<br/>Cases</b> | <b>FY20<br/>Active<br/>Cases</b> | <b>FY21<br/>Active<br/>Cases</b> | <b>FY22<br/>Active<br/>Cases</b> |
| Misdemeanor Sex Offense              | 1,053                            | 1,008                            | 1,025                            | 988                              | 962                              |
| Misdemeanor 1                        | 20,663                           | 20,979                           | 20,259                           | 25,180                           | 27,413                           |
| Misdemeanor 2 or 3                   | 16,366                           | 17,035                           | 15,613                           | 16,657                           | 21,831                           |
| Misdemeanor DUI                      | 9,413                            | 9,083                            | 8,490                            | 8,613                            | 7,615                            |
| <b>subttl without Traffic/Other</b>  | <b>47,495</b>                    | <b>48,105</b>                    | <b>45,387</b>                    | <b>51,438</b>                    | <b>57,821</b>                    |
| Misdemeanor Traffic/Other            | 16,650                           | 16,719                           | 14,445                           | 14,080                           | 19,714                           |
| <b>Misdemeanor Cases</b>             | <b>64,145</b>                    | <b>64,824</b>                    | <b>59,832</b>                    | <b>65,518</b>                    | <b>77,535</b>                    |
| Misc. Proceedings                    | 4,057                            | 3,579                            | 3,300                            | 1,832                            | 1,572                            |
| Revocations                          | 19,502                           | 19,267                           | 16,283                           | 13,429                           | 15,955                           |
| Appeals                              | 413                              | 419                              | 382                              | 267                              | 193                              |
| <b>Misdemeanor Other Proceedings</b> | <b>23,972</b>                    | <b>23,265</b>                    | <b>19,965</b>                    | <b>15,528</b>                    | <b>17,720</b>                    |
| <b>Total Misdemeanor</b>             | <b>88,117</b>                    | <b>88,089</b>                    | <b>79,797</b>                    | <b>81,046</b>                    | <b>95,255</b>                    |

**Juvenile Cases.** Through FY 2017-18, the OSPD had experienced an increase in its juvenile caseload, due to legislation. House Bill 14-1032 requires the OSPD to be present at detention hearings, allows the court to appoint the OSPD when the parents refuse to provide counsel, allows the court to appoint the OSPD when the court deems it to be in the best interest of the child, and intentionally makes it more difficult for juveniles to waive counsel. The number of active juvenile cases peaked at 11,469 in FY 2017-18 and has since been decreasing down to 6,707 in FY 2021-22.



However, we expect this downward trend to turnaround as the OSPD experienced a slight increase in the number of its new higher level juvenile cases going from 3,108 cases in FY 2020-21 to 3,519 cases in FY 2021-22.



Juvenile cases represent about 4 percent of our total cases and require about 4 percent of our trial FTE resources.



## OSPD Trial Office - Outstanding Cases

FY18-FY22

| CASE TYPE                            | FY18 O/S      | FY19 O/S      | FY20 O/S      | FY21 O/S      | FY22 O/S      | FY22 % O/S Cases |
|--------------------------------------|---------------|---------------|---------------|---------------|---------------|------------------|
| Felony 1                             | 181           | 179           | 190           | 231           | 232           | 0.5%             |
| Felony 2                             | 184           | 188           | 237           | 299           | 305           | 0.6%             |
| Sex Assault Felony 2, 3, 4, 5 or 6   | 1,036         | 1,130         | 1,110         | 1,211         | 725           | 1.5%             |
| Felony 3 or 4 (COV)                  | 1,643         | 1,719         | 1,832         | 2,172         | 1,143         | 2.3%             |
| Felony 3 or 4 (non-COV)              | 3,307         | 3,461         | 3,844         | 4,381         | 5,337         | 10.9%            |
| Felony 5 or 6                        | 4,649         | 4,658         | 5,127         | 6,869         | 6,679         | 13.6%            |
| DUI Felony 4                         | 374           | 412           | 453           | 460           | 416           | 0.8%             |
| Drug Felony 1, 2, 3 or 4             | 3,377         | 3,734         | 2,865         | 1,969         | 1,771         | 3.6%             |
| <b>Felony Cases</b>                  | <b>14,751</b> | <b>15,481</b> | <b>15,658</b> | <b>17,592</b> | <b>16,608</b> | <b>33.8%</b>     |
| Misc. Proceedings                    | 1,473         | 1,517         | 1,297         | 1,169         | 986           | 2.0%             |
| Revocations                          | 3,920         | 4,060         | 4,440         | 5,108         | 5,039         | 10.3%            |
| Appeals                              | 19            | 30            | 27            | 34            | 23            | 0.0%             |
| <b>Felony Other Proceedings</b>      | <b>5,412</b>  | <b>5,607</b>  | <b>5,764</b>  | <b>6,311</b>  | <b>6,048</b>  | <b>12.3%</b>     |
| <b>Total Felony</b>                  | <b>20,163</b> | <b>21,088</b> | <b>21,422</b> | <b>23,903</b> | <b>22,656</b> | <b>46.1%</b>     |
| Misdemeanor Sex Offense              | 150           | 362           | 389           | 423           | 227           | 0.5%             |
| Misdemeanor 1                        | 4,734         | 5,174         | 6,031         | 8,164         | 6,348         | 12.9%            |
| Misdemeanor 2 or 3                   | 3,279         | 3,685         | 4,116         | 5,115         | 5,527         | 11.2%            |
| Misdemeanor DUI                      | 2,575         | 2,675         | 2,971         | 3,364         | 1,864         | 3.8%             |
| Misdemeanor Traffic/Other            | 3,546         | 3,990         | 3,825         | 5,066         | 6,338         | 12.9%            |
| <b>Misdemeanor Cases</b>             | <b>14,284</b> | <b>15,886</b> | <b>17,332</b> | <b>22,132</b> | <b>20,304</b> | <b>41.3%</b>     |
| Misc. Proceedings                    | 946           | 797           | 689           | 324           | 232           | 0.5%             |
| Revocations                          | 2,844         | 3,053         | 3,305         | 3,638         | 3,494         | 7.1%             |
| Appeals                              | 207           | 213           | 183           | 100           | 87            | 0.2%             |
| <b>Misdemeanor Other Proceedings</b> | <b>3,997</b>  | <b>4,063</b>  | <b>4,177</b>  | <b>4,062</b>  | <b>3,813</b>  | <b>7.8%</b>      |
| <b>Total Misdemeanor</b>             | <b>18,281</b> | <b>19,949</b> | <b>21,509</b> | <b>26,194</b> | <b>24,117</b> | <b>49.1%</b>     |
| Juvenile Sex Offense                 | 145           | 239           | 249           | 217           | 209           | 0.4%             |
| Juvenile Felony                      | 948           | 868           | 993           | 718           | 854           | 1.7%             |
| Juvenile Misdemeanor                 | 1,024         | 1,001         | 1,046         | 691           | 911           | 1.9%             |
| <b>Juvenile Cases</b>                | <b>2,117</b>  | <b>2,108</b>  | <b>2,288</b>  | <b>1,626</b>  | <b>1,974</b>  | <b>4.0%</b>      |
| Misc. Proceedings                    | 278           | 210           | 96            | 65            | 56            | 0.1%             |
| Revocations                          | 576           | 534           | 481           | 396           | 352           | 0.7%             |
| Appeals                              | 23            | 8             | 4             | 6             | 5             | 0.0%             |
| <b>Juvenile Other Proceedings</b>    | <b>877</b>    | <b>752</b>    | <b>581</b>    | <b>467</b>    | <b>413</b>    | <b>0.8%</b>      |
| <b>Total Juvenile</b>                | <b>2,994</b>  | <b>2,860</b>  | <b>2,869</b>  | <b>2,093</b>  | <b>2,387</b>  | <b>4.9%</b>      |
| <b>Summary</b>                       |               |               |               |               |               |                  |
| <b>Total Cases</b>                   | <b>31,152</b> | <b>33,475</b> | <b>35,278</b> | <b>41,350</b> | <b>38,886</b> | <b>79.1%</b>     |
| Total Misc. Proceedings              | 2,697         | 2,524         | 2,082         | 1,558         | 1,274         | 2.6%             |
| Total Revocations                    | 7,340         | 7,647         | 8,226         | 9,142         | 8,885         | 18.1%            |
| Total Appeals                        | 249           | 251           | 214           | 140           | 115           | 0.2%             |
| <b>Total Other Proceedings</b>       | <b>10,286</b> | <b>10,422</b> | <b>10,522</b> | <b>10,840</b> | <b>10,274</b> | <b>20.9%</b>     |
| <b>Grand Total Outstanding Cases</b> | <b>41,438</b> | <b>43,897</b> | <b>45,800</b> | <b>52,190</b> | <b>49,160</b> | <b>100.0%</b>    |

## OSPD Trial Office - Active Cases

FY18-FY22

| CASE TYPE                            | FY18<br>Active | FY19<br>Active | FY20<br>Active | FY21<br>Active | FY22<br>Active | FY22 %<br>Active |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|------------------|
| Felony 1                             | 325            | 360            | 368            | 381            | 435            | 0.2%             |
| Felony 2                             | 586            | 515            | 527            | 649            | 718            | 0.4%             |
| Sex Assault Felony 2, 3, 4, 5 or 6   | 2,744          | 2,863          | 2,762          | 2,720          | 2,462          | 1.4%             |
| Felony 3 or 4 (COV)                  | 5,224          | 5,372          | 5,119          | 5,509          | 5,421          | 3.0%             |
| Felony 3 or 4 (non-COV)              | 12,304         | 13,111         | 12,603         | 12,339         | 13,447         | 7.5%             |
| Felony 5 or 6                        | 17,386         | 18,600         | 17,533         | 19,603         | 23,462         | 13.1%            |
| DUI Felony 4                         | 1,165          | 1,172          | 1,115          | 1,111          | 1,120          | 0.6%             |
| Drug Felony 1, 2, 3 or 4             | 14,886         | 16,327         | 13,591         | 6,862          | 6,131          | 3.4%             |
| <b>Felony Cases</b>                  | <b>54,620</b>  | <b>58,320</b>  | <b>53,618</b>  | <b>49,174</b>  | <b>53,196</b>  | <b>29.6%</b>     |
| Misc. Proceedings                    | 6,884          | 6,745          | 6,092          | 4,447          | 4,135          | 2.3%             |
| Revocations                          | 21,937         | 21,539         | 19,592         | 17,168         | 20,211         | 11.3%            |
| Appeals                              | 53             | 64             | 72             | 71             | 77             | 0.0%             |
| <b>Felony Other Proceedings</b>      | <b>28,874</b>  | <b>28,348</b>  | <b>25,756</b>  | <b>21,686</b>  | <b>24,423</b>  | <b>13.6%</b>     |
| <b>Total Felony</b>                  | <b>83,494</b>  | <b>86,668</b>  | <b>79,374</b>  | <b>70,860</b>  | <b>77,619</b>  | <b>43.2%</b>     |
| Misdemeanor Sex Offense              | 1,053          | 1,008          | 1,025          | 988            | 962            | 0.5%             |
| Misdemeanor 1                        | 20,663         | 20,979         | 20,259         | 25,180         | 27,413         | 15.3%            |
| Misdemeanor 2 or 3                   | 16,366         | 17,035         | 15,613         | 16,657         | 21,831         | 12.2%            |
| Misdemeanor DUI                      | 9,413          | 9,083          | 8,490          | 8,613          | 7,615          | 4.2%             |
| Misdemeanor Traffic/Other            | 16,650         | 16,719         | 14,445         | 14,080         | 19,714         | 11.0%            |
| <b>Misdemeanor Cases</b>             | <b>64,145</b>  | <b>64,824</b>  | <b>59,832</b>  | <b>65,518</b>  | <b>77,535</b>  | <b>43.2%</b>     |
| Misc. Proceedings                    | 4,057          | 3,579          | 3,300          | 1,832          | 1,572          | 0.9%             |
| Revocations                          | 19,502         | 19,267         | 16,283         | 13,429         | 15,955         | 8.9%             |
| Appeals                              | 413            | 419            | 382            | 267            | 193            | 0.1%             |
| <b>Misdemeanor Other Proceedings</b> | <b>23,972</b>  | <b>23,265</b>  | <b>19,965</b>  | <b>15,528</b>  | <b>17,720</b>  | <b>9.9%</b>      |
| <b>Total Misdemeanor</b>             | <b>88,117</b>  | <b>88,089</b>  | <b>79,797</b>  | <b>81,046</b>  | <b>95,255</b>  | <b>53.0%</b>     |
| Juvenile Sex Offense                 | 574            | 594            | 538            | 469            | 453            | 0.3%             |
| Juvenile Felony                      | 3,077          | 3,294          | 2,958          | 2,465          | 2,228          | 1.2%             |
| Juvenile Misdemeanor                 | 3,431          | 3,570          | 3,176          | 2,463          | 2,464          | 1.4%             |
| <b>Juvenile Cases</b>                | <b>7,082</b>   | <b>7,458</b>   | <b>6,672</b>   | <b>5,397</b>   | <b>5,145</b>   | <b>2.9%</b>      |
| Misc. Proceedings                    | 1,513          | 911            | 739            | 426            | 230            | 0.1%             |
| Revocations                          | 2,826          | 2,594          | 1,918          | 1,550          | 1,317          | 0.7%             |
| Appeals                              | 48             | 42             | 12             | 13             | 15             | 0.0%             |
| <b>Juvenile Other Proceedings</b>    | <b>4,387</b>   | <b>3,547</b>   | <b>2,669</b>   | <b>1,989</b>   | <b>1,562</b>   | <b>0.9%</b>      |
| <b>Total Juvenile</b>                | <b>11,469</b>  | <b>11,005</b>  | <b>9,341</b>   | <b>7,386</b>   | <b>6,707</b>   | <b>3.7%</b>      |
| <b>Summary</b>                       |                |                |                |                |                |                  |
| <b>Total Cases</b>                   | <b>125,847</b> | <b>130,602</b> | <b>120,122</b> | <b>120,089</b> | <b>135,876</b> | <b>75.7%</b>     |
| Total Misc. Proceedings              | 12,454         | 11,235         | 10,131         | 6,705          | 5,937          | 3.3%             |
| Total Revocations                    | 44,265         | 43,400         | 37,793         | 32,147         | 37,483         | 20.9%            |
| Total Appeals                        | 514            | 525            | 466            | 351            | 285            | 0.2%             |
| <b>Total Other Proceedings</b>       | <b>57,233</b>  | <b>55,160</b>  | <b>48,390</b>  | <b>39,203</b>  | <b>43,705</b>  | <b>24.3%</b>     |
| <b>Grand Total Active Cases</b>      | <b>183,080</b> | <b>185,762</b> | <b>168,512</b> | <b>159,292</b> | <b>179,581</b> | <b>100.0%</b>    |

## OSPD Trial Office - New Cases

FY18-FY22

| CASE TYPE                            | FY18 New       | FY19 New       | FY20 New       | FY21 New       | FY22 New       | FY22 %<br>New<br>Cases |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|------------------------|
| Felony 1                             | 157            | 182            | 189            | 192            | 204            | 0.2%                   |
| Felony 2                             | 377            | 319            | 339            | 414            | 419            | 0.3%                   |
| Sex Assault Felony 2, 3, 4, 5 or 6   | 1,682          | 1,782          | 1,603          | 1,575          | 1,251          | 1.0%                   |
| Felony 3 or 4 (COV)                  | 3,620          | 3,558          | 3,381          | 3,676          | 3,249          | 2.6%                   |
| Felony 3 or 4 (non-COV)              | 9,360          | 9,834          | 9,184          | 8,502          | 9,066          | 7.1%                   |
| Felony 5 or 6                        | 13,342         | 14,104         | 12,885         | 14,493         | 16,593         | 13.0%                  |
| DUI Felony 4                         | 741            | 787            | 703            | 655            | 660            | 0.5%                   |
| Drug Felony 1, 2, 3 or 4             | 11,873         | 12,980         | 9,876          | 3,997          | 4,162          | 3.3%                   |
| <b>Felony Cases</b>                  | <b>41,152</b>  | <b>43,546</b>  | <b>38,160</b>  | <b>33,504</b>  | <b>35,604</b>  | <b>27.9%</b>           |
| Misc. Proceedings                    | 5,374          | 5,285          | 4,589          | 3,160          | 2,966          | 2.3%                   |
| Revocations                          | 18,225         | 17,590         | 15,516         | 12,704         | 15,103         | 11.9%                  |
| Appeals                              | 19             | 47             | 42             | 45             | 43             | 0.0%                   |
| <b>Felony Other Proceedings</b>      | <b>23,618</b>  | <b>22,922</b>  | <b>20,147</b>  | <b>15,909</b>  | <b>18,112</b>  | <b>14.2%</b>           |
| <b>Total Felony</b>                  | <b>64,770</b>  | <b>66,468</b>  | <b>58,307</b>  | <b>49,413</b>  | <b>53,716</b>  | <b>42.2%</b>           |
| Misdemeanor Sex Offense              | 755            | 656            | 658            | 595            | 539            | 0.4%                   |
| Misdemeanor 1                        | 16,008         | 16,412         | 15,049         | 19,134         | 19,249         | 15.1%                  |
| Misdemeanor 2 or 3                   | 13,249         | 13,740         | 11,941         | 12,562         | 16,716         | 13.1%                  |
| Misdemeanor DUI                      | 6,756          | 6,606          | 5,814          | 5,634          | 4,251          | 3.3%                   |
| Misdemeanor Traffic/Other            | 13,178         | 13,077         | 10,472         | 10,253         | 14,648         | 11.5%                  |
| <b>Misdemeanor Cases</b>             | <b>49,946</b>  | <b>50,491</b>  | <b>43,934</b>  | <b>48,178</b>  | <b>55,403</b>  | <b>43.5%</b>           |
| Misc. Proceedings                    | 3,347          | 2,654          | 2,509          | 1,160          | 1,248          | 1.0%                   |
| Revocations                          | 16,624         | 16,394         | 13,207         | 10,106         | 12,317         | 9.7%                   |
| Appeals                              | 208            | 211            | 163            | 85             | 93             | 0.1%                   |
| <b>Misdemeanor Other Proceedings</b> | <b>20,179</b>  | <b>19,259</b>  | <b>15,879</b>  | <b>11,351</b>  | <b>13,658</b>  | <b>10.7%</b>           |
| <b>Total Misdemeanor</b>             | <b>70,125</b>  | <b>69,750</b>  | <b>59,813</b>  | <b>59,529</b>  | <b>69,061</b>  | <b>54.2%</b>           |
| Juvenile Sex Offense                 | 342            | 328            | 299            | 218            | 236            | 0.2%                   |
| Juvenile Felony                      | 2,285          | 2,438          | 2,088          | 1,470          | 1,510          | 1.2%                   |
| Juvenile Misdemeanor                 | 2,518          | 2,564          | 2,165          | 1,420          | 1,773          | 1.4%                   |
| <b>Juvenile Cases</b>                | <b>5,145</b>   | <b>5,330</b>   | <b>4,552</b>   | <b>3,108</b>   | <b>3,519</b>   | <b>2.8%</b>            |
| Misc. Proceedings                    | 1,258          | 638            | 525            | 333            | 165            | 0.1%                   |
| Revocations                          | 2,222          | 2,014          | 1,385          | 1,061          | 921            | 0.7%                   |
| Appeals                              | 32             | 19             | 4              | 9              | 9              | 0.0%                   |
| <b>Juvenile Other Proceedings</b>    | <b>3,512</b>   | <b>2,671</b>   | <b>1,914</b>   | <b>1,403</b>   | <b>1,095</b>   | <b>0.9%</b>            |
| <b>Total Juvenile</b>                | <b>8,657</b>   | <b>8,001</b>   | <b>6,466</b>   | <b>4,511</b>   | <b>4,614</b>   | <b>3.6%</b>            |
| <b>Summary</b>                       |                |                |                |                |                |                        |
| <b>Total Cases</b>                   | <b>96,242</b>  | <b>99,367</b>  | <b>86,646</b>  | <b>84,790</b>  | <b>94,526</b>  | <b>74.2%</b>           |
| Total Misc. Proceedings              | 9,926          | 8,577          | 7,623          | 4,653          | 4,379          | 3.4%                   |
| Total Revocations                    | 37,115         | 35,998         | 30,108         | 23,871         | 28,341         | 22.2%                  |
| Total Appeals                        | 269            | 277            | 209            | 139            | 145            | 0.1%                   |
| <b>Total Other Proceedings</b>       | <b>47,310</b>  | <b>44,852</b>  | <b>37,940</b>  | <b>28,663</b>  | <b>32,865</b>  | <b>25.8%</b>           |
| <b>Grand Total New Cases</b>         | <b>143,552</b> | <b>144,219</b> | <b>124,586</b> | <b>113,453</b> | <b>127,391</b> | <b>100.0%</b>          |

## OSPD Trial Office - Closed Cases

FY18-FY22

| CASE TYPE                            | FY18<br>Closed | FY19<br>Closed | FY20<br>Closed | FY21<br>Closed | FY22<br>Closed | FY22 %<br>Closed |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|------------------|
| Felony 1                             | 118            | 141            | 147            | 113            | 169            | 0.1%             |
| Felony 2                             | 285            | 272            | 217            | 282            | 362            | 0.3%             |
| Sex Assault Felony 2, 3, 4, 5 or 6   | 1,704          | 1,676          | 1,578          | 1,449          | 1,677          | 1.3%             |
| Felony 3 or 4 (COV)                  | 3,398          | 3,419          | 3,120          | 3,175          | 4,110          | 3.2%             |
| Felony 3 or 4 (non-COV)              | 8,108          | 8,878          | 7,874          | 7,164          | 7,483          | 5.7%             |
| Felony 5 or 6                        | 12,080         | 12,914         | 11,405         | 11,692         | 15,886         | 12.2%            |
| DUI Felony 4                         | 782            | 742            | 645            | 644            | 695            | 0.5%             |
| Drug Felony 1, 2, 3 or 4             | 10,669         | 11,524         | 9,871          | 4,489          | 4,047          | 3.1%             |
| <b>Felony Cases</b>                  | <b>37,144</b>  | <b>39,566</b>  | <b>34,857</b>  | <b>29,008</b>  | <b>34,429</b>  | <b>26.4%</b>     |
| Misc. Proceedings                    | 5,410          | 5,229          | 4,795          | 3,278          | 3,116          | 2.4%             |
| Revocations                          | 18,017         | 17,479         | 15,152         | 12,062         | 14,977         | 11.5%            |
| Appeals                              | 32             | 34             | 45             | 37             | 54             | 0.0%             |
| Partial Service                      | 2,682          | 3,274          | 3,104          | 2,568          | 2,387          | 1.8%             |
| <b>Felony Other Proceedings</b>      | <b>26,141</b>  | <b>26,016</b>  | <b>23,096</b>  | <b>17,945</b>  | <b>20,534</b>  | <b>15.7%</b>     |
| <b>Total Felony</b>                  | <b>63,285</b>  | <b>65,582</b>  | <b>57,953</b>  | <b>46,953</b>  | <b>54,963</b>  | <b>42.1%</b>     |
| Misdemeanor Sex Offense              | 687            | 636            | 627            | 556            | 724            | 0.6%             |
| Misdemeanor 1                        | 15,581         | 15,219         | 13,511         | 15,990         | 20,156         | 15.5%            |
| Misdemeanor 2 or 3                   | 12,659         | 12,886         | 10,949         | 10,874         | 15,697         | 12.0%            |
| Misdemeanor DUI                      | 6,776          | 6,344          | 5,450          | 5,169          | 5,699          | 4.4%             |
| Misdemeanor Traffic/Other            | 12,897         | 12,486         | 10,349         | 8,588          | 13,024         | 10.0%            |
| <b>Misdemeanor Cases</b>             | <b>48,600</b>  | <b>47,571</b>  | <b>40,886</b>  | <b>41,177</b>  | <b>55,300</b>  | <b>42.4%</b>     |
| Misc. Proceedings                    | 3,111          | 2,780          | 2,610          | 1,511          | 1,319          | 1.0%             |
| Revocations                          | 16,646         | 16,214         | 12,978         | 9,790          | 12,282         | 9.4%             |
| Appeals                              | 206            | 206            | 199            | 167            | 106            | 0.1%             |
| Partial Service                      | 1,209          | 1,368          | 1,615          | 2,211          | 2,131          | 1.6%             |
| <b>Misdemeanor Other Proceedings</b> | <b>21,172</b>  | <b>20,568</b>  | <b>17,402</b>  | <b>13,679</b>  | <b>15,838</b>  | <b>12.1%</b>     |
| <b>Total Misdemeanor</b>             | <b>69,772</b>  | <b>68,139</b>  | <b>58,288</b>  | <b>54,856</b>  | <b>71,138</b>  | <b>54.5%</b>     |
| Juvenile Sex Offense                 | 294            | 344            | 279            | 238            | 244            | 0.2%             |
| Juvenile Felony                      | 1,989          | 2,095          | 1,710          | 1,574          | 1,243          | 1.0%             |
| Juvenile Misdemeanor                 | 2,269          | 2,338          | 1,929          | 1,665          | 1,406          | 1.1%             |
| <b>Juvenile Cases</b>                | <b>4,552</b>   | <b>4,777</b>   | <b>3,918</b>   | <b>3,477</b>   | <b>2,893</b>   | <b>2.2%</b>      |
| Misc. Proceedings                    | 1,235          | 701            | 639            | 361            | 166            | 0.1%             |
| Revocations                          | 2,251          | 2,060          | 1,438          | 1,153          | 949            | 0.7%             |
| Appeals                              | 25             | 34             | 8              | 7              | 10             | 0.0%             |
| Partial Service                      | 391            | 583            | 468            | 292            | 302            | 0.2%             |
| <b>Juvenile Other Proceedings</b>    | <b>3,902</b>   | <b>3,378</b>   | <b>2,553</b>   | <b>1,813</b>   | <b>1,427</b>   | <b>1.1%</b>      |
| <b>Total Juvenile</b>                | <b>8,454</b>   | <b>8,155</b>   | <b>6,471</b>   | <b>5,290</b>   | <b>4,320</b>   | <b>3.3%</b>      |
| <b>Summary</b>                       |                |                |                |                |                |                  |
| <b>Total Cases</b>                   | <b>90,296</b>  | <b>91,914</b>  | <b>79,661</b>  | <b>73,662</b>  | <b>92,622</b>  | <b>71.0%</b>     |
| Total Misc. Proceedings              | 9,756          | 8,710          | 8,044          | 5,150          | 4,601          | 3.5%             |
| Total Revocations                    | 36,914         | 35,753         | 29,568         | 23,005         | 28,208         | 21.6%            |
| Total Appeals                        | 263            | 274            | 252            | 211            | 170            | 0.1%             |
| Total Partial Service                | 4,282          | 5,225          | 5,187          | 5,071          | 4,820          | 3.7%             |
| <b>Total Other Proceedings</b>       | <b>51,215</b>  | <b>49,962</b>  | <b>43,051</b>  | <b>33,437</b>  | <b>37,799</b>  | <b>29.0%</b>     |
| <b>Grand Total Closed Cases</b>      | <b>141,511</b> | <b>141,876</b> | <b>122,712</b> | <b>107,099</b> | <b>130,421</b> | <b>100.0%</b>    |

## MISCELLANEOUS HEARINGS

As a result of House Bill 13-1210, the Rothgery bill, and House Bill 14-1032, the Juvenile Defense bill, OSPD began tracking the number of both felony and misdemeanor advisement/bond hearings along with juvenile detention hearings. These statistics are shown separately below and are not included in the Other Proceedings category.

| <b>Advisement/Bond Hearings and Juvenile Detention Hearings</b> | <b>FY18</b> | <b>FY19</b> | <b>FY20</b> | <b>FY21</b> | <b>FY22</b> |
|-----------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------|
| <b>Advisement/Bond, Felony</b>                                  | 38,570      | 42,416      | 37,719      | 27,050      | 42,491      |
| <b>Advisement/Bond, Misdemeanor</b>                             | 35,457      | 34,503      | 30,720      | 24,726      | 41,314      |
| <b>Juvenile Detention Hearings</b>                              | 3,625       | 3,338       | 2,069       | 789         | 1,199       |

## **CASE WITHDRAWALS**

In specific situations, the OSPD will need to withdraw from a case either as the result of a conflict of interest or for non-conflict reasons, such as private counsel entering or OSPD clients deciding to proceed pro se.

| <b>OSPD Trial Office Withdrawals</b> |                |                |                |                |                |                  |  |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|------------------|--|
| <b>FY18-FY22</b>                     |                |                |                |                |                |                  |  |
|                                      | <b>FY18</b>    | <b>FY19</b>    | <b>FY20</b>    | <b>FY21</b>    | <b>FY22</b>    |                  |  |
| <b>New Opened Cases</b>              | <b>143,552</b> | <b>144,219</b> | <b>124,586</b> | <b>113,453</b> | <b>127,391</b> |                  |  |
| Conflicts                            |                |                |                |                |                |                  |  |
| Co-Defendant                         | 4,386          | 4,853          | 4,006          | 3,160          | 3,553          |                  |  |
| Witness                              | 5,112          | 5,664          | 5,676          | 6,603          | 7,368          |                  |  |
| Other                                | 1,074          | 1,465          | 1,519          | 1,551          | 3,193          |                  |  |
| <b>Total</b>                         | <b>10,572</b>  | <b>11,982</b>  | <b>11,201</b>  | <b>11,314</b>  | <b>14,114</b>  |                  |  |
| <i>% of New Cases</i>                | <i>7.4%</i>    | <i>8.3%</i>    | <i>9.0%</i>    | <i>10.0%</i>   | <i>11.1%</i>   | <i>9.1% avg</i>  |  |
| Non-Conflicts                        |                |                |                |                |                |                  |  |
| Private Counsel                      | 2,447          | 2,645          | 2,454          | 2,358          | 2,458          |                  |  |
| Pro Se                               | 491            | 502            | 378            | 313            | 403            |                  |  |
| Other                                | 960            | 1,076          | 859            | 942            | 2,567          |                  |  |
| <b>Total</b>                         | <b>3,898</b>   | <b>4,223</b>   | <b>3,691</b>   | <b>3,613</b>   | <b>5,428</b>   |                  |  |
| <i>% of New Cases</i>                | <i>2.7%</i>    | <i>2.9%</i>    | <i>3.0%</i>    | <i>3.2%</i>    | <i>4.3%</i>    | <i>3.2% avg</i>  |  |
| <b>Total</b>                         | <b>14,470</b>  | <b>16,205</b>  | <b>14,892</b>  | <b>14,927</b>  | <b>19,542</b>  |                  |  |
| <i>% of New Cases</i>                | <i>10.1%</i>   | <i>11.2%</i>   | <i>12.0%</i>   | <i>13.2%</i>   | <i>15.3%</i>   | <i>12.4% avg</i> |  |

**Conflict Withdrawals.** A conflict of interest occurs in situations where the OSPD represents a co-defendant or a person who is a witness in the case, or other circumstances as identified in the Colorado Rules of Professional Conduct. The withdrawal rate due to a conflict increased to 11 percent this past year.

| <b>Year</b> | <b>Adult</b> |           |          | <b>Juvenile</b> |           |          | <b>Total</b> |           |          |
|-------------|--------------|-----------|----------|-----------------|-----------|----------|--------------|-----------|----------|
|             | New Cases    | Conflicts | % of new | New Cases       | Conflicts | % of new | Total New    | Conflicts | % of new |
| FY18        | 134,895      | 9,601     | 7.1%     | 8,657           | 971       | 11.2%    | 143,552      | 10,572    | 7.4%     |
| FY19        | 136,218      | 10,650    | 7.8%     | 8,001           | 1,332     | 16.6%    | 144,219      | 11,982    | 8.3%     |
| FY20        | 118,120      | 10,123    | 8.6%     | 6,466           | 1,078     | 16.7%    | 124,586      | 11,201    | 9.0%     |
| FY21        | 108,942      | 10,589    | 9.7%     | 4,511           | 721       | 16.0%    | 113,453      | 11,310    | 10.0%    |
| FY22        | 122,777      | 13,256    | 10.8%    | 4,614           | 858       | 18.6%    | 127,391      | 14,114    | 11.1%    |

## APPELLATE DIVISION CASELOAD

### APPELLATE CASE TRENDS

**Appellate Cases.** The Office of the State Public Defender maintains a centralized Appellate Division (the Division) that represents indigent clients in felony appeals from every jurisdiction in the state, regardless of who may have represented them in prior court proceedings (e.g., court-appointed counsel, Alternate Defense Counsel and private attorneys). The Division is expected to handle a total of 1,629 cases in FY 2022-23, of which 779 are in phase one and 850 are in phase two.

- Phase one is where an initial OSPD brief has not yet been filed and is the phase during which the most resources are required. We estimate the Division will see 480 new cases, along with 299 cases carried over from previous years.
- Phase two is the continuation of the case through the appeals process, which can take several years to complete.

| <b>APPELLATE DIVISION</b> |                    |                           |                                  |                                  |                                               |                                    |                                           |                                       |                                  |
|---------------------------|--------------------|---------------------------|----------------------------------|----------------------------------|-----------------------------------------------|------------------------------------|-------------------------------------------|---------------------------------------|----------------------------------|
| <b>FISCAL YEAR</b>        | <b>New Appeals</b> | <b>Briefs Filed by PD</b> | <b>Cases Resolved Other Ways</b> | <b>Appeals Closed in Phase 1</b> | <b>Cases awaiting filing of initial brief</b> | <b>Standard Caseload per NLADA</b> | <b>Cases in excess of NLADA standards</b> | <b>Cases Phase 2 (after OB filed)</b> | <b>Total Active Felony Cases</b> |
| FY 14                     | 573                | 367                       | 127                              | 495                              | 749                                           | 279                                | 470                                       | 1000                                  | 2341                             |
| FY 15                     | 533                | 422                       | 122                              | 544                              | 738                                           | 363                                | 375                                       | 985                                   | 2282                             |
| FY 16                     | 511                | 486                       | 141                              | 627                              | 622                                           | 359                                | 263                                       | 1049                                  | 2234                             |
| FY 17                     | 525                | 459                       | 101                              | 560                              | 587                                           | 351                                | 236                                       | 879                                   | 2196                             |
| FY 18                     | 523                | 421                       | 150                              | 571                              | 539                                           | 351                                | 188                                       | 820                                   | 1989                             |
| FY 19                     | 563                | 381                       | 118                              | 499                              | 603                                           | 368                                | 235                                       | 761                                   | 1922                             |
| FY 20                     | 514                | 454                       | 133                              | 587                              | 530                                           | 368                                | 162                                       | 816                                   | 1878                             |
| FY 21                     | 256                | 433                       | 66                               | 499                              | 287                                           | 308                                | 0                                         | 890                                   | 1602                             |
| FY 22                     | 379                | 310                       | 57                               | 367                              | 299                                           | 273                                | 26                                        | 850                                   | 1556                             |
| FY 23 Est.                | 480                | 343                       | 112                              | 456                              | 324                                           | 279                                | 45                                        | 778                                   | 1629                             |
| FY 24 Est.                | 495                | 378                       | 116                              | 494                              | 324                                           | 293                                | 31                                        | 757                                   | 1596                             |
| FY 25 Est.                | 510                | 378                       | 119                              | 498                              | 336                                           | 300                                | 36                                        | 735                                   | 1590                             |
| FY 26 Est.                | 525                | 378                       | 123                              | 501                              | 360                                           | 307                                | 53                                        | 713                                   | 1596                             |
| FY 27 Est.                | 541                | 378                       | 127                              | 505                              | 395                                           | 307                                | 88                                        | 691                                   | 1613                             |

#### Phase One:

The chart above references the appellate caseload standards that have been published by the National Legal Aid & Defender Association (“NLADA”) for appellate defender offices since 1980. In FY 2013-14, the number of backlog cases (those awaiting an initial brief) peaked at 749, the highest ever experienced, exceeding the NLADA standard caseload for the Division by 470 cases. The following year, the Division requested and received additional FTEs and funding to help lower this number and has been successful in doing so, dropping to 530 cases as of FY 2019-20, which was the lowest level in over a decade. Furthermore, with the delay in felony cases being processed due to the COVID-19 pandemic, new appellate cases assigned to the Division had dropped by nearly 50 percent in FY 2020-21. This allowed the Division to make great strides in working through the backlog of cases.

However, as expected last year, it was anticipated that as the trial courts began to open back up and conduct trials, felony cases would be resolved and appellate cases would follow the same general trend and would once again increase. In FY 2021-22, the Division did experience this same upward trend as it received 379 new cases, yet staff was able to maintain the number of cases awaiting the filing of the initial brief at a manageable level of 299 cases by year-end which is still in line with the NLADA standards.

With the continued increase in felony cases at the trial level, it is projected that as these felony cases are resolved, appellate cases will continue to increase, returning to pre-COVID levels in FY 2023-24.

Historically, the NLADA standards have been based on the complexity of the appeal and/or the number of pages on the record. The more serious the case, the more complex it would be and have more pages of record to be reviewed. Standards per the NLADA are based on the assumption that an attorney can handle 22 cases per year based on an average of 500 pages on the record. In FY 2021-22 the Division was seeing an average of 1500 pages per case and when adjusted using the NLADA 500 page base, attorneys would be expected to carry 7.3 cases per year.

Last year, the Division had noticed a significant increase in the incoming number of large or complex appeals, which are typically cases resulting in first-degree murder convictions with life sentences, sex assaults, or cases involving eight days or more of trial. Such cases usually involve lengthy records and numerous appellate issues and are thus more time consuming than other appeals. In FY 2021-22, the Division experienced a 40-50 percent increase in such appeals. If that pace continues throughout the year, it could have a significant impact on the Division's workload, even if the number of overall appeals remains below normal levels.

As of the beginning of FY 2022-23, although the current caseload is manageable, the Division is facing attorney turnover and currently has 11 vacant positions which will necessarily be filled as caseloads return to pre-pandemic levels.

#### Phase Two:

After an opening brief is filed, the case remains active as it progresses through the appellate process and the work involved extends well into subsequent years. Almost with exception, Phase Two involves subphases, which includes filing, consistent with appellate court deadlines, a reply brief in response to the attorney general's answer brief and filing a petition for writ of certiorari with the Colorado Supreme Court asking for review of the Court of Appeals' decision. In a modest percentage of cases, attorneys also file a petition for rehearing in the Court of Appeals or Supreme Court asking for that court to reconsider its opinion. In statutorily eligible direct appeal cases, once the direct appeal has concluded, a postconviction motion under Crim. P. 35(b) is filed in the district court asking for reduction of sentence.

Court deadlines for briefs and petitions in the Colorado Supreme Court often must take precedence over briefs due in the Colorado Court of Appeals. As a result, appellate attorneys frequently pause work on briefs in the Court of Appeals in order to prioritize filings with the Supreme Court. While this may incur some delay in the filing of opening briefs in the Court of Appeals, it has also had the effect of more timely reduction of the cases pending in the second phase of the appeal. The Division estimates there are currently 850 cases at various stages within this process (phase two).

| <b>Briefs, Pleadings &amp; Arguments</b> |     |
|------------------------------------------|-----|
| Reply Briefs                             | 328 |
| Motions                                  | 150 |
| Cert Petitions                           | 252 |
| 35B Filed                                | 80  |
| Oral Arguments                           | 68  |

In addition to processing felony appeals statewide, the Division also assists in the appellate process for both county court and juvenile appeals. This past year, staff consulted or worked on over 208 cases, handled roughly 77 queries from juvenile attorneys in the trial offices, and held numerous statewide trainings, enabling trial offices to achieve improved administrative efficiencies as well as increased representational effectiveness.



# Performance Measures

|                                                                                                                |               | FY 20-21       | FY 21-22       | FY 22-23       | FY 23-24       | FY 24-25       |
|----------------------------------------------------------------------------------------------------------------|---------------|----------------|----------------|----------------|----------------|----------------|
|                                                                                                                |               | (actual)       | (actual)       | (projected)    | (projected)    | (projected)    |
| <b>MEASURE 1:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>119,229</b> | <b>136,144</b> | <b>135,034</b> | <b>139,085</b> | <b>143,258</b> |
| Number of new trial court cases.                                                                               | Actual        | 113,453        | 127,391        |                |                |                |
| <b>MEASURE 2:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>165,029</b> | <b>175,221</b> | <b>184,968</b> | <b>190,517</b> | <b>196,233</b> |
| Number of active trial court cases.                                                                            | Actual        | 159,292        | 179,581        |                |                |                |
| <b>MEASURE 3:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    |
| Percent of trial court attorney staff allocated vs. total required for closed trial court cases.               | Actual        | 80%            | 79%            |                |                |                |
| <b>MEASURE 4:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>500</b>     | <b>500</b>     | <b>500</b>     | <b>500</b>     | <b>500</b>     |
| Number of attorney applications received.                                                                      | Actual        | 500            | 410            |                |                |                |
| <b>MEASURE 5:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    |
| Percent of total attorney staff allocated vs. total required for closed trial court cases and appellate cases. | Actual        | 81%            | 80%            |                |                |                |
| <b>MEASURE 6:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>12%</b>     | <b>12%</b>     | <b>12%</b>     | <b>12%</b>     | <b>12%</b>     |
| Annual rates of attrition:                                                                                     |               |                |                |                |                |                |
| Attorneys                                                                                                      | Actual        | 15%            | 21%            |                |                |                |
| Investigators                                                                                                  | Actual        | 9%             | 10%            |                |                |                |
| Administrative Assistants                                                                                      | Actual        | 19%            | 30%            |                |                |                |
| Total All Employees                                                                                            | Actual        | 14%            | 19%            |                |                |                |
| <b>MEASURE 7:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>70%</b>     | <b>70%</b>     | <b>70%</b>     | <b>70%</b>     | <b>70%</b>     |
| Percent of experienced, fully capable staff (journey level or higher):                                         |               |                |                |                |                |                |
| Attorneys                                                                                                      | Actual        | 39%            | 39%            |                |                |                |
| Investigators                                                                                                  | Actual        | 57%            | 53%            |                |                |                |
| Administrative Assistants                                                                                      | Actual        | 41%            | 36%            |                |                |                |
| Total All Employees                                                                                            | Actual        | 45%            | 43%            |                |                |                |
| <b>MEASURE 8:</b>                                                                                              |               |                |                |                |                |                |
|                                                                                                                | <b>Target</b> | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    | <b>100%</b>    |
| Percent compliance with minimum standards for total staffing requirements.                                     | Actual        | 83%            | 80%            |                |                |                |

|                                                                                                                        |               | FY 20-21 | FY 21-22 | FY 22-23    | FY 23-24    | FY 24-25    |
|------------------------------------------------------------------------------------------------------------------------|---------------|----------|----------|-------------|-------------|-------------|
|                                                                                                                        |               | (actual) | (actual) | (projected) | (projected) | (projected) |
| <b>MEASURE 9:</b>                                                                                                      | <b>Target</b> | 12%      | 12%      | 12%         | 12%         | 12%         |
| Maintain established standard percentages for reasonable staff supervision, management and development.                | Actual        | 10%      | 9%       |             |             |             |
| <b>MEASURE 10:</b>                                                                                                     | <b>Target</b> | 524      | 450      | 480         | 495         | 510         |
| Number of new appellate cases.                                                                                         | Actual        | 256      | 379      |             |             |             |
| <b>MEASURE 11:</b>                                                                                                     | <b>Target</b> | 1,870    | 1,627    | 1,629       | 1,596       | 1,590       |
| Number of active appellate cases.                                                                                      | Actual        | 1,602    | 1,556    |             |             |             |
| <b>MEASURE 12:</b>                                                                                                     | <b>Target</b> | 100%     | 100%     | 100%        | 100%        | 100%        |
| Percent of appellate attorney staff allocated vs. total required for appellate cases awaiting filing of initial brief. | Actual        | 85%      | 84%      |             |             |             |
| <b>MEASURE 13:</b>                                                                                                     | <b>Target</b> | 105,353  | 129,507  | 134,333     | 138,362     | 142,512     |
| Number of trial court cases closed.                                                                                    | Actual        | 107,099  | 130,421  |             |             |             |
| <b>MEASURE 14:</b>                                                                                                     | <b>Target</b> | 132      | 132      | 193         | 193         | 193         |
| Days of training provided.                                                                                             | Actual        | 69       | 182      |             |             |             |
| <b>MEASURE 15:</b>                                                                                                     | <b>Target</b> | 15       | 15       | 15          | 15          | 15          |
| Number of CLE credits provided to all attorneys.                                                                       | Actual        | 12       | 14       |             |             |             |
| <b>MEASURE 16:</b>                                                                                                     | <b>Target</b> | 3        | 3        | 3           | 3           | 3           |
| Hours of ethics training provided, focusing on Colorado criminal law.                                                  | Actual        | 2.2      | 2        |             |             |             |
| <b>MEASURE 17:</b>                                                                                                     | <b>Target</b> | 15       | 15       | 15          | 15          | 15          |
| Number of administrative processes and organizational infrastructure evaluations performed.                            | Actual        | 15       | 15       |             |             |             |
| <b>MEASURE 18:</b>                                                                                                     | <b>Target</b> | 447      | 358      | 343         | 378         | 378         |
| Number of appellate cases for which an Opening Brief has been filed.                                                   | Actual        | 433      | 310      |             |             |             |
| <b>MEASURE 19:</b>                                                                                                     | <b>Target</b> | 490      | 271      | 324         | 324         | 336         |
| Number of backlogged appellate cases.                                                                                  | Actual        | 287      | 299      |             |             |             |