

Judicial Branch

# Office of the State Public Defender

Performance Audit  
July 2024  
2354P



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July 19, 2024

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Office of the State Public Defender. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the responses of the Office of the State Public Defender.

*Kerri L. Hunter*



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# Report Highlights

## Office of the State Public Defender

Judicial Branch Performance Audit • July 2024 • 2354P



OFFICE OF THE STATE AUDITOR

C O L O R A D O

### Key Concern

The Office of the State Public Defender (OSPD) needs updated methods and data to measure its staffing needs and can improve its process for managing attorney workloads by establishing agency-wide guidance. Additionally, OSPD can improve its controls for its review of defendants' applications for public defender representation and tracking of new attorney training.

### Key Findings

- OSPD case data indicates that attorneys have high workloads. Evaluated against various standards for public defender workloads, we found that between 46 and 99 percent of all OSPD attorneys and 65 percent of supervising attorneys worked on more cases than recommended, depending on the workload standard.
- Part of OSPD's method for assessing its workload and staffing needs uses a workload study conducted in 2016, which does not reflect significant changes to the criminal justice system that increase workload, such as an increase in electronic and body camera evidence and new requirements for juvenile cases. Additionally, OSPD does not track some data that may be useful for monitoring workload, such as attorney work hours, and has not provided agency-wide guidance on managing attorney workloads.
- We found that OSPD can better document its review of defendants' applications for public defender representation. Our review of 28 applications found that OSPD lacked sufficient documentation for us to fully assess whether two applicants qualified for OSPD representation, and seven applications were missing documentation required by OSPD's procedures.
- While we found that new OSPD attorneys generally received required trainings in a timely manner, OSPD can improve its system for tracking new attorneys' completion of trainings. For example, there was no record, or an incomplete record, of completion for approximately 5 percent of new attorney trainings in our study period, and OSPD has not consistently tracked the date of training completion for all trainings.

### Background

- OSPD is an independent agency charged with providing criminal defense counsel to criminal defendants in State courts who cannot afford to retain private counsel. OSPD attorneys, alongside investigators, paralegals, and social workers, represented defendants in approximately 131,000 cases that were closed in Fiscal Year 2023.
- OSPD operates 21 regional trial offices across Colorado, in addition to a statewide appellate office. OSPD was appropriated about 1,100 FTE, 575 of whom are attorneys, and an annual budget of approximately \$156 million for Fiscal Year 2024.
- OSPD is responsible for reviewing defendants' applications for public defender representation and making initial determinations of indigency to determine whether a defendant is eligible for state-funded counsel based on standards established by the Colorado Supreme Court.
- In recent years, OSPD has hired approximately 100 new attorneys annually, and requires that new attorneys complete a series of trainings to equip them with the skills and knowledge necessary to provide quality representation to clients.

### Recommendations Made

**11**

### Responses

Agree: **10**  
Partially Agree: **1**  
Disagree: **0**





# Chapter 1

## *Overview*

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The Colorado Office of the State Public Defender (OSPD) is an independent state agency charged with providing legal representation to indigent criminal defendants throughout Colorado. The General Assembly established OSPD in 1969 following the U.S. Supreme Court’s decision in *Gideon vs. Wainwright* [372 U.S. 335 (1963)], which held that states are constitutionally obligated to provide legal representation to indigent persons charged with a crime that could result in incarceration.

OSPD is responsible for providing indigent defendants with representation that is “commensurate with” that available to nonindigents [Section 21-1-101, C.R.S.]. OSPD has established the following mission statement:

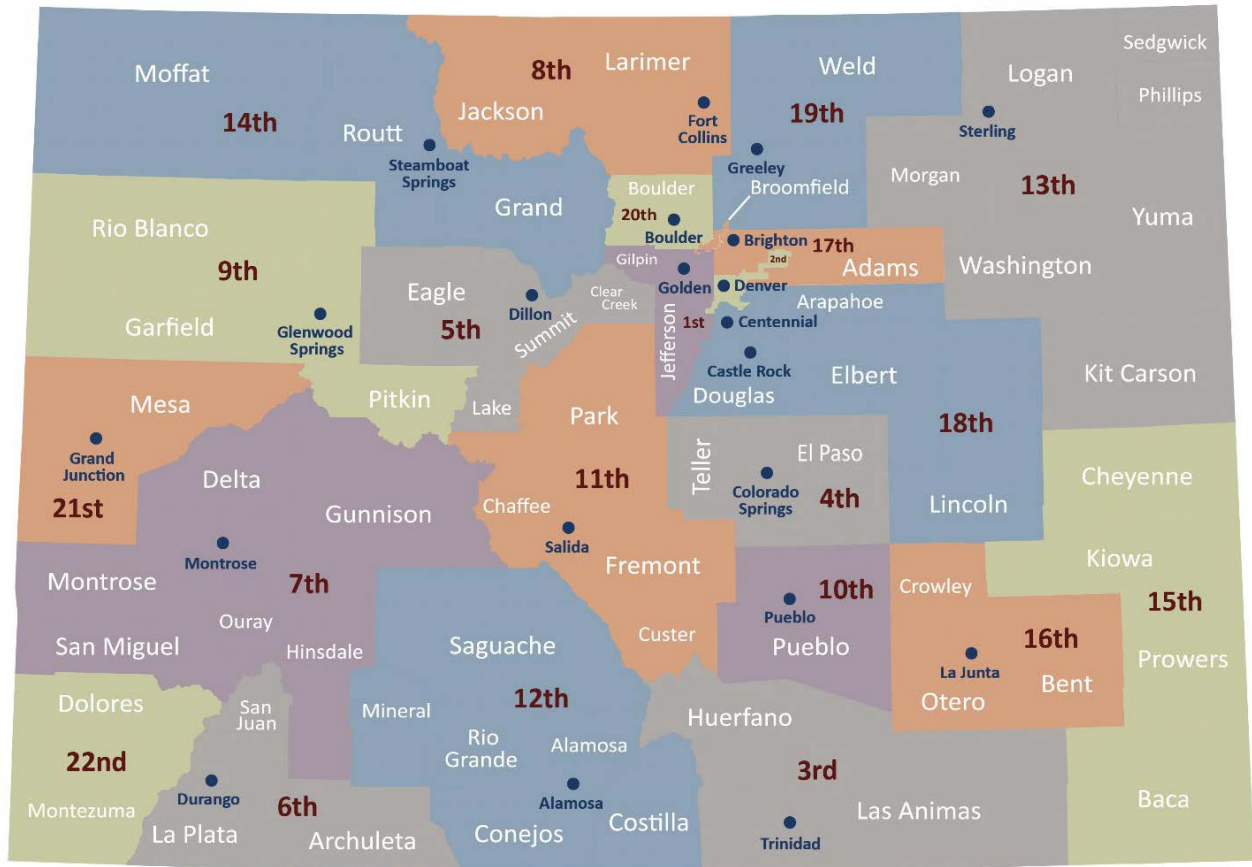
“The mission of the Colorado Office of the State Public Defender is to defend and protect the rights, liberties, and dignity of those accused of crimes who cannot afford to retain counsel. We do this by providing constitutionally and statutorily mandated representation that is effective, zealous, inspired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

OSPD is administratively housed within the Judicial Department and is led by the State Public Defender. The Public Defender Commission—a five-member commission selected by the Colorado Supreme Court—appoints the State Public Defender to 5-year terms. Once appointed, the State Public Defender administers OSPD independently without any administrative control or oversight by either the Judicial Department or Public Defender Commission. OSPD represents all indigent criminal defendants in state courts, except for defendants with whom OSPD has a conflict of interest. A conflict of interest can occur when, for example, OSPD is already representing a co-defendant in the same criminal case. When OSPD has a conflict of interest with a defendant, the individual will be represented by private attorneys hired through contracts administered by the Office of the Alternate Defense Counsel, a separate agency housed within the Judicial Department. Indigent defendants facing incarceration for federal or municipal offenses are also afforded a right to counsel; however, in these instances counsel is provided by a federal or municipal public defender, not OSPD.

OSPD estimates that its attorneys represent about 70 percent of all criminal defendants in state courts, and they closed about 131,000 cases during Fiscal Year 2023—the most recent year for which data is available. In Fiscal Year 2024, OSPD was appropriated 1,101.8 full-time equivalent employees (FTE), including approximately 575 attorneys. OSPD operates 21 trial offices across the state, as

well as a statewide appellate office and a central administrative office. Exhibit 1.1 provides an overview of OSPD trial office locations.

**Exhibit 1.1**  
**Colorado Judicial Districts with OSPD Trial Office Locations**



Source: Office of the State Auditor-created map based on information provided by the Office of the State Public Defender.  
Note: OSPD has trial offices in every judicial district except for the 15th and 22nd Judicial Districts, which are served by the La Junta and Durango offices, respectively. The 18th Judicial District has two trial offices, one in Centennial and one in Castle Rock, and will be split in 2025 to form two separate judicial districts—the 18th and 23rd Judicial Districts.

## Criminal Defense Services

Under Section 21-1-103, C.R.S., OSPD must represent a person charged with a criminal offense if the person requests representation or the court orders OSPD to represent them, and if the person qualifies as indigent under Chief Justice Directives, which are established by the Colorado Supreme Court and provide operational and administrative requirements for State courts and cases.

Defendants who are held in custody can automatically be represented by OSPD without submitting an application; however, if they are released before the conclusion of their case, the defendant must submit an application and be approved to continue to receive OSPD representation. Generally,

defendants who are not held in custody must submit an application for a public defender with the local OSPD trial office, which can be completed in-person, through email, or by fax.

The Colorado Supreme Court has promulgated Chief Justice Directive 04-04, which provides the specific eligibility criteria OSPD must use to determine if a defendant not held in custody is eligible to receive State-funded counsel. The directive establishes a multifactor scoring system that considers the defendant's income, expenses, assets, severity of charge(s), and household size to determine whether the individual is indigent, and therefore, eligible for OSPD representation. For example, effective April 2024, a single individual with a gross annual income of \$18,825 or below is considered indigent based on their income alone and, thus, qualifies for a public defender. A single individual with a gross annual income greater than \$18,825, but below \$32,944, could also potentially qualify for public defender services if they meet additional criteria, such as facing felony charges, having expenses in excess of income, or having few assets that could be used to pay for defense costs (e.g., cash, stocks, and property that could easily be converted to cash). Although OSPD is responsible for reviewing applications and making eligibility determinations, courts have the final authority to appoint OSPD to represent defendants, and can choose to appoint OSPD to represent defendants whom OSPD found to not qualify as indigent or may deny OSPD representation for a defendant whom OSPD determined were indigent. In juvenile cases, courts may also appoint OSPD to represent juveniles whose parents or guardians are not indigent if they refuse, or are otherwise unable, to retain counsel. OSPD services are provided to eligible defendants free of charge, except for a \$25, non-refundable processing fee, which is assessed upon applicants at the final disposition of their case, unless waived by the court [Section 21-1-103 (3), C.R.S.].

OSPD assigns an attorney to act as the lead attorney for the duration of each defendant's case. The lead attorney is responsible for assessing the charges, reviewing evidence, appearing with the client at all required hearings, filing motions with the court, negotiating with district attorneys on plea agreements, advising the client, and if applicable, representing the client at trial. Depending on the nature of the case, the lead attorney may receive assistance from the following OSPD staff:

- **Additional attorneys** may be assigned to assist with a case for several reasons, such as to reduce the lead attorney's workload or to help a newer attorney build experience.
- **Investigators** collect and review evidence, interview witnesses, and ensure the appearance of witnesses by serving subpoenas.
- **Paralegals** review evidence, draft motions, support attorneys in trial, and organize case files.
- **Administrative staff** enter case information in OSPD's case management database, process applications to determine indigency and eligibility for OSPD counsel, and provide general administrative support and office management.

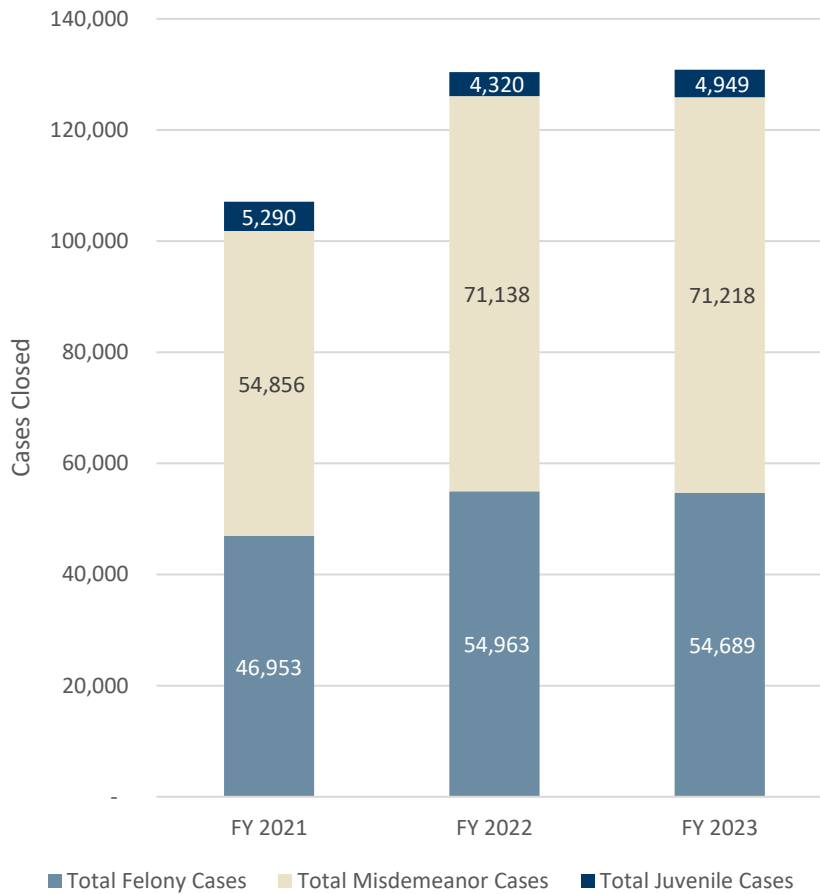
- **Social workers** work with defendants and their families to assess and identify mental health, substance abuse, or other issues that may influence the defendant's behavior to help their defense. Social workers may also work to connect their clients with appropriate resources and supports.

It is common for OSPD's attorneys to close around 200 cases per year. According to OSPD, the time required to represent a client varies widely based on the seriousness of the charges, case complexity, the amount of evidence collected, client and district attorney decisions, and whether the case goes to trial.

OSPD tracks case information in a database known as Defender File. The database includes a wide range of information about each case, including a client's personal information, court information, charges, the attorney assigned to the case, key dates, outcomes, and notes from the attorney and other staff assigned to the case. OSPD began using this system in November 2021, but staff reported that the database also includes older case data migrated from OSPD's legacy system. OSPD stores discovery information, such as digital images, videos, and police body camera footage, in separate systems due to this information requiring a large amount of storage space.

Exhibit 1.2 provides information on the types of cases OSPD closed in Fiscal Years 2021 through 2023. Misdemeanors are less serious criminal offenses, which can carry maximum sentences of less than 1 year that are typically served in county jails, while felonies are more serious criminal offenses for which defendants can receive sentences greater than 1 year (up to life) and can be incarcerated in state prisons. Juvenile cases involve defendants under the age of 18 who are charged with a misdemeanor or felony. As shown, OSPD's caseload reached its highest point at 130,856 cases closed in Fiscal Year 2023. According to OSPD, some of the increase in caseload during Fiscal Years 2022 and 2023 was due to catching-up from the delays the judicial system experienced during the COVID-19 pandemic.

**Exhibit 1.2**  
**Cases Closed by OSPD, by Case Type, Fiscal Years 2021–2023**



Source: Office of the State Public Defender Budget Requests for Fiscal Years 2024 and 2025.

OSPD also provides counsel for indigent clients in appellate matters, regardless of whether clients were represented in prior court proceedings by OSPD, Alternate Defense Counsel attorneys, or privately-hired attorneys. Appellate services are provided by the OSPD’s single, statewide appellate office in Denver. Appellate cases are also generally assigned to a single attorney responsible for the duration of the appeal. Appellate practice differs significantly from criminal defense in trial courts, and OSPD’s appellate division operates separately from its trial offices, with its own training program, policies, and procedures. Generally, appellate attorneys are responsible for reviewing the trial record for errors and filing appeals—typically to the Colorado Court of Appeals—although the Colorado Supreme Court also hears a limited number of appeals at its discretion.

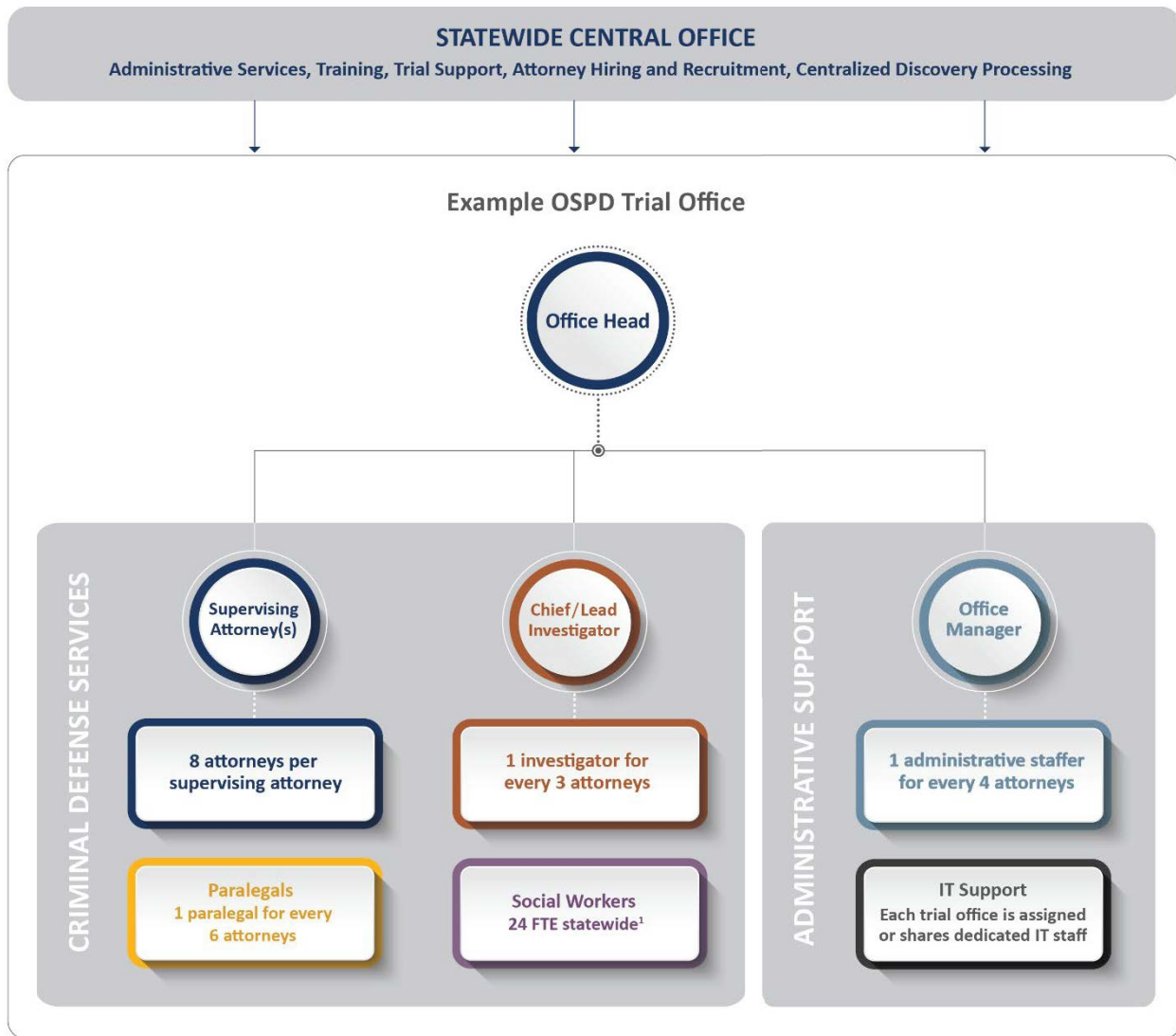
## Administration

OSPD operates a central administrative office in Denver (70 FTE in Fiscal Year 2024), which is run by OSPD senior management and handles most administrative functions for the agency, including attorney hiring and recruitment, training, budgeting, purchasing, accounting, payroll, human resources, and information technology. The central administrative office also contains a team of discovery clerks, who process discovery (evidence related to cases) for all trial offices. OSPD's appellate office (63.2 FTE in Fiscal Year 2024) is also in Denver and handles all OSPD felony appeals.

OSPD represents most clients through its 21 trial offices. According to OSPD, trial offices operate similarly to independent law firms and have significant autonomy in their management of cases, organization, internal procedures, and operations. For example, central office management generally is not involved in individual cases, attorneys cannot access case information outside of their trial office, and each office may have its own procedures for assigning cases to attorneys and monitoring attorney performance. According to OSPD, this decentralized approach is necessary because the practices of courts, district attorneys, types of cases, and size of the geographic area within each judicial district can vary widely, and trial offices can better represent clients if they can adapt to the challenges specific to their region.

Each trial office is led by a lead attorney (the “office head”), and has a lead administrator (the “office manager”). Additionally, each trial office has several attorneys (usually assigned to either misdemeanor or felony practice), at least one paralegal, at least two investigators, and at least one administrative assistant, in addition to the office manager. OSPD also assigns a limited number of social workers and information technology staff to a specific office, or to be shared among a specific group of offices. Exhibit 1.3 shows the typical structure of an OSPD trial office. Depending on the office size, the office head may supervise all attorneys, investigators, paralegals, and social workers directly, or there may be intermediate supervisors, such as chief investigators, paralegal supervisors, and supervisory attorneys. OSPD has only recently established a supervisory paralegal role in some offices, and social workers are generally supervised by attorneys, with support from a statewide social work coordinator.

**Exhibit 1.3**  
**Basic Structure of an OSPD Trial Office**

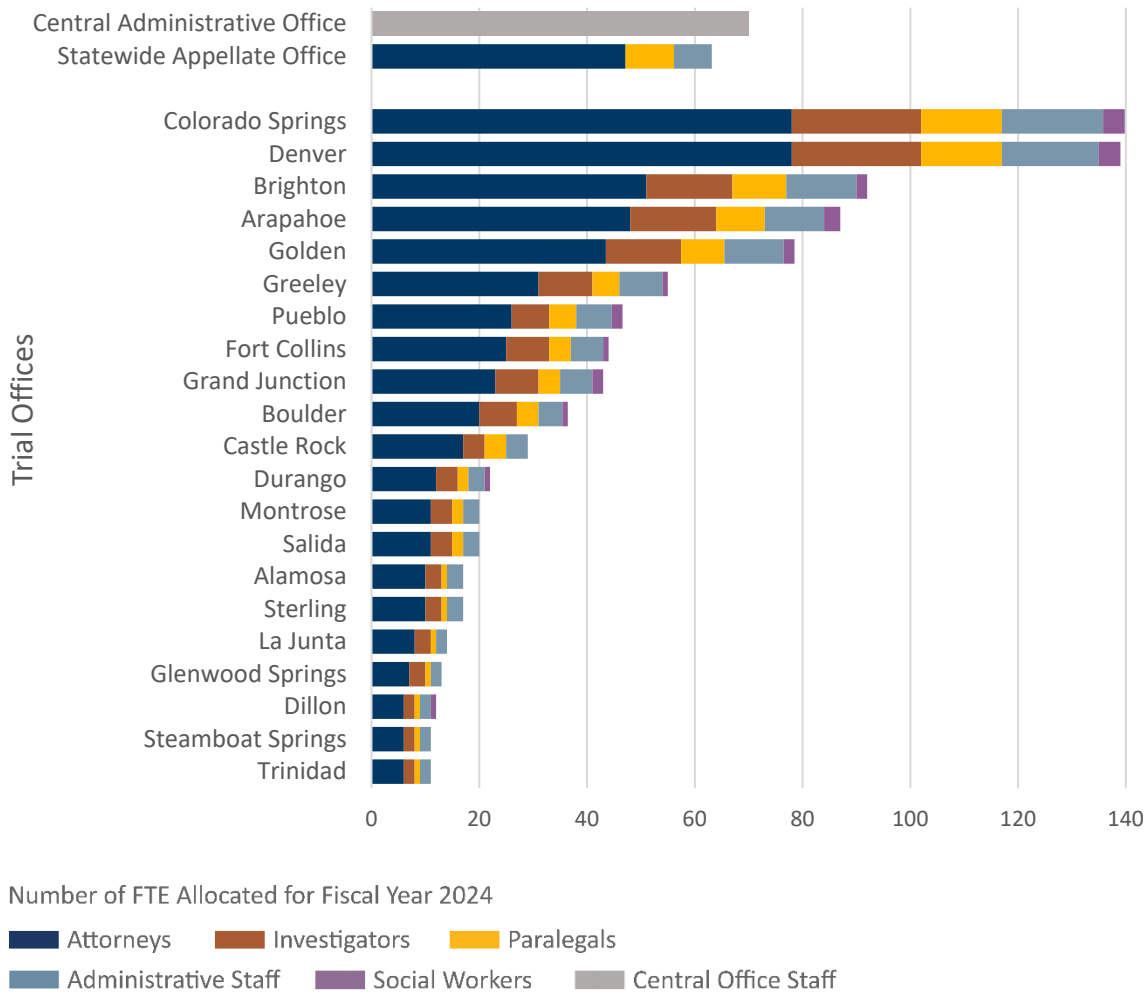


Source: Office of the State Auditor representation of Office of the State Public Defender operations.

<sup>1</sup> OSPD has been appropriated 11 additional social worker FTE beginning in Fiscal Year 2025.

Trial offices vary in size significantly due to variations in caseload, geography, and jurisdiction-specific factors, such as the practices of the courts and district attorneys in the region they serve. For example, OSPD’s smallest office is in Trinidad with 11 staff, including 6 attorneys, while the largest trial office is in Colorado Springs with 140 staff, including 78 attorneys. Exhibit 1.4 provides the size and composition of the staff in each OSPD office. Based on the number of attorneys allocated to each trial office, OSPD uses set ratios to allocate a commensurate number of support staff.

**Exhibit 1.4**  
**FTE Allocated Per OSPD Office, Fiscal Year 2024**



Source: Office of the State Public Defender.

**Attorney Recruitment, Training, and Assignment.** OSPD has a centralized process for hiring and assigning new attorneys to trial offices. Most attorneys hired by OSPD are recent law school graduates recruited from law schools in Colorado and across the United States, and are newly admitted or in the process of being admitted to the Colorado Bar. OSPD does not allow attorneys to apply to a specific office, although it does allow prospective attorneys to indicate a preference for which office they will be assigned and attorneys can request to be transferred to a different office after 24 months on the job. OSPD also offers legal internships for law school students at trial offices across the state.

New attorneys must complete a basic training program before they can be assigned cases and are assigned less serious cases until they gain the experience necessary to manage felonies and more complicated cases. Generally, new attorneys are assigned to county court where they work



misdemeanor cases, and then are promoted to felony practice in district court depending upon when a vacancy becomes available and their performance, which typically occurs about 1 to 2 years after an attorney is hired. Depending on the trial office, an attorney’s case assignment may be geographical (e.g., an attorney in a rural office might be responsible for all cases in a given county) or may be by courtroom or division (e.g., two attorneys in an urban district might split the cases in a single courtroom). Some offices assign cases on a rotation, where each attorney is responsible for all cases that originate in their designated week, or have a dedicated rotation for serious felonies or sex crimes, to ensure that any one attorney is not overburdened. OSPD clients are not permitted to choose which attorney represents them. Supervising attorneys and office heads generally carry a caseload, in addition to their supervisory and managerial duties.

## Funding

OSPD is primarily funded by appropriations from the State’s General Fund, with less than 1 percent of its funding coming from grants and other sources. As noted previously, OSPD clients pay a non-refundable \$25 processing fee at the time of the final disposition of their case, unless the fee is waived by the court [Section 21-1-103 (3), C.R.S.]. However, these funds are collected by the courts and are transmitted into the State’s General Fund; OSPD does not receive any of this revenue directly. Section 21-1-106, C.R.S., also requires the court to assess fees or costs against a defendant when the court has “determined that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant.” This revenue would also be transmitted to the State’s General Fund, and OSPD does not receive any such “earned” revenue directly.

Exhibit 1.5 outlines OSPD’s appropriation history from Fiscal Years 2021 through 2025. As shown, OSPD’s funding and FTE have grown substantially each year since Fiscal Year 2021.

**Exhibit 1.5**  
**OSPD Appropriations, Fiscal Years 2021 to 2025**

Fiscal Year	Total Appropriations	Change from Previous Fiscal Year	Appropriated FTE	Change from Previous Fiscal Year
2021	\$108,256,486	1.3%	925.1	4.0%
2022	\$118,904,447	9.8%	966.4	4.5%
2023	\$130,018,903	9.3%	1,050.5	8.7%
2024	\$156,363,167	20.3%	1,101.8	4.9%
2025	\$178,273,311	14.0%	1,183.5	7.4%

Source: Joint Budget Committee Appropriations Reports Fiscal Years 2022 to 2024, House Bill 24-1188 (Fiscal Year 2024 Supplemental Appropriation), and House Bill 24-1430 (Fiscal Year 2025 Long Bill).

Recent increases in OSPD appropriations have been primarily driven by:

- **Attorney and Support Staff Increases.** The General Assembly appropriated a combined increase of 65.6 attorney and support staff FTE in Fiscal Years 2021 and 2022 to address projected caseload increases. For Fiscal Year 2025, OSPD has been appropriated an additional 91.4 FTE for new attorneys and support staff to address attorney workload concerns.
- **Agency-wide Salary Increases.** The General Assembly appropriated \$16.1 million for agency-wide salary increases in Fiscal Year 2024, in an effort to help OSPD better retain experienced staff.
- **Expansion of the Paralegal, Discovery Clerk, and Social Work Programs.** For Fiscal Year 2023, OSPD requested and received approximately 100 additional FTE—to be phased in through Fiscal Year 2024—to staff all trial offices with paralegals. Previously, OSPD only employed paralegals in the appellate division and a small number of trial offices. Also in Fiscal Year 2023, OSPD received 15 FTE for discovery clerk staff to help manage the discovery received for cases, as well as \$1.9 million for a new digital discovery storage system. For Fiscal Year 2025, OSPD has been appropriated an additional 11.5 FTE to expand its social work function.

We discuss the reasons behind OSPD’s recent increases in staffing in detail in Chapter 2 of this report.

## Audit Purpose, Scope, and Methodology

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government, and Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. This audit was conducted at the discretion of the State Auditor. Audit work was performed from September 2023 to June 2024, and we appreciate the cooperation and assistance provided by OSPD.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The key objectives of the audit were to assess whether OSPD has adequate processes and controls to:

- Manage its staffing needs and attorney caseloads.
- Make timely and accurate eligibility determinations for defendants that apply for OSPD counsel.
- Ensure attorneys receive adequate training and that sufficient oversight of staff performance exists.

To accomplish our audit objectives, we performed the following audit work:

- Performed site visits at 8 of OSPD’s 21 trial offices—Alamosa, Arapahoe, Colorado Springs, Denver, Durango, Fort Collins, Grand Junction, and Sterling—and remotely at OSPD’s appellate office. During each visit we interviewed attorneys and staff across position types to understand each office’s practices relevant to our objectives.
- Reviewed laws, regulations, policies and procedures, and guidance applicable to OSPD.
- Interviewed OSPD management and staff.
- Reviewed OSPD staffing plans from Fiscal Years 2021 through 2024, and its SMART Performance Plan for Fiscal Year 2023.
- Reviewed local and national public defender workload studies.
- Reviewed OSPD case data from Fiscal Years 2021 through 2023, and assessed workloads for OSPD attorneys and supervisors relative to established public defender workload guidelines.
- Reviewed OSPD’s eligibility determination policies and procedures and reviewed a sample of applications for OSPD representation for cases closed during Fiscal Year 2023 and the associated records used to determine indigency and eligibility for OSPD services.
- Analyzed OSPD new attorney training records for completion and timeliness for attorneys hired by OSPD between January 1, 2022 and December 5, 2023.

We relied on one nonstatistical sample to support our audit work. Specifically, in testing OSPD indigency determinations, we randomly sampled 80 cases closed during Fiscal Year 2023 from the eight OSPD trial offices we visited (10 sample cases for each office). Because not all cases necessitate an indigency determination (such as when the defendant remains in custody for the duration of the case), this sample yielded 28 applications and their supporting documentation, which we tested for compliance with Chief Justice Directives and applicable OSPD policies and procedures. The results of our nonstatistical sample cannot be projected to the population of all OSPD application determinations. However, the sample results are valid for the purpose of assessing OSPD’s controls over its indigency determination process and, along with the other audit

work performed, provide sufficient, reliable evidence as the basis for our findings, conclusions, and recommendations.

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Details about the audit work supporting our findings and conclusions—including any deficiencies in internal control that were significant to our audit objectives—are described in the remainder of this report.

A draft of this report was reviewed by OSPD. Obtaining the views of responsible officials is an important part of the Office of the State Auditor's (OSA) commitment to ensuring that the report is accurate, complete, and objective. The OSA was solely responsible for determining whether and how to revise the report, if appropriate, based on OSPD's comments. The written responses to the recommendations and the related implementation dates were the sole responsibility of OSPD. However, in accordance with auditing standards, we have included an Auditor's Addendum to responses that are inconsistent with the findings or conclusions or that do not adequately address the recommendations.

# Chapter 2

## *Resource and Workload Management*

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### Finding 1

#### Resource and Workload Management

Managing a growing need for attorneys and support staff has been a longstanding challenge for the Office of the State Public Defender (OSPD), for which workload is influenced by factors outside of its control, such as the number of indigent defendants who qualify for its services and the number and type of cases filed by state prosecutors. At the time of our last audit of OSPD, conducted in 2003, OSPD data showed that it closed 70,920 cases in Fiscal Year 2002. As of Fiscal Year 2023, OSPD data show that it closed 130,856 cases—an 85 percent increase. According to OSPD management, this growth in cases—caused by factors like changes in laws requiring appointed counsel earlier in misdemeanor cases and population growth, and changes in the amount of work in each case—has increased the need for public defenders, with OSPD appropriated 1,050.5 full-time equivalent employees (FTE) in Fiscal Year 2023, compared to 335.1 FTE in Fiscal Year 2002—a 213 percent increase.

**Attorney Workload Studies.** Public defense agencies across the country report overwork and understaffing, and apply different approaches to understand their workload and staffing needs. However, because of variability in clients, case complexity, individual attorney practices, and jurisdictional practice, it is difficult to determine the maximum number of cases an attorney should be assigned in a year or the amount of time attorneys should spend on cases of specific types to provide reasonably effective counsel. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) attempted to do so when it adopted the first national public defense workload standards to help public defense agencies assess organizational staffing needs and identify excessive workload conditions. The “NAC standards” estimated the maximum number of cases a defense attorney could handle per year based on case type, but have been criticized for being too broad because they assume all felonies require the same number of attorney work hours regardless of their seriousness or complexity. At the local and national level, numerous efforts have been made in the years since to develop more accurate and updated public defense workload standards to help public defense agencies evaluate attorney workloads.

OSPD assessed its staffing needs using the NAC standards until 1997, when it began using workload standards developed by consultants for OSPD. Specifically, in 1996 and again in 2002 and 2008, OSPD hired the consulting firm The Spangenberg Group to develop a method to more accurately

measure the workload associated with each case. OSPD engaged an accounting/consulting firm, RubinBrown, and the American Bar Association (ABA) to conduct a new study of attorney workloads within OSPD in 2016, known as the Colorado Project. Released in 2017, RubinBrown and the ABA provided two workload standards in the study—one used the time-tracking methodology previously developed by The Spangenberg Group to revise the standards based on updated attorney workload information; the other sought to set new standards for how many hours attorneys should spend on each case type using input from a panel of attorney experts. OSPD has continued to use the Spangenberg workload standards, as updated by RubinBrown and the ABA during the Colorado Project study, for assessing its staffing needs. OSPD refers to these standards as the RubinBrown standards. According to OSPD management, using this data-driven approach of measuring workload based on complexity of the case has helped them measure the agency’s workload and articulate its staffing needs in the budgetary process. Throughout this finding, “workload standards” is a reference to this method for OSPD to measure the agency’s workload and staffing needs.

**OSPD reports that it is currently understaffed.** In its Fiscal Year 2025 Budget Request, OSPD reported that the agency’s “workload exceeds the capacity of its existing staff, despite defenders working long hours at great cost to their own health and well-being to provide excellent representation for their clients.” According to OSPD, because it cannot control the primary contributors to workload changes—the number of cases filed, the type of cases, or the number of defendants who qualify as indigent—the primary mechanism available to OSPD to address workload concerns is through budget requests and, specifically, increased FTE and salary increases intended to boost staff retention. According to OSPD, staff workloads have increased substantially in recent years due to the following:

- **An increase in evidence that attorneys and staff must review.** In recent years, law enforcement has significantly increased its use of technological investigative techniques, which have resulted in a dramatic increase in the volume of evidence, such as police body camera footage, phone recordings, and computer data, collectively referred to as “discovery,” that OSPD staff must review. OSPD reported a 4,500 percent increase in the amount of data stored in its digital storage system since 2016 and estimated in its Fiscal Year 2025 Budget Request that it needed 180 additional attorney FTE to address the amount of time needed to handle the portion of this increase caused by discovery.
- **An increase in the number of courtrooms, special courts, and magistrates.** OSPD’s practice is to assign staff by courthouses and courtrooms, so that they can efficiently handle dockets, understand specific judges’ practices, and gain familiarity with the prosecutors who staff the courtrooms. OSPD reported that, in addition to traditional dockets, judicial districts have expanded the use of specialty courts and dockets, designed to problem-solve, reduce recidivism, and support positive outcomes for certain types of cases, such as competency, veterans, and domestic violence. OSPD also reported that between Fiscal Years 2016 and 2022, the Judicial Branch had a 39 percent increase in the number of magistrates to cover these courtrooms and

dockets. As the number of courtrooms, special courts, and magistrates increases, OSPD must assign additional attorneys to cover their dockets, and OSPD estimated in its Fiscal Year 2025 Budget Request that it needed 20 additional attorney FTE to do so.

- **Delays establishing defendants' competency.** Defendants cannot be prosecuted, accept a plea bargain, or go to trial if they are not mentally competent. OSPD reported that it closed 3,797 cases during Fiscal Year 2023 in which the defendant's competency was raised. The Office of Civil and Forensic Mental Health, within the Department of Human Services, which operates the State's mental health hospitals in Fort Logan and Pueblo, is responsible for evaluating defendants' competency and providing treatment to help them gain competency if they are not initially found competent to move forward in their criminal cases. OSPD reports that significant delays in this process in recent years have increased its attorney workloads because cases in which a defendant has not been found competent require additional court appearances and attorneys must provide additional support and communication to these clients while their cases are delayed. For the Fiscal Year 2025 budget, OSPD reported that it would need 20 additional attorney FTE to address the number of cases involving competency.
- **Juveniles charged as adults.** Recent court decisions require OSPD attorneys to follow additional guidelines when youth are charged as adults in a criminal case. These guidelines often require OSPD to staff multiple attorneys and support staff to a single case to ensure that the team representing the juvenile defendant has the appropriate level of experience to handle the case. OSPD highlighted that the work involved for these cases is "specialized and labor-intensive" and compared the work involved to prepare for the hearing to determine whether a case will be transferred to adult court as similar to that associated with taking a felony murder to trial. OSPD requested in its Fiscal Year 2025 budget request an additional 10 attorneys to address this workload.

In all, OSPD indicated in its budget request that it needed 230 additional attorneys for Fiscal Year 2025 to address these issues. According to OSPD, the realities of attorney recruitment and state fiscal limitations influenced its decision to request 70 additional attorneys and 58 support staff to maintain its target ratio of support staff to attorneys, which included 23.3 investigators, 11.7 paralegals, 17.5 administrative assistants, and 5.5 centralized administrative staff. OSPD also requested 11 new social worker positions and 25 client advocate positions to assist clients with resources, along with 1.6 FTE for centralized administrative staff and 1 FTE for a manager for its new digital discovery storage system. Based on this request, the General Assembly appropriated OSPD an additional 103.9 FTE, including 50 attorneys, 16.7 investigators, 8.3 paralegals, 11 social workers, 12.5 administrative assistants, 1 IT manager, and 4.4 centralized administrative staff for Fiscal Year 2025. Exhibit 2.1 provides the FTE increases requested by and appropriated to OSPD for Fiscal Year 2025.

## Exhibit 2.1

### Office of the State Public Defender FTE Increase Request and Final Appropriation Fiscal Year 2025

Position Type	Additional FTE Requested	Additional FTE Appropriated
Attorney	70	50
Investigator	23.3	16.7
Administrative Assistant	17.5	12.5
Paralegal	11.7	8.3
Social Worker	11	11
Client Advocate	25	0
IT Manager	1	1
Central Administrative Staff	7.1	4.4
Total	166.6	103.9

Source: Office of the State Auditor review of the Office of the State Public Defender’s Fiscal Year 2025 Budget Request and Joint Budget Committee staff comeback memorandum for the Fiscal Year 2025 Long Bill.

Additionally, in its 2023 Annual Performance Report, completed in accordance with the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act, OSPD set as one of its three goals, “Hire and retain a sufficient number of quality staff to effectively manage the ever-increasing workload in each office in the state.” OSPD also set performance measures that included tracking the percentage of attorney staff allocated compared to the total required for trial and appellate cases, compliance with minimum standards for total staffing requirements, the maintenance of reasonable staffing for supervision of staff, and annual rates of staff attrition.

**Management of attorney workloads at trial offices.** Although Central Office management determines the number of attorneys needed across the state and in each specific region and administers the hiring process for each trial office, trial office heads are responsible for assigning cases and managing day-to-day attorney workloads within their offices. According to OSPD, in recognition of the need to accommodate the jurisdictional differences around the state to best meet the local needs of each office, it does not have specific policies and procedures regarding how office heads should manage workload. All eight trial office heads we interviewed reported having a process to regularly assign cases and monitor the number of cases assigned to attorneys and their overall workload. Attorneys are typically assigned to a particular court or court room. For example, for busier courtrooms in urban district courts, two attorneys might split the entire docket of cases for which a public defender is appointed; while in rural district courts, which tend to have fewer cases, a single attorney might be assigned every case. As a result, attorneys reported that their workload fluctuates based on the number and type of cases that come through their assigned court docket. Additionally, OSPD trial offices typically assign new attorneys to county court, where they handle misdemeanor cases, and move more experienced attorneys to district court, where they handle felonies.

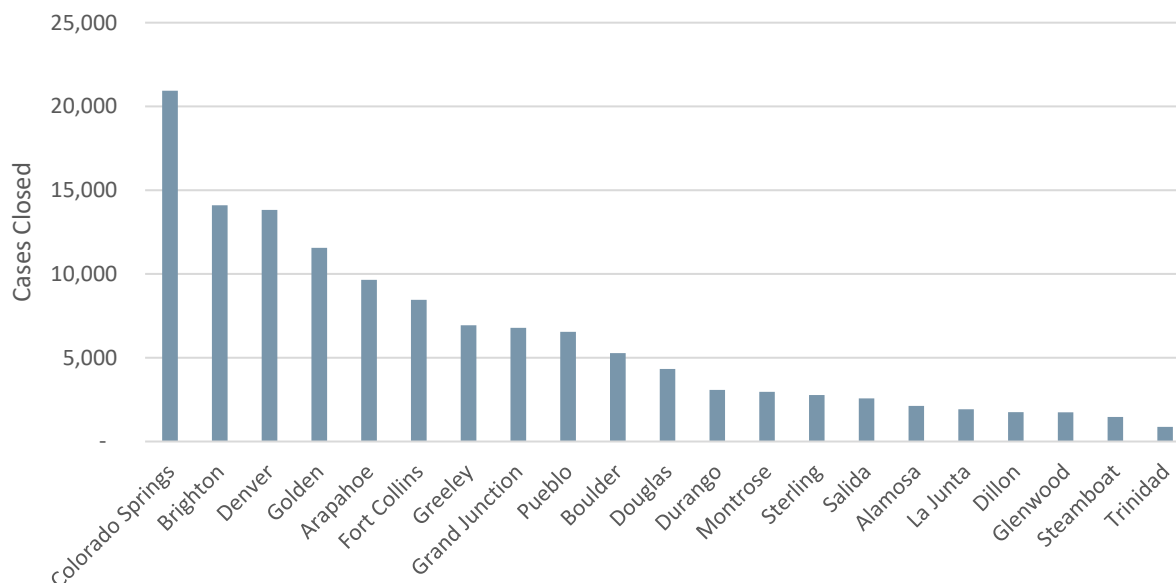


Office heads and supervisors use various methods to assess attorney workload. For example, most office heads stated that they run reports to monitor the number of active cases attorneys are assigned at any one time and make adjustments to case assignments, as needed. For example, they might ask another attorney to temporarily cover a docket for an attorney with too many cases to help balance workload. Some office heads also reported specifically monitoring the most serious felony cases, such as murders and juvenile cases, and making special assignments to ensure that the attorney assigned has the experience and time needed to handle the case. Additionally, office heads reported planning more or less attorney time for particular court rooms based on the practices of the judges and district attorneys assigned. Many of the office heads also reported regularly needing to reassign cases to triage workload when attorneys take extended time off (e.g., Family Medical Leave Act time) or resign, leaving a vacancy within the office. Although some office heads and supervising attorneys said that they provide new attorneys with training on how to manage caseloads, once cases are assigned, each attorney is responsible for managing the number of hours they work on each case based on their judgment about the work that is necessary to provide adequate representation. Generally, both the office heads and attorneys we spoke with indicated that most attorneys expect to work more than 40 hours per week to meet the needs of their workload. OSPD attorneys are not eligible for overtime pay or additional paid time off to compensate them for weeks that they work in excess of 40 hours.

To oversee workload at its trial offices, the State Public Defender conducts monthly meetings with the individual office heads to hear about issues at each trial office, including workload issues. According to OSPD management and the trial office heads we interviewed, factors that impact attorney workloads can vary significantly across trial offices. For example, the practices of the district attorney offices that serve each region can impact the number of cases that go to trial (e.g., if a district attorney is less willing to offer plea bargains, then cases are more likely to go to trial since defendants have less incentive to plead guilty); attorneys in rural offices often must spend significantly more time traveling to get to court and visit clients; and some offices that cover urban areas in the state reported handling a higher proportion of serious felonies. Exhibit 2.2 provides the number of cases closed by trial office in Fiscal Year 2023.

## Exhibit 2.2

### Total Cases Closed<sup>1</sup> by Trial Office<sup>2</sup> – Fiscal Year 2023



Source: Office of the State Auditor analysis of case data provided by the Office of the State Public Defender (OSPD) for cases closed in Fiscal Year 2023.

<sup>1</sup> This graph depicts caseloads, not workload, and includes all cases that OSPD closed in Fiscal Year 2023, as documented in its case management system, except for two case types that OSPD excludes from its workload calculations because they have no associated workload for attorneys or other staff: juvenile detention hearings and certain types of advisements.

<sup>2</sup> This chart excludes the appellate office because its operations differ significantly from the trial offices.

## What audit work was performed and what was the purpose?

We reviewed statute and the Colorado Court Rules, including the Colorado Rules of Professional Conduct and the Colorado Rules of Criminal Procedure, as well as ABA guidance and other legal literature to understand requirements and best practices for indigent defense representation. We interviewed OSPD senior management to understand its methods for evaluating caseloads and workloads, and how it measures performance and assesses staffing needs across the agency. We conducted site visits to 8 of the 21 OSPD trial offices across the state and met with management and staff from OSPD’s appellate office. As part of these visits, we interviewed 9 office heads and 35 attorneys with varying levels of experience and responsibilities regarding how cases are assigned and caseloads are tracked and managed, the manageability of workloads, and the impact of workloads on cases. We also analyzed OSPD data on agency staffing and cases closed by its attorneys in Fiscal Year 2023 to identify caseload and workload trends.

The purpose of our audit work was to determine whether OSPD has adequate controls to assess and monitor attorney workloads and agency staffing needs.

## How were the results of the audit work measured?

**OSPD attorneys should maintain appropriate workloads.** Section 21-1-101(1), C.R.S., requires OSPD to adhere to the Colorado Rules of Professional Conduct, adopted by the Colorado Supreme Court, which provide attorney obligations intended to ensure clients receive competent and diligent counsel. A 2022 formal opinion published by the Ethics Committee of the Colorado Bar Association, *A Lawyer's Duty to Maintain an Appropriate Workload*, provides guidance on the application of the Rules of Professional Conduct as they relate to attorney workloads, stating that the rules “require lawyers to manage their workload to ensure proper client representation” and that “a lawyer’s workload must be such that the lawyer can competently and diligently handle the matters assigned and recognize the supervising lawyer’s concomitant obligations in this regard.” Additionally, the ABA issued a formal ethics opinion [ABA Opinion 06-441], providing that a lawyer should not accept new clients if their workload prevents them from providing competent, diligent representation to current or potential clients, with “no exception for lawyers who represent indigent persons charged with crimes.” In its *Ten Principles of a Public Defense Delivery System*, the ABA also requires that defense counsel workloads be controlled to allow for quality representation. None of the sources provide for what an unreasonable workload is, since complexity and individual factors associated with each case drive workload.

**Workload Standards.** There are no specific amounts established in statute or the rules dictating either the hours an attorney must spend on cases or the number of cases an attorney can take on before their workload exceeds that which would allow them to provide competent and diligent representation. Based on our discussions with OSPD management and attorneys working at trial offices, the workload that is manageable for individual attorneys can vary based on many factors, including the complexity and seriousness of the cases they are assigned, the amount of evidence that must be reviewed for cases, the amount of experience the attorney has, the availability of support staff such as investigators and paralegals, the amount of travel required, and the practices of the district attorney’s office that is handling the cases. Additionally, although there is guidance regarding the number of cases defense attorneys can accept, the guidance varies substantially. Specifically, we identified the following:

- **The Colorado Project.** This public defense workload study was released in 2017 and conducted to “calculate data-driven workload standards that can assist the OSPD in assessing staffing requirements and provide empirical support to determine workloads.” This involved determining the time OSPD attorneys were spending on cases based on 6 months of daily time entry for all OSPD attorneys, as well as expert opinions on the amount of time that defense attorneys should spend, on average, to provide quality representation. The study provided two sets of workload standards for attorneys based on case type: 1.) the RubinBrown standards, which were developed based on the *actual* amount of time OSPD attorneys reported spending on cases and adjusted to account for time spent on case-specific tasks outside of their control, such as time traveling and waiting in court, and 2.) the “Delphi method” standards (Delphi),

which reflect the views of a panel of legal experts on the number of hours attorneys *should* spend on cases. At the time of the audit, OSPD relied on the RubinBrown standards, and other data points and information, to plan staffing allocation.

- **RAND National Public Defense Workload Study.** In 2023, the RAND Corporation published workload standards for public defenders that established the average number of hours attorneys need to provide reasonably effective counsel in criminal cases of various types. The standards are intended to help public defense organizations that do not have localized data determine the number of attorneys needed to handle a given workload, as well as identify excessive workload conditions. However, the standards are a guide for public defender organizations nationwide; they do not take factors specific to Colorado into account.

Exhibit 2.3 provides the workload standards under each method, expressed as the average number of hours that attorneys should spend on each case type to provide reasonably effective counsel. Cases are grouped by severity, with crimes with lower number classifications generally indicating more serious crimes. As shown, the standards vary considerably, with the RubinBrown standards providing significantly lower number of hours per case for most case types than the Delphi and RAND standards.

### Exhibit 2.3

#### Comparison of Public Defender Workload Standards Expressed as Hours per Case<sup>1</sup>

Case Type – Colorado Project	RubinBrown Case Hours <sup>2</sup>	Delphi Case Hours <sup>2</sup>	Case Type – RAND	RAND Case Hours <sup>3</sup>
Felony 1	449.3	427.3	Felony-High-Other	99
Felony 2	82.6	134.5	Felony-High-Other	99
Sex Assault Felony 2, 3, 4, 5 or 6	42.4	98.9	Felony-High-Other	99
Crime of Violence (COV) Felony 3 or 4	19.7	87.1	Felony-Mid	57
DUI Felony 4	11.1	29.9	DUI-High	33
Misdemeanor Sex Offense 1, 2 or 3	10.1	33.8	Misdemeanor-High	22.3
Non-COV Felony 3 or 4	8.9	47	Felony-Low	35
Felony 5 or 6	6.4	28.3	Felony-Low	35
Misdemeanor DUI	5.4	15.5	DUI-Low	19
Drug Felony 1, 2, 3 or 4	5.3	28.6	Felony-Low	35
Misdemeanor 1	4.1	16.3	Misdemeanor-High	22.3
Misdemeanor 2 or 3	3.1	11.4	Misdemeanor-Low	13.8
Felony Probation Revocation	2.1	7.4	Probation and Parole Violations	13.5
Misdemeanor Traffic Other	1.9	6.9	Misdemeanor-Low	13.8
Misdemeanor Probation Revocation	1.3	4.3	Probation and Parole Violations	13.5

Source: Colorado Office of the State Auditor analysis of The Colorado Project (2017) and the RAND Corporation’s National Public Defense Workload Study (2023).

<sup>1</sup> The RAND Study excluded all juvenile case types from its scope. As such, we have excluded juvenile case types from this table.

<sup>2</sup> The RubinBrown and Delphi workload standards assume that attorneys have 1,269 available hours for core case work in a year to account for non-case related activities, such as holidays, leave, and professional development.

<sup>3</sup> The RAND workload standards assume that attorneys have 2,080 available hours per year, which is equal to working 40 hours per week, 52 weeks per year.

As discussed in greater detail in the sections that follow, OSPD management does not consider any of these standards to fully and accurately represent the time its attorneys need to spend on each case type to provide reasonably effective counsel. Although at the time of the audit OSPD management reported using the RubinBrown method along with other information to assess its staffing needs, it believes that these standards likely underestimate attorneys’ true workloads due to changes that have occurred since the study was completed, such as increases in digital evidence that must be reviewed. On the other hand, OSPD indicated that the Delphi and RAND methods overestimate the number of hours attorneys should spend on each case type. However, because there are no alternative workload standards available for the purposes of assessing OSPD’s attorney workloads, we assessed OSPD’s attorney workloads using each of these standards.

**SMART Government Act Requirements.** The SMART Government Act requires state agencies to have performance measures, which are defined by Section 2-7-202(18), C.R.S., as “quantitative indicator[s] used to assess the operational performance of a department...and should demonstrate the department’s efficiency and effectiveness in delivering goods or services to customers and taxpayers.” Statute provides for the State Auditor to review “the integrity of performance measures audited; [and] the accuracy and validity of reported results” [Section 2-7-204(5), C.R.S.]. In its 2023 Performance Plan, completed in accordance with the SMART Government Act, OSPD included the following measures related to attorney workload and maintaining adequate staff resources:

- **Percent of trial court attorney staff allocated versus total required for closed trial court cases**—measures the actual number of OSPD trial court attorneys as a percent of the number of attorneys required to handle the number of cases closed in a fiscal year, using the RubinBrown standards. For Fiscal Year 2023, OSPD estimates it had 76 percent of the attorneys needed to handle the nearly 130,900 cases closed in that year. OSPD also calculates this measure to look at the ratio of the number of appellate attorneys and trial attorneys to closed appellate and trial court cases.
- **Percent compliance with total staffing requirements**—measures the actual number of OSPD staff, including attorneys and support staff, as a percentage of the total staff required to handle the number of closed cases in a fiscal year, based on the RubinBrown standards and established ratios of attorneys to support staff (i.e., 1 investigator for every 3 attorneys, 1 paralegal for every 6 attorneys, and 1 administrative assistant for every 4 attorneys). For Fiscal Year 2023, OSPD estimates it was 77 percent staffed overall.

## What problems did the audit work identify and why did they occur?

We found that OSPD’s attorney workloads exceeded the guidance provided under each of the relevant studies we identified. As discussed above, OSPD management reported that high workload among its attorneys is a significant and longstanding challenge—not unique to the Colorado public

defender system—and has made addressing the high workload issue one of OSPD’s key strategic goals. Some of the OSPD attorneys we spoke with reported that high caseloads impact the quality of representation they can provide for their clients and cause them to regularly work a high number of hours, which can drive attorney turnover and cause vacancies. However, none of the OSPD attorneys we spoke with indicated that high caseloads caused them to provide representation below the standards established under the Rules of Professional Conduct. Further, according to the Office of the Presiding Disciplinary Judge—appointed by the Colorado Supreme Court to oversee lawyer discipline and publish public disciplinary decisions against lawyers who violate the Colorado Rules of Professional Conduct—no public disciplinary decisions were issued against an OSPD attorney from at least 2020 to 2023. However, we found that OSPD methods and processes for measuring its workload and quantifying its need for staff could be updated to better reflect and be responsive to changes in the criminal defense system and available data and data systems.

**OSPD case data indicates high workloads.** We reviewed OSPD data for cases closed during Fiscal Year 2023 and found that many attorneys closed a greater number of cases than the standards recommend. Because OSPD attorneys are typically assigned a variety of case types, we assessed each attorney’s total workload by multiplying the number of cases of each type that they had closed during the year by the number of hours the studies suggest attorneys should spend on average for each case type. We then assessed the number of attorneys whose total closed cases for the year would exceed the workload standards set forth by each of the RubinBrown, Delphi, and RAND methods. Because the methodologies behind the workload calculations use 1 year of full-time work as their base timeframe, our analysis only included attorneys who closed cases in at least 10 months during the year, except for attorneys who had begun working for OSPD during the year. For those attorneys who closed cases in 10 or 11 months, we calculated the average number of hours they worked each month and extrapolated to 12 months to compare their workload to the annual standards. In total our analysis included 484 attorneys.

As shown in Exhibit 2.4, we found that between 46 and 99 percent of the attorneys in our analysis closed more cases than the study standards suggest an attorney would be able to manage. However, the number of attorneys with workloads that exceed the standards varies significantly based on the method each study used to set caseload standards.

**Exhibit 2.4**

**Percent of OSPD Attorneys with Workloads That Exceed RubinBrown, Delphi, and RAND Workload Standards, Fiscal Year 2023**

Percent of attorneys with workloads over RubinBrown Standards <sup>1</sup>	Percent of attorneys with workloads over Delphi Standards <sup>1</sup>	Percent of attorneys with workloads over RAND Standards <sup>2</sup>
46%	99%	97%

Source: Office of the State Auditor analysis of Office of the State Public Defender case data based on average hours needed per case provided by the 2017 Colorado Project and 2023 RAND National Public Defense Workload Study.

<sup>1</sup> The RubinBrown and Delphi workload standards assume that attorneys have 1,269 available hours for core case work in a year to account for non-case related activities, such as holidays, leave, and professional development.

<sup>2</sup> The RAND workload standards assume that attorneys have 2,080 available hours per year, which is equal to working 40 hours per week, 52 weeks per year.

Additionally, a significant proportion of the attorneys included in our review, depicted in Exhibit 2.4, who had workloads that exceeded standards were in supervisory and management positions. Specifically, as shown in Exhibit 2.5, of the 54 supervising attorneys in trial offices in our analysis, 35 (65 percent) had workloads that exceeded the RubinBrown workload standards with 10 supervisors (19 percent) exceeding the standards by at least 50 percent. This workload would be in addition to their supervision duties, for which OSPD’s staffing model allocates 0.25 additional FTE for each supervisor position to account for supervisory obligations. Therefore, supervisors who exceeded the workload standards likely have particularly high workloads. Similarly, we found that nearly 30 percent of office heads had workloads exceeding workload study standards, with one office head exceeding the standards by 129 percent and two other office heads exceeding the standards by about 60 percent. OSPD includes office heads in its workload calculations to a varying degree depending on the size of the office. Although we also compared supervising attorney’s and office head’s caseloads to the Delphi and RAND standards, because our comparison with these standards indicates that nearly every attorney, including supervisors and office heads, has an excessive workload, they are less meaningful for comparing workloads across position types. Therefore, we only present the results of our comparison to the RubinBrown standards in Exhibit 2.5.

**Exhibit 2.5  
Number of Supervising Attorneys and Office Heads with Workloads Exceeding the RubinBrown Method Standards, Fiscal Year 2023**

	Total Population	Population over RubinBrown Standards	Percent over RubinBrown Standards	Exceeded RubinBrown Standards by at least 50 Percent
Supervising Attorneys <sup>1</sup>	54	35	65%	10
Office Heads <sup>2</sup>	21	6	29%	3

Source: Office of the State Auditor analysis of Office of the State Public Defender case data and RubinBrown standards published in the 2017 Colorado Project workload study.

<sup>1</sup> Total population of supervising attorneys includes only those supervisors that closed cases in at least 10 months of the year, because the methodologies for calculating workloads use one year of full-time work as the baseline.

<sup>2</sup> Three offices had turnover in the office head position during Fiscal Year 2023, so this population includes the office heads for each of the 21 trial offices who were in that position for more than half of the year.

**Attorneys report long work hours and heavy workload.** During our site visits at OSPD’s 8 trial offices and appellate office, we asked 37 attorneys and office heads about how much they work and how they manage their caseloads. All 37 (100 percent) reported working at least 45 hours in a typical week, with 12 (32 percent) reporting that they typically work at least 60 hours or more each week. Many attorneys said that their work hours increase significantly from these estimates during weeks when they have trials, when it is common to work 80 hour weeks, and that they will work outside of normal office hours or on weekends to keep up with their workload. Attorneys reported significant variability in the frequency of cases going to trial across judicial districts and trial offices, with some



attorneys reporting having cases go to trial only a few times a year, and others reporting having multiple trials each month.

Attorneys reported a variety of factors that drive workloads. We identified the following key trends from the attorneys we spoke with:

- **New attorneys assigned to county courts report high caseloads.** Attorneys in several trial offices reported that workload is highest for new attorneys defending misdemeanor charges in county courts. Some attorneys we spoke with reported working 7 days a week—or having more than 200 misdemeanor cases at a time during their time in county court. Attorneys reported that county courts can be short-staffed at times because when staff vacancies occur, their office prioritizes staffing the district courts by moving more experienced county court attorneys to district court. Additionally, new county court attorneys typically must spend more time on each case than an experienced lawyer would have to spend on the same case because they are often recent law school graduates who are still learning the legal standards and defense strategies that apply to each type of case, whereas more experienced attorneys have a larger base of knowledge to draw from and can work more efficiently.
- **Attorneys in rural offices report lower caseloads than urban offices, but spend significant amounts of time driving to attend court or to visit clients in other counties.** In rural offices, which often serve several courts spread across large geographic areas and multiple counties, it is common for a single attorney to be assigned to a court and handle all indigent defense cases that come through the court. For these attorneys, workload can be more variable based on how many cases come through their assigned court and the distance from their trial office to that court, as well as to the jails where the defendants are being held.
- **Office heads and supervising attorneys often have high caseloads in addition to their supervisory duties.** Of the 9 office heads we interviewed, 8 told us that they have caseloads in addition to their managerial duties. One office head reported having 120 cases at one point in 2023, in addition to their duties managing a trial office. The office heads and supervising attorneys that we spoke with often indicated that they will take on the most serious and complex cases that come through their office, as well as extra cases to fill in when vacancies occur within the office.
- **Vacancies within offices can cause attorneys to take on large caseloads.** Attorneys indicated that because OSPD’s hiring is cyclical, with most hires starting between August and November following passage of the July bar exam. Therefore, it can sometimes take several months to fill a vacancy, during which time other attorneys, who may already be working at full capacity, must take on extra cases. Several attorneys we spoke with reported that they were carrying, or at one point carried, more than 100 felony cases at a time. One attorney reported that about 2 years ago, they had around 140 “serious” felony cases at one time, and described that period as terrible and said that a repeat of that number of cases would cause them to leave



the agency. Although the attorney did not indicate the specific felony case types they were carrying at that time, the RubinBrown standards indicate that an attorney should, over the course of 1 year, work no more than 3 class 1 felony cases (e.g., first degree murder, first degree kidnapping), 15 class 2 felony cases (e.g., certain second degree murders), 64 class 3 or 4 violent felony cases (e.g., vehicular homicide, trafficking of a minor), and 142 non-violent class 3 or 4 felony cases (e.g., operation of a chop shop, first degree perjury). These standards assume that the attorney is carrying cases of only one case type.

- **An increase in discovery has significantly increased workload in recent years.** Most of the attorneys we spoke with indicated that reviewing discovery, such as police body camera video, is a significant driver of workload. More experienced attorneys indicated that the volume of evidence they must review has increased substantially in recent years and, although some indicated that they get help with this review from paralegals, many attorneys indicated that they believed it was important to review the discovery themselves to identify evidence that might help their clients' cases.

**OSPD needs updated methods and additional data to measure its staffing needs and monitor its performance.** Our case data review and interviews with OSPD attorneys generally concurs with OSPD management's assessment that its current workload exceeds staff capacity; however, we found that OSPD lacks sufficiently current information to fully assess its staffing needs. Specifically, we found the following issues:

- **Current standards may underestimate attorney workload.** As discussed, OSPD management uses the RubinBrown standards from the 2017 Colorado Project along with other information to evaluate trial office workloads and assess its needs for additional staff, and to calculate its performance measures related to having enough attorneys and staff to manage cases. However, the RubinBrown standards may understate workloads. During the audit, OSPD management reported that the RubinBrown standards have become outdated since they were published in 2017 and do not account for changes to the legal system that have likely increased workloads for each case, such as the increased amounts of discovery, complexity of cases, number of specialty courts and dockets, and number of clients living with mental illness and having other high needs. Additionally, the RubinBrown standards are based on the average number of hours OSPD attorneys reported *actually* working on cases and related activities during the study, and not necessarily the amount of time attorneys *should* spend on each case to provide quality representation. For this reason, if attorneys had excessive workloads at the time of the study and were spending fewer hours on cases than they should have, the RubinBrown standards would underestimate workload.

As discussed, the Colorado Project also employed the Delphi method, to seek to establish standards for the average number of hours attorneys *should* spend on each case to provide quality representation. If OSPD used the Delphi standards to calculate its staffing needs, it would show a significantly greater need for staff. However, OSPD reports that the Delphi standards likely

overstate attorney workload and have not been useful for assessing additional staffing. Further, the RAND standards published in 2023, while more recent, are not based on Colorado-specific data and do not account for OSPD's organizational and operating structure.

- **OSPD does not track attorney work hours.** OSPD cannot quantify the number of hours attorneys work on a weekly or monthly basis because it does not require attorneys to track and report their work hours. OSPD management reported that it is concerned that requiring attorneys to report work hours could be burdensome for its staff and that it would be difficult for attorneys to accurately track the various activities that go into representing clients. Additionally, OSPD does not need to track hours for billing purposes, because it provides its services free of charge. However, as discussed, workloads for individual cases and attorneys can be highly variable and cannot be fully captured by monitoring caseloads alone. Therefore, without data on the number of hours that attorneys worked, OSPD management lacks information that it could use to track attorney workloads and plan for its staffing needs. Although OSPD is not required to track attorney work hours, it is a common practice in the legal profession for billing purposes and across state government for FLSA non-exempt staff to report work hours, and other OSPD staff, such as paralegals and administrative staff are required to report work hours. Additionally, having a data point that quantifies how much attorneys are actually working will help OSPD measure the effectiveness and impact of the additional FTE provided by the General Assembly, such as the more than 100 FTE appropriated for Fiscal Year 2025. Our 2003 audit of OSPD included a recommendation that the agency implement a timekeeping system for all employees, including attorneys, as part of a process for identifying and evaluating its cost for services. The agency partially agreed with that recommendation, citing that “a formal time-keeping system is not now cost effective,” but that it would continue to evaluate the feasibility and effectiveness of a timekeeping system.

**OSPD can improve its process for managing workloads by providing guidance to trial office management.** As discussed, OSPD's current process for monitoring workloads includes an annual review of workloads agency-wide for the purposes of budget development and performance measure calculations; the State Public Defender's monthly meetings with the individual office heads to hear about issues at each trial office, including workload issues; ad-hoc reviews of workloads to troubleshoot issues that arise; and regular review of attorney caseloads by office heads and supervisors. However, OSPD has not developed written, agency-wide guidance for monitoring and managing attorneys' workloads. In practice, most day-to-day management of attorney workloads is driven by the current needs of each trial office, the expectations of each office head regarding how many cases attorneys can take on, and the number of hours each attorney decides to spend on their cases. Although all of the attorneys we interviewed indicated that they had high caseloads, attorneys varied considerably in their assessment of the manageability of their caseloads. For example, some attorneys reported having workloads that significantly impacted their ability to maintain work-life balance and said that workload could drive them to leave the organization, while others said the overall amount of work they had was usually reasonable. By updating its data and providing

additional guidance and support to trial office management, OSPD can improve the consistency of practices across its trial offices and optimize its efforts to manage the agency's workload.

**Need for a new workload study.** According to OSPD management, due to the issues we discussed above, it believes it can improve its ability to plan its staffing needs and monitor workload by hiring a consultant to conduct a new workload study, develop updated guidance on how many hours attorneys need on average to complete each type of case, and make improvements to its processes for monitoring workload. During the 2024 Legislative Session, House Bill 24-1289 was introduced, which in amended form addressed this need for a new workload study. According to OSPD, it supported the bill after significant revisions to address concerns it had about the legislation's practicality and ethical implications. The bill would have provided funding for the new workload study, but it was not brought to a vote in the House Appropriations Committee and failed. The bill had a fiscal note of \$401,933 in Fiscal Year 2025, and \$266,943 in Fiscal Year 2026, which included \$225,000 for the workload study and \$75,000 for an implementation study, respectively.

## Why do these problems matter?

In its Fiscal Year 2025 budget request, OSPD highlighted the importance of having adequate staff resources, stating that if it did not receive the requested increase to its staffing “the OSPD’s ability to provide representation to clients as directed by the federal and state constitutions and Colorado statutes, in accordance with the Colorado Rules of Professional Conduct and the ABA Standards, will be significantly damaged.” In addition, attorneys we interviewed told us about the following impacts of their high caseloads and long work hours:

- 17 attorneys told us that their workload could sometimes interfere with their ability to provide quality counsel. For example, several attorneys reported that they are not able to communicate as much with their clients as they would like. One attorney noted that in order to cope with higher caseloads, they find themselves pursuing borderline issues less, such as probable cause for a traffic stop or search, and being more judicious in what issues they raise. Another attorney noted that if they had more time to spend on a case, they believe that they would be able to improve outcomes for their clients.
- 5 supervising attorneys and office heads reported that their caseloads impede their ability to provide as much supervision to their employees as they would like. For example, one supervising attorney noted that every attorney they supervise could use more supervision, but they did not have time to provide more supervision. Similarly, some attorneys told us that they did not receive as much supervision or feedback from their supervisors as they would like.
- 7 attorneys told us that they are passionate about their jobs, but also that the workload is sometimes unmanageable to the point it could make them leave the OSPD. One attorney with

more than 15 years of experience at OSPD commented that as they get older, the long hours required to keep up with the workload become less manageable.

The limitations we identified with OSPD's methods and data for measuring its staffing needs reduce its ability to assess its need for additional staffing to address its longstanding staffing challenges. OSPD recognizes the need for additional staffing and requires current data and an updated method to measure agency workload. For example, in its SMART Government Act performance report, OSPD reported that, as of Fiscal Year 2023, it had reached 77 percent staffing on its trial cases. However, OSPD reported to us that this figure likely does not represent its full need for staff because it was based on an outdated methodology. Additionally, OSPD was appropriated 104 additional paralegals in Fiscal Years 2023 and 2024. Although OSPD staff told us that the addition of the paralegals has had a positive impact on trial offices and attorney workloads by taking on tasks like reviewing discovery and writing motions, because OSPD does not track attorney work hours and has not conducted a workload study that considers the tasks that paralegals are taking and how long those tasks should take, it cannot quantify the degree to which attorney workloads may have decreased. Further, the lack of a consistent process for monitoring and managing individual attorney workloads across the agency increases the risk of individual attorneys having excessive caseloads, a situation that could occur regardless of whether OSPD has adequate staffing agency-wide.

## **Recommendation 1**

The Office of the State Public Defender (OSPD) should improve its process for assessing its personnel resource needs and monitoring attorney workloads by:

- A. Establishing updated workload standards by conducting a new workload study. This should include gathering new information on the average work necessary to provide quality representation, taking into account recent changes to the legal system since the last Colorado-specific study.
- B. Using the updated workload information in Part A to update its methods for assessing agency workload to measure OSPD's overall need for staffing and trial office workload.
- C. Using the information obtained through Part A and Part B to establish agency-wide guidance and processes to monitor and manage individual attorney workloads, which should include collecting data on the number of hours that attorneys work.
- D. Using the workload standards, established from Part A, and the data on hours worked, gathered from Part C, to update the methodologies for its State Measurement for Accountable, Responsive, and Transparent Government Act performance measures, which rely on the workload standards and establish metrics as necessary to measure the impact and effectiveness of FTE increases appropriated by the General Assembly.

## Response

### *Office of the State Public Defender*

#### A. Agree

Implementation Date: July 2026

The Office of the State Public Defender agrees with this recommendation and expects there will be a fiscal impact. As a leader on internal workload studies within public defender systems nationwide, the OSPD has already begun work to complete a new Colorado-specific workload analysis. Our agency is reviewing methodologies across related industries as a preliminary step in our commitment to updating OSPD attorney workload standards to reflect the current demands of indigent criminal legal representation. Our commitment to this process underscores our dedication to maintaining the highest standards of public defense. To complete this necessary work, our agency will need proper funding before moving forward with a new workload study. Implementation of standards will then follow based on data and information learned in the workload study.

Implementation of this recommendation is contingent upon receiving funding for the workload study.

#### B. Agree

Implementation Date: December 2026

The Office of the State Public Defender agrees with this recommendation and plans to revise its method for evaluating staffing needs based on the information gathered through Recommendation 1A. This will entail updating the attorney workload assessments in alignment with the new study's results to ensure that the process for determining personnel needs is both current and effective, reflecting the latest insights and data.

Implementation of this recommendation is contingent upon receiving funding for the workload study.

#### C. Partially Agree

Implementation Date: December 2026

The Office of the State Public Defender partially agrees with this recommendation. OSPD will establish and implement new processes for assessing personnel resource needs and monitor attorney workloads using the information obtained through Recommendations 1A and 1B. OSPD believes that information about attorney working hours is an important data point and expects that a new workload study will necessarily require some component of time-tracking in line with this recommendation. However, currently, OSPD does not commit to ongoing and indefinite time-tracking by all OSPD attorneys. It is a public defender core belief that individual

time spent does not equate to effectiveness or ethical representation. Focusing solely on time fails to recognize and account for other important factors in a public defense practice, including experience, skills, time management, relationships, and wide differences in cases, clients, prosecutors, and judges. It stifles creative practice, professional independence, defenders helping each other and co-chairing cases. It is the agency's expectation that the new study will consider multiple factors to come up with up-to-date data and workload standards. The OSPD is receptive to implementing a task management system which, following a thorough evaluation, could offer time tracking features that can be utilized to update data about workload and time more regularly, if such a system is identified.

Implementation of this recommendation is contingent upon receiving funding for the workload study.

### **Auditor's Addendum**

The Office of the State Public Defender does not currently have a process or mechanism for tracking how many hours attorneys work. This information is needed to help the agency track attorney workloads and plan for its staffing needs. Although we recognize that ongoing time-tracking would result in an additional administrative burden for attorneys and OSPD management, tracking attorney work hours on an ongoing basis, in addition to using information collected through the recommendations in Part A and Part B, would improve OSPD's ability to monitor attorney workloads. Additionally, having a data point that quantifies how much attorneys are actually working will help OSPD measure the effectiveness and impact of the additional FTE provided by the General Assembly.

#### **D. Agree**

Implementation Date: July 2027

The Office of the State Public Defender agrees with this recommendation and will use data from Recommendations 1A, 1B and 1C to update its SMART Act measures.

Implementation of this recommendation is contingent upon receiving funding for the workload study.

# Chapter 3

## *Eligibility Determinations*

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### **Finding 2** **Eligibility Determinations**

According to the Sixth Amendment to the U.S. Constitution and Article II, Section 16 of the Colorado Constitution, defendants in criminal cases have a right to be represented by an attorney. In 1963, the U.S. Supreme Court in *Gideon v. Wainwright* held that this right includes the right for defendants in criminal cases who cannot afford an attorney to have one provided by the state. This right extends to all individuals charged with a crime, regardless of citizenship status. Under Section 21-1-103(3), C.R.S., the Colorado Office of the State Public Defender (OSPD) is responsible for reviewing applications from defendants who request a state-paid attorney in criminal cases and determining whether they—and for juveniles, their parents or guardians—qualify as indigent. OSPD is required to make its determinations in accordance with Chief Justice Directives promulgated by the Colorado Supreme Court, which provide standards for determining whether an applicant qualifies as indigent. OSPD provides its determination of indigency to the court assigned each case, which then approves or denies a defendant’s request for OSPD representation.

OSPD’s trial offices accept applications from defendants and determine whether they qualify for court-appointed counsel, which is typically provided by OSPD unless OSPD has a conflict, in which case Alternate Defense Counsel provides representation following OSPD’s determination of indigency. Defendants can apply in-person at one of OSPD’s 21 trial offices, by fax, or by email using forms created by the Judicial Department and available on the OSPD website. In some jurisdictions, OSPD staff are also available at courthouses to take applications from defendants.

For adult defendants, Chief Justice Directive 04-04 provides that OSPD has the authority to waive the application process if the defendant is currently in custody and OSPD chooses to do so in most cases, unless it has information indicating that the defendant has access to sufficient funds to pay for counsel. For juvenile defendants who are in custody, Chief Justice Directive 14-01 provides that OSPD or Alternate Defense Counsel must be appointed to provide representation without an application if the juvenile does not retain counsel, regardless of indigency status. Therefore, defendants in criminal cases who are in custody and request OSPD representation generally do not have to complete an application unless they are released before the resolution of their case, at which point they must complete one. Additionally, in cases where juvenile defendants’ parents or guardians refuse to provide for counsel or where the court determines that it is in the best interests of the

child, the court can appoint counsel regardless of whether juveniles and their parents qualify as indigent.

Based on our interviews with OSPD management and staff at eight trial offices around the state, administrative staff at each trial office are responsible for their offices' application process, although in rare cases, an attorney or investigator may help process an application if necessary to expedite the process. OSPD staff are responsible for processing a large volume of applications. Although OSPD does not track the number of applications it processes statewide, according to OSPD staff, roughly half of the defendants that OSPD represents, which was equivalent to about 65,000 of the total 130,000 defendants OSPD represented in Fiscal Year 2023, must submit an application, with the other half automatically represented by OSPD because they are in custody. OSPD staff often work with an applicant to complete as much of the application as possible, collect documents necessary (e.g., pay stubs, bank statements, tax returns) to verify the applicant's income and, in some cases, assets, and compare the information gathered to the Chief Justice Directive standards. OSPD staff reported that there is often significant time pressure to complete and process an application because defendants frequently apply for representation only a few days before an upcoming hearing date. OSPD does not track its application approvals and denials statewide; however, OSPD trial office staff who process applications indicated that they approve approximately 80 percent of applications.

Once OSPD makes an application determination, the application is forwarded to the court, which appoints or denies OSPD representation based on the application and any other information provided to the court. According to staff, courts typically follow OSPD's determination, but in some cases, may appoint OSPD to represent a defendant that does not meet indigency standards if the court determines that they would not otherwise be likely to find representation. Additionally, district attorneys' offices can review the application and challenge OSPD's decision to represent a defendant; however, according to OSPD trial office administrative staff and attorneys that we interviewed, this is not a common practice.

## **What audit work was performed and what was the purpose?**

We interviewed OSPD management and trial office staff on the indigency determination process; reviewed applicable laws, Chief Justice Directives, and OSPD's written procedures related to determining indigency; and reviewed OSPD eligibility determinations for a sample of cases. To perform our sample review, we randomly selected 80 cases closed during Fiscal Year 2023 and requested the applications and supporting documentation related to each case. We limited our sample to cases closed by the 8 out of 21 trial offices included in our site visits because some practices for reviewing eligibility vary across OSPD trial offices, and we had gained a more complete understanding of the practices of the 8 trial offices we visited. Because OSPD generally destroys documentation for denied applications where OSPD is not appointed—and does not systematically track denied applications—we further limited our sample to cases where OSPD was appointed to represent the defendant. For each application included in our sample, we reviewed the information



on the application, supporting documentation provided by the applicant, and additional forms completed by OSPD staff during the application process, and then assessed whether OSPD's determination complied with Chief Justice Directives and OSPD's policies and procedures. Additionally, we measured the time between the applicant signing the application and OSPD's eligibility determination and assessed whether OSPD staff had completed their review prior to the applicant's next court appearance for their case. Because the process for determining whether a defendant qualifies for court-appointed counsel varies significantly between adult and juvenile defendants and defendants in 96 percent of cases closed by OSPD in Fiscal Year 2023 were adults, we limited our audit work in this area to adult cases.

The purpose of our work was to determine whether OSPD has adequate processes to ensure that its indigency determinations for adult cases are timely and in accordance with Chief Justice Directives.

## How were the results of the audit work measured?

Chief Justice Directive 04-04, Attachment A, B, and C, provides requirements for adult defendants in criminal cases who request OSPD representation, as follows:

- **Defendants Not in Custody.** The defendant must apply for the Public Defender using a form established by the Colorado Supreme Court, Application for Court-Appointed Counsel (JDF 208).
- **Defendants in Custody.** If the defendant is in custody and cannot post (or is not allowed) bail, OSPD may automatically elect to represent the defendant without an application. In practice, OSPD automatically elects to represent defendants in these instances unless it has information indicating that the defendant has access to sufficient funds to pay for counsel. If the defendant is later released, they must complete the application process.
- **Income Requirements.** Defendants with gross monthly income at or below 125 percent of the poverty level, as established by the U.S. Department of Health and Human Services, qualify for OSPD representation. Under this standard, as of January 2023, a single defendant with income at or below \$1,519 per month (\$18,225 annual) would qualify, with the monthly income threshold increasing by about \$535 for each additional household member. For example, an applicant with a household size of 6, would qualify if their monthly income was at or below \$4,196 (\$50,350 annual). Income includes salaries, tips, commissions, bonuses, dividends, pensions, retirement benefits, Social Security Disability, Social Security Supplemental Income, workers' compensation benefits, unemployment benefits, and alimony. Income does not include Temporary Aid for Needy Families (TANF) benefits, food stamps, subsidized housing assistance, veterans' disability benefits, child support payments, or other public assistance programs. Married applicants' income includes their spouses' income and for applicants in multi-person households, income includes other household members' income if the applicant has a

right to unilaterally access household funds and/or the other household members have a legal obligation to assist the applicant in obtaining counsel.

- **Additional Factors for Defendants with Income above Guidelines.** Defendants with gross monthly income above 125 percent, but no more than 218.75 percent of poverty level (equivalent to \$2,658 per month for a single individual in 2023) may qualify for court-appointed counsel representation depending on their income, expenses, assets, and their most serious charge. To determine eligibility for these applicants, Chief Justice Directives require OSPD staff to complete an Eligibility Scoring Instrument that assesses an applicant's ability to pay for representation. Under the Eligibility Scoring Instrument, an applicant must score at or above 150 points to qualify and can potentially receive points in three areas: 1.) gross income, 2.) income compared to expenses, and 3.) charge compared to assets. For the purposes of determining eligibility, assets include cash on-hand or in accounts, stocks, bonds, personal property, or investments that could be readily converted to cash without jeopardizing the applicant's ability to maintain home and employment. Additionally, only expenses for essential items, such as rent, groceries, utilities, and car payments are considered for determining eligibility. Nonessential expenses, including cable television, entertainment, dining out, alcohol, and cigarettes, are not included.
- **Exceptions.** Defendants that do not meet these guidelines generally must pay for their own representation. However, OSPD or the defendant may request that the court make an exception to appoint OSPD representation notwithstanding the applicant not meeting eligibility standards. Additionally, in cases where a defendant meets the guidelines, but appears to be able to afford representation (e.g., an unemployed person who has substantial savings), OSPD can request that the court not appoint counsel to represent the defendant.

For staff reviewing applications, OSPD's Procedures for Determining Indigency provide the following additional requirements and guidance:

- Applicants must provide their gross monthly income, if employed, including documentation to support the reported amount. Acceptable means of income verification include pay stubs, pay checks, written statements from employers, income tax returns, or any additional documentation necessary to verify income. OSPD does not have a written procedure requiring that applicants provide documentation to verify other information on the application, such as number of dependents, assets, and expenses; however, some trial office staff indicated that they do ask some applicants to provide documentation to verify information beyond their income if it is relevant to making an eligibility determination.
- If an applicant is unemployed, the staff reviewing the application must note this on the application. According to OSPD management, staff should complete a Discussion Questions form for applicants that report being unemployed and having no income. This form includes questions for staff to help verify that the applicant is disclosing all of their income and determine

the applicant's living situation if they have no income (e.g., living with family, homeless, living off of savings).

- An applicant's dependents include the applicant and all dependents, whether living in the household or not, for whom the applicant is financially responsible.
- Applicants must sign the application swearing that the information on the form is true and complete. OSPD allows exceptions to this requirement if the applicant is physically unable to sign, cannot verify the information on the form, or the attorney determines that the client should not sign the application (e.g., the applicant's signature could be used as evidence in their case). If the client does not sign the application, OSPD staff should note this on the application.
- The application must be signed by the OSPD employee taking the application.
- A copy of the application, along with verification documents or notation of the source of the verifying information, must be retained in the case file of any defendant for whom the court appoints counsel; OSPD maintains records for cases where it is appointed and also where Alternate Defense Counsel was appointed due to a conflict.

Additionally, OSPD allows trial offices to develop their own policies and procedures to make the application process as efficient as possible so long as the procedures are consistent with the agency-wide policies and procedures outlined above.

Although we did not identify any quantifiable standards related to how quickly OSPD staff should review applications, OSPD management and trial office staff indicated that it is important that reviews be completed as quickly as possible to minimize the time eligible defendants go without legal representation. According to trial office staff, it is particularly important that OSPD make the determination of whether it can represent an applicant prior to their next upcoming court appearance to avoid delays in their case.

OSPD management is also responsible for establishing controls to ensure that staff follow applicable standards when making eligibility determinations on applications. *Standards for Internal Control in the Federal Government* (commonly known as the Green Book) provides guidance related to the control system that management employs to provide reasonable assurance that organization objectives will be achieved. These standards represent an accepted best practice for internal control systems in governmental organizations and are required for all of Colorado's executive branch agencies. As an independent agency in the Judicial Branch, OSPD is not bound to these standards, but reported to the audit team that it attempts to substantially comply with such executive-branch guidance in its own policies and in practice.

The Green Book holds that "control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entities' objectives and address

related risks,” and that management should design “appropriate types of control activities for the entity’s internal control system,” which may include reviews comparing actual performance to planned or expected results [Standards 10.02 and 10.03]. Therefore, we expected OSPD to have policies and procedures to guide its indigency determination process and to ensure that staff responsible for reviewing applications follow applicable guidance when determining whether applicants qualify for OSPD representation.

## What problems did the audit work identify?

We found that, although most of the OSPD eligibility determinations we reviewed appeared to comply with the Chief Justice Directives and were completed in a timely manner, OSPD lacked sufficient documentation for us to fully assess whether some applicants qualified for public defender representation.

As discussed, we selected a random sample of 80 cases closed during Fiscal Year 2023, limited to the 8 trial offices included in our site visits. Of these cases, we reviewed 28 applications and their supporting documentation. We did not review the remaining cases for the following reasons:

- Defendants in 36 cases qualified for OSPD representation without an application because they were in custody.
- OSPD had destroyed applications for 10 cases in accordance with its case records retention policy.
- For 2 cases, OSPD withdrew from the case prior to representing the defendant and did not process an application.
- For 1 case, a judge appointed OSPD without an application being processed.
- For 3 cases, the applicants were juveniles. Because of the limited number of juvenile cases, which have different eligibility standards as discussed, we did not include these cases in our review.

Of the 28 cases we reviewed, OSPD lacked sufficient documentation for us to fully assess whether two of the applicants qualified for public defender representation under Chief Justice Directive guidelines. Specifically, the following issues made it difficult for us to assess the applicants’ eligibility:

- **Case 1.** Based on the income reported on the application form, documentation provided by the applicant, and notations made by OSPD staff, it is not clear if OSPD staff properly determined the monthly income for the applicant. Specifically, the applicant provided a copy of a pay check as documentation and it is not noted on the check whether it represented gross pay, which is

what eligibility standards are based on, or if the employer withheld taxes prior to writing the check. It also appears that staff may have converted biweekly pay to monthly pay by multiplying the amount on the check by 2. However, this method would undercount income because there are generally more days in a month (30.4 days on average) than 2 biweekly pay periods (28 days). Additionally, the application indicated that the applicant had two dependents, was single, but also lived with their brother-in-law, and paid child support. There is no additional notation or documentation of the applicant's dependents included in the application materials. Therefore, it is not clear if the applicant improperly counted the brother-in-law as a dependent, was married but indicated otherwise on the application (which would indicate they could have an additional dependent and/or unreported spousal income), or had a child or other dependent that was not noted on the application. The applicant also left the assets section of the form blank and did not provide any documentation indicating whether they owned assets and if so, their value. In this case, these issues could make the difference between the applicant qualifying or not qualifying under the Chief Justice Directive standards.

- **Case 2.** The applicant reported being paid only in rent, which is income that would not be available to support their representation, but the income amount put them above eligibility standards. Although Chief Justice Directives do not indicate how this type of income should be treated in these circumstances and OSPD staff could have reasonably determined that this income should not be counted for the purposes of determining indigency, there was no documentation or notation in the application materials indicating how OSPD determined income and eligibility for this applicant.

Additionally, although we were able to determine whether OSPD's eligibility decision appeared to be consistent with Chief Justice Directive guidelines for 26 of the 28 applicants we reviewed, who reported having no income and/or documented having income below eligibility guidelines, we found the following instances where it appears that staff did not follow OSPD procedures:

- OSPD staff did not provide an Eligibility Scoring Instrument for two cases in which it appears they should have completed one based on the applicant's income.
- OSPD staff did not provide a Discussion Questions form for four cases where an applicant indicated that they had no income.
- The applicant did not sign the application form and staff did not provide any notes or explanation in the application materials in one case. Although OSPD's written procedures indicate that staff should note when an applicant was unable to sign, OSPD management reports that there may be reasons it would not want staff to note the reasons why the application was not signed, such as a risk of the information being used against a client or other sensitive information.

- OSPD staff did not sign the application form or indicate what their determination was regarding eligibility for one case.

We also found the following issues that, while not contrary to Chief Justice Directives or OSPD procedures, made it more difficult to understand what the applicant reported and confirm that OSPD staff made proper decisions:

- In 11 cases, it appears that staff may have edited the form—in some cases crossing off and replacing figures, entering information that was left blank, and adding totals. While OSPD management reported that they expect staff to make edits and complete sections of the application when applicants make mistakes or are unable to do so themselves, there was no explicit notation on the application or in other documentation indicating whether it was staff or the applicant who made the edits and why the edits were made.
- Staff typically do not provide information, either on the application or in supporting documentation, to indicate how they applied their judgment and the method they used to determine key figures, such as income, number of dependents, assets, and expenses. As discussed, applications contained conflicting information, either between two sections of the form or between the application and the supporting documentation the applicant provided. Because staff have a limited ability to control what applicants provide on the application and have a limited amount of time to complete their review, staff apply significant judgment to determine which source of information to use, how to calculate income, the number of dependents, expenses, and available assets. However, for 23 of the 28 applications we reviewed, staff did not provide any indication of how they made the determination other than to check the box on the application indicating that the applicant’s income was “below income guidelines” and should qualify.

In addition to reviewing whether OSPD’s eligibility determinations complied with Chief Justice Directives and OSPD policies, we reviewed the timeliness of OSPD’s determinations. We found that for 18 of the 20 applications, for which the next court appearance and staff signature date were recorded, staff completed their review prior to the applicants’ next court appearance, with staff reviewing 15 of these applications no later than 1 day after the client signed the application. For the two cases where staff completed their review after the next scheduled court appearance, it appears that final approval was delayed while staff worked to gather additional documentation from the applicant that was needed to make an eligibility determination.

## **Why did the problems occur?**

OSPD trial office staff responsible for processing applications reported that it can be challenging to ensure that applicants properly complete applications and provide supporting documentation. According to staff, some applicants struggle to complete the form and provide supporting documentation due to not understanding the form instructions, having limited literacy skills, having

physical or mental disabilities, or lacking access to the required supporting documentation. It can also be difficult for staff to follow up with applicants who do not provide all of the necessary information and documentation because some applicants have limited access to phone and email services. At the same time, OSPD attorneys and staff indicated that courts expect OSPD to make timely eligibility determinations and if the process to make a determination is prolonged, it can delay the applicant's case or prevent them from having representation. Therefore, staff reported that it is common to need to work with applicants to get the essential information necessary to make a determination on the case as quickly as possible. Staff generally reported helping applicants fill in sections of the application and providing flexibility regarding what type of documentation to accept. Additionally, some staff reported the need to apply judgment within the established guidelines in close cases and weigh the applicant's overall circumstances to assess their ability to retain private representation. Staff reported doing what they can to help applicants qualify; for example, not counting vehicles as assets convertible to cash, which is allowable under the Chief Justice Directives, if staff determine that the vehicle is necessary for the applicant to maintain their household, or averaging out seasonal income over a period of months to determine monthly income rather than using the most recent month's pay stub, which is not a situation addressed by the Chief Justice Directive or OSPD procedures. In some offices, staff also said that they qualify some applicants who are outside of the guidelines by a narrow margin, if it appears that they would not otherwise be able to afford private counsel. Although OSPD procedures do not provide guidance for staff on making these types of exceptions, they may be allowable under some circumstances under the Chief Justice Directives and Colorado caselaw.

Given the complexity and inherent challenges OSPD staff are likely to face when processing applications, we found that OSPD can improve its controls over the application process in the following areas:

### **Guidance for Staff**

OSPD has not established sufficient agency-wide guidance on processing applications. Specifically, we found a lack of guidance in the following areas:

- **Calculating Income and Dependents.** Although OSPD's Procedures for Determining Indigency indicate the types of information that should be included on the application, they do not include details on what methods are acceptable for staff to use to calculate key figures. For example, OSPD's procedures do not provide guidance on acceptable methods staff can use to calculate an applicant's monthly income when an applicant provides conflicting information, variable income, or when the pay rate needs to be converted to a monthly rate. Additionally, while OSPD procedures define an applicant's dependents as including "the applicant and all dependents, whether living in the household or not, for whom the applicant is financially responsible," they do not provide additional guidance to help staff determine who qualifies as a dependent and what is necessary to qualify as being financially responsible for a dependent.

- Required Documentation to Verify Applicant Information.** As discussed, OSPD’s procedures indicate that staff should collect documentation to verify the applicant’s income and trial office staff indicated sometimes collecting additional documentation to verify other key information on the application, such as bank statements to confirm assets. However, OSPD procedures do not indicate whether and in what circumstances staff should collect verification documentation for key information, other than income, that is necessary to determine eligibility, such as dependents, assets, and expenses. OSPD management indicated that it would not be feasible for staff to collect verification documentation for all of the figures on the application that are used to determine eligibility because doing so would substantially slow the application process and could act as a barrier for some otherwise eligible applicants, but that staff may ask applicants for additional documentation based on the circumstances of each application. Additionally, although OSPD management indicated that staff are expected to complete the Discussion Questions form when applicants report not having any income, the OSPD Procedures for Determining Indigency do not reference this form or provide information on how and when staff should use it.
- Documenting Staff Review.** OSPD’s procedures provided limited guidance regarding how staff should explain the basis of their decision on applications. Specifically, although staff are required to complete a scoring instrument for applications where an applicant is above income guidelines by no more than 75 percent, they are not required to indicate how they determine the scores they enter on the instrument, and moreover, this form does not contain a space for them to do so. Further, staff are not required to indicate what they considered the applicant’s income, number of dependents, assets, and expenses to be or how they calculated these figures. Although we found that some applications and supporting documents had some notation indicating how staff calculated some figures, there did not appear to be any consistent method for doing so. Additionally, OSPD has not established guidance on how staff should note situations where the application is inconsistent with other information they receive from the applicant or when they must correct or complete some portions of the form due to applicants not being able to do so.
- Recommending Exceptions.** Although Chief Justice Directives indicate that OSPD can request that a court make an exception and appoint OSPD to represent a defendant who does not meet eligibility guidelines, OSPD procedures do not provide guidance for staff on when this is appropriate, how to document the request, and whether additional approval (i.e., from an office head or office manager) is necessary.

## Application Review

OSPD does not have any agency-wide policies or procedures for reviewing staff determinations on applications. As discussed, the Green Book, which can serve as a best practice for governmental organizations, provides that “reviews by management at the functional or activity level” are a common practice that can help ensure that an organization fulfills its responsibilities and addresses



its identified risks. Although 2 of the 8 trial offices we visited reported having a supervisor periodically review a sample of applications completed by staff, OSPD does not require this practice—most trial offices we visited did not have a systematic process for reviewing application decisions. OSPD management indicated that due to the volume of applications trial offices receive, it would not be practical for its supervisors to review every application. According to OSPD management, in prior years, central office staff conducted audits at several trial offices each year and as part of this process, would review a sample of applications to ensure that the offices were following OSPD’s procedures and to help train staff on best practices; however, this process was discontinued after 2018 due to disruptions caused by central office staff turnover and the COVID-19 pandemic. Management indicated that it is considering reestablishing this process, but had not formalized plans to do so at the time of our audit.

Further, we found that OSPD lacks the information necessary to facilitate a systematic, statewide review of applications. As discussed, OSPD does not centrally track the number of applications, the number of applicants who qualified or were denied, or the number of applications processed by each trial office. Having this information would allow management to monitor any significant trends across regions and facilitate the sampling of applications for periodic review. Due to a lack of documentation on the basis of staff decisions, it was often difficult to determine whether staff had properly applied the Chief Justice Directives and OSPD’s Procedure for Determining Indigency, so OSPD would likely need to establish requirements for staff to further document their application determinations in order to facilitate the review process. This could include additional notation on the application or the Discussion Questions form, or the creation of an additional form for staff to record the basis of their decision on the application.

## **Training**

We found that, for the review period, OSPD did not have an agency-wide training program for administrative staff, other than sessions provided for all administrative staff at OSPD’s annual conference, including training on how to process applications. As a result, trial office staff may not have not received consistent training on processing applications. Specifically, most trial office staff reported receiving primarily on-the-job training from the office manager, supervisor, or more experienced administrative staff. Although administrative staff generally reported that they received effective training, it is unclear if training is consistent across trial offices, particularly in areas for which OSPD has not implemented written guidance. According to OSPD management, it has recognized the need for more consistent training for administrative staff and is developing an agency-wide training program.

## **Why do these problems matter?**

The issues we found increase the risk of OSPD approving applicants that do not meet eligibility standards, denying applicants that should qualify, and making inconsistent application decisions

across its trial offices. If applications are improperly approved, OSPD's caseload and costs will increase. OSPD reported an average cost per case of \$733 in Fiscal Year 2023. Additionally, if applicants submit inaccurate information and are later found to have falsified information, they could face additional criminal charges and be liable to the State for the cost of their defense. Conversely, if applications are improperly denied, applicants may not be able to afford representation and could be denied their constitutional right to counsel. Further, if OSPD does not follow consistent practices across trial offices, defendants in some regions of the state may have unequal access to representation.

## Recommendation 2

The Office of the State Public Defender should improve its controls over its indigency determination process by:

- A. Establishing additional staff guidance on the application process, including providing additional information regarding the calculation of income and dependents, requirements for documentation of dependents, assets, and expenses when necessary to determine eligibility, and a process for administrative staff to document their review of applications.
- B. Resuming a regular process to review staff application decisions and ensure that staff are following established guidance. This could include conducting periodic internal audits within each trial office and/or having Central Office staff conduct audits.
- C. Collecting statewide information on its application processing as needed to facilitate monitoring and review of its applications process established in Part B.
- D. Further developing agency-wide training for staff who process applications to establish common expectations and guidance, and ensure consistency across trial offices.

## Response

*Office of the State Public Defender*

- A. Agree  
Implementation Date: July 2025

The Office of the State Public Defender agrees with this recommendation and will do a review of policy and procedure documents and training/instructional material to incorporate additional guidance, where appropriate and where in line with Chief Justice Directives 04-04 and 14-01 and appellate caselaw interpreting indigency. OSPD will incorporate this guidance into its training program for administrative personnel.

B. Agree

Implementation Date: July 2025

The Office of the State Public Defender agrees with this recommendation. The Central Administrative Office will resume quarterly internal audits of regional offices to review staff application decisions and ensure that staff are following established guidance. OSPD will create processes for regional office management to periodically review indigency determinations of regional office staff.

C. Agree

Implementation Date: July 2025

The Office of the State Public Defender agrees with this recommendation and expects that there will be a fiscal impact to meet it. While OSPD has systems that may be adapted to develop a tracking framework, those systems will require enhancement by vendors. In the interim, information from quarterly internal audits of regional offices will provide increased oversight and evaluation of the statewide application procedures.

D. Agree

Implementation Date: July 2025

The Office of the State Public Defender agrees with this recommendation. The Central Administrative Office is in the process of developing supplementary training tailored for personnel handling application processes. Comprehensive instructions to guarantee accuracy and uniformity across regional offices, where possible, will be provided.



# Chapter 4

## *New Trial Attorney Training Program Monitoring*

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### **Finding 3**

#### **New Trial Attorney Training Program Monitoring**

The Office of the State Public Defender (OSPD) requires new attorneys to complete a training program to ensure that they have the necessary knowledge and skills to represent clients. In a typical year, OSPD hires approximately 100 new attorneys, the majority of whom have never previously practiced law in Colorado. According to OSPD management, its training program is a “safety net for quality” and an important part of maintaining the agency’s culture and effectiveness. Currently, OSPD’s training for new attorneys placed in its trial offices includes:

- 6 days of “basic lawyer training,” typically administered in two, 3-day long sessions scheduled within 14 days and 60 days, respectively, of a new attorney’s start date. These trainings cover the fundamentals of misdemeanor and trial practice in Colorado. Completion of these trainings is generally required for all new attorneys.
- A 4.5 day-long “boot camp” training, typically completed within 2 years of an attorney’s start date. At this training, attorneys practice and are graded on jury selection, cross examination, and other trial skills. New attorneys generally must receive a “pass” grade in this training, and may repeat the training if necessary.
- 3 half-day long trainings related to sex crimes. Generally, new attorneys must attend the first day/session within 2 years of their start date, and may elect to attend the other 2 sessions on an optional basis.
- 2 days of training related to specialized practice, either for attorneys beginning district court practice or for attorneys beginning to represent youth in juvenile proceedings. All new attorneys are generally required to complete 1 of these trainings within 6 months of beginning either district court or juvenile practice.

OSPD exempts newly-hired attorneys with prior indigent defense or criminal defense experience from some or all of these training requirements on a case-by-case basis. Additionally, OSPD’s appellate office trains its new attorneys independently and does not require new appellate attorneys to follow this training progression.

According to OSPD management, trial offices and attorneys are notified when new staff training sessions are scheduled to occur and office heads and supervising attorneys ensure that new attorneys attend when they are ready. To track new attorney training completion on an ongoing basis, OSPD management uses a spreadsheet that training staff within the central office update for each training that occurs and that includes fields to record the date that each attorney completed each training. According to OSPD management, training department staff, office heads, and other senior management can access this spreadsheet to review whether staff have completed training.

In addition to the new attorney training program administered centrally, new trial attorneys also receive trainings in their trial office. These training programs vary by office, but it is common for offices to offer trainings for attorneys on a weekly basis, and to provide additional training opportunities and guidance for new attorneys, in particular. OSPD also hosts an annual, all-staff training conference, and provides a number of other ongoing training programs for both new and experienced attorneys to meet their Continuing Legal Education requirements.

## **What audit work was performed and what was the purpose?**

We interviewed OSPD management and training program staff about the new trial attorney training program; reviewed OSPD's training program completion and personnel records; and interviewed attorneys, attorney supervisors, and office heads in eight trial offices on their offices' training practices. We evaluated OSPD training records for completeness, timeliness, and agreement with personnel records, focusing our review on the record of training completion for new trial attorneys that commenced employment with OSPD between January 1, 2021 and December 5, 2023 (the date the records were transmitted to us). Additionally, we evaluated OSPD's policies, procedures, and monitoring activities for its attorney training program. We also reviewed rules and guidelines related to attorney training in Colorado law, Colorado Rules of Professional Conduct, and American Bar Association (ABA) guidelines.

The purpose of our work was to determine whether new OSPD attorneys completed required trainings within the timelines outlined by OSPD management, and assess the policies and procedures OSPD uses to monitor its training program.

## **How were the results of the audit work measured?**

Section 21-1-101(1), C.R.S., requires OSPD to adhere to the ABA Criminal Justice Standards for the Defense Function and the Colorado Rules of Professional Conduct. These standards broadly require criminal defense offices to ensure that their attorneys receive adequate training and have processes in place to ensure that attorneys are competent. OSPD management has indicated that its new staff training program is an important component of ensuring the competency of new attorneys.

During the audit, OSPD management provided its target timeframes for the completion of each training included in the new attorney training program, shown in Exhibit 4.1. As shown, OSPD reorganized its Basic Lawyer Training Program in July 2023; as part of this reorganization, the timeframe for completion of basic lawyer training changed. Additionally, OSPD management indicated that although it expects new attorneys to complete trainings in accordance with this schedule, it makes occasional exceptions based on attorneys’ casework demands or personal circumstances. Additionally, as discussed, it may change the timing and scope of the trainings for attorneys who are hired with prior legal experience.

**Exhibit 4.1**

**Target Timeframes for Completion of OSPD New Trial Attorney Trainings**

Training	Target Timeframe for Completion of Training	
	Prior to July 2023 Training Reorganization	After July 2023 Training Reorganization
Basic Lawyer Training 1	90 days after attorney start date	60 days after attorney start date
Basic Lawyer Training 2	90 days after attorney start date	60 days after attorney start date
Basic Lawyer Training 3	30 days after completion of Basic Lawyer Training 2	60 days after attorney start date
Basic Lawyer Training 4	30 days after completion of Basic Lawyer Training 3	60 days after completion of Basic Lawyer Training 1, 2, 3
Basic Lawyer Training 5	30 days after completion of Basic Lawyer Training 4	60 days after completion of Basic Lawyer Training 1, 2, 3
Basic Lawyer Training 6 <sup>1</sup>	30 days after completion of Basic Lawyer Training 5	60 days after completion of Basic Lawyer Training 1, 2, 3
Sex Crimes Defense	2 years after attorney start date	
Boot Camp	2 years after attorney start date	
Introduction to District Court	6 months after attorney begins practice in district court	
Core Juvenile Skills	120 days after attorney begins juvenile representation	

Source: Office of the State Public Defender response to Office of the State Auditor request for information. These timeframes do not reflect a written policy, but rather OSPD representation of typical practice.

<sup>1</sup> Basic Lawyer Training 6 was added to OSPD’s training program in August 2022. Because this training was not required for all attorneys in our study population, we did not test completion of Basic Lawyer Training 6.

OSPD management is also responsible for establishing controls to ensure that staff complete the required training and for monitoring the effectiveness of its training program. *Standards for Internal Control in the Federal Government* (commonly known as the Green Book) provides guidance related to the control system that management employs to provide reasonable assurance that organization objectives will be achieved. These standards represent an accepted best practice for internal control systems in governmental organizations and are required for all of Colorado’s executive branch agencies. As an independent agency in the Judicial Branch, OSPD is not bound to these standards, but reported to the audit team that it attempts to substantially comply with such executive-branch guidance in its own policies and in practice.

The Green Book holds that management should design “appropriate types of control activities for the entity’s internal control system” which may include controls over information processing, establishment and review of performance measures and indicators, and segregation of duties [Standard 10.03]. Additionally, the Green Book holds that “[m]anagement should establish and operate monitoring activities to monitor the internal control system and evaluate the results” [Standard 16.01]. Therefore, we expected OSPD to have policies and procedures to track attorney training, monitor its training program to ensure attorneys complete the required trainings within the expected timelines, and follow up with attorneys and their supervisors if a training is not completed on time.

## What did the audit work find and why did it occur?

We found that new OSPD attorneys included in our review generally received the required new attorney trainings in a timely manner. Additionally, OSPD attorneys that we interviewed reported that the new attorney training program, in conjunction with the on-the-job training and training provided by trial offices, was effective at preparing them for criminal defense practice, with some attorneys mentioning that the quality of the training program was a reason that they chose to work for OSPD instead of public defenders’ offices in other states. However, OSPD’s training records were not complete and, for some trainings and attorneys, we could not determine whether the attorneys completed the trainings on time. Additionally, we found that OSPD’s training tracking spreadsheet does not allow management to easily monitor new attorney training, and that the methods staff use to enter data could result in inaccurate entries.

As discussed, our review included the new attorney trainings OSPD provided for attorneys hired between January 1, 2021 and December 5, 2023. This included 331 attorneys and 2,362 individual instances of attorney trainings—a single instance being a training session that one attorney attended or should have attended based on their start date. Our review found the following issues:

- **OSPD did not record the date that attorneys completed some trainings.** We found that OSPD did not record a completion date in its tracking spreadsheet for 308 instances of attorney training (19 percent). We could not determine if these trainings were completed in a timely



manner. However, of the 308 instances, 298 of them (97 percent) appear to have occurred between January 1, 2021 and May 1, 2022, a period in which OSPD management reported that its training program experienced significant disruption due to impacts from the Covid-19 pandemic. In the period from May 1, 2022 to December 5, 2023, we found 10 instances of trainings that were recorded as completed without a date of completion.

- **OSPD lacked a record of attorneys completing some trainings.** We identified 109 instances (about 5 percent) where OSPD’s tracking spreadsheet was missing a record of an attorney completing a training that was required for them. However, of these 109 missing trainings, 79 of them (72 percent) appear to have been missed between January 1, 2021 and May 1, 2022, the period in which OSPD management reported that its training program experienced significant disruption due to impacts from the Covid-19 pandemic, and 30 (28 percent) occurred between May 1, 2022 and December 5, 2023. According to OSPD management, attorneys sometimes do not receive trainings within the expected timelines if they are sick or cannot attend due to their responsibilities representing clients, which could explain the missing training records we identified. In these cases, attorneys are expected to attend the training the next time it is offered.
- **OSPD does not track more than one instance of “boot camp” training completion,** even though some attorneys may take the training multiple times if they do not pass the course on their first attempt. OSPD’s tracking spreadsheet does not specifically indicate if the attorney passed or failed.
- **OSPD does not track the date in which attorneys begin district court or juvenile practice,** which makes it impossible to monitor whether new attorneys are receiving trainings for specialized practice in a timely manner.

Additionally, we found that the spreadsheet OSPD uses to track new attorney training does not allow for management to easily monitor its training program and could risk erroneous entries. Specifically, OSPD has not established written guidance for staff on recording trainings and staff routinely use inconsistent or problematic syntax to denote training completion, which makes it difficult to analyze training data and standardize monitoring activities. For example, dates of completion are sometimes recorded in a non-standardized format (e.g., a range of dates, or multiple dates, are recorded in the same cell). Additionally, in some cases, important information about the data field—such as whether a date recorded indicates the date that a training was completed by an attorney, or merely the date it was scheduled—will be denoted by whether a cell is highlighted, instead of by a separate data field, which increases the risk of staff accidentally recording that a training was completed. Although we were able to modify the data to allow for a systematic review, doing so took a substantial amount of time and it would not be practical for OSPD to perform this process on a regular basis in order to monitor whether attorneys are completing training within the expected timelines. Consequently, OSPD staff currently rely upon a manual spot-checking to ensure attorney completion of required trainings. Further, due to the methods used to enter the data, we could not confirm their reliability.

## Why do these problems matter?

As discussed, OSPD typically hires approximately 100 new attorneys each year, most of whom have limited experience representing clients, and as of December 5, 2023, approximately a third of its attorneys had been with OSPD for 2 years or less. A typical new OSPD attorney begins representing clients within the first month of starting with OSPD and a typical OSPD attorney closes over 200 cases per year. Therefore, OSPD's new attorney training program is a key control in ensuring the quality of the counsel OSPD provides to its clients. If new attorneys do not complete all of the required training, there is an increased risk of OSPD not providing legal services "commensurate with those available to nonindigents," as required by Section 21-1-101(1), C.R.S. The issues we identified increase the risk that a required training will be missed, and make the process of monitoring trainings more time consuming and less comprehensive.

## Recommendation 3

The Office of the State Public Defender should strengthen its system for ensuring that new attorneys complete required trainings by:

- A. Implementing a tracking system for training that is structured to allow for comprehensive analysis, and consistently records dates of training completion and other pertinent information, such as the date that an attorney begins district court or juvenile practice.
- B. Establishing system controls and clear guidelines for staff entering training data to ensure reliability and consistency across records.
- C. Periodically monitoring the data collected to ensure that attorneys are completing training within OSPD's expected timelines.

## Response

*Office of the State Public Defender*

- A. Agree  
Implementation Date: July 2025

The Office of the State of Public Defender agrees with this recommendation. The OSPD's Training Department is renowned for its exceptional quality across the public defense community. Our training division is frequently solicited to provide guidance to other Public Defender agencies in the areas of jury selection, crafting cross-examination strategies, case mitigation, and articulating the backgrounds of our clients as well as the circumstances that led to their legal challenges.

OSPD is committed to augmenting the quality of its training with tools and systems that support its training department and managers in tracking attorneys' progression through their training and professional development. OSPD is already in the process of evaluating systems to enhance OSPD's onboarding to, among other purposes, ensure that all pertinent information including relevant dates are recorded and easily accessible.

B. Agree

Implementation Date: December 2024

The Office of the State Public Defender agrees with this recommendation. The Central Administrative Office is committed to collaborating with personnel responsible for inputting training data. Comprehensive instructions/training to guarantee the accuracy and uniformity of the records will be provided.

C. Agree

Implementation Date: December 2024

The Office of the State Public Defender will implement quarterly updates between the training department and executive leadership to ensure that all attorneys are up to date with their professional development.







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