

FISCAL YEAR 2012-13

BUDGET HEARING

Before
The Joint Budget Committee
Of The Colorado General Assembly



DOUGLAS K. WILSON
COLORADO STATE PUBLIC DEFENDER

Douglas D. Tracey
Chief Administrative & Operations Officer

Wednesday, December 14, 2011

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STRATEGIC PLAN

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ROLE & MISSION

The Office of the Colorado State Public Defender (The Office) is appointed by the Court to represent

MISSION: The constitutions of Colorado and of the United States establish the right to counsel. The single overriding objective of the Office of the State Public Defender is to provide reasonable and effective criminal defense representation for our clients and fulfill this constitutional requirement.

indigent persons charged with crimes where there is a possibility of being jailed or imprisoned. The single overriding objective of the agency is to provide effective criminal defense counsel to all indigent persons requesting counsel. In fulfilling its mission, The Office's role is defined by the United States and Colorado constitutions, applicable statutes, court rules, American Bar Association standards, and the Colorado Rules of Professional Conduct.

VISION

Our basic role and mission will not change. Providing representation to our indigent clients is a federal and state constitutional mandate and the purpose for which The Office was created. The State Public Defender

VISION:

- CONTINUE MEETING OUR CONSTITUTIONAL OBLIGATION TO PROVIDE QUALITY REPRESENTATION TO THE INDIGENT BY FOCUSING ON NEW TECHNOLOGY, STAFF DEVELOPMENT, TRAINING AND ACCESS TO INFORMATION TO ADAPT OUR RESPONSES TO INCREASING CASELOAD, INCREASING DIVERSITY OF CASES, AND THE CHANGING CRIMINAL JUSTICE ATMOSPHERE.
- MAINTAIN OUR COMMITMENT TO AND FOCUS OF PROVIDING SERVICE TO THE POOR.
- CONTINUE TO COMPLY WITH OUR CONSTITUTIONAL, STATUTORY AND ETHICAL OBLIGATIONS, ESPECIALLY BY MAINTAINING THE CRITICAL ATTORNEY-CLIENT RELATIONSHIP.

System is the most effective and efficient means of meeting that requirement.

PROGRAM IN BRIEF

The Office of the State Public Defender is required to provide criminal defense representation to indigent persons charged with crimes except where there is a conflict of interest. The Court makes the appointment when a defendant qualifies for public defender services pursuant to applicable case law and Chief Justice Directives. In FY 2010-11, The Office received 95,268 new trial and appellate cases, closed 94,776 trial and appellate cases and carried a total of 124,158 active trial and appellate cases. The Office functions as a single program devoted to providing reasonable and effective criminal defense representation in these cases.

While our primary function of providing criminal defense representation will not change, the criminal justice environment in which we operate is changing. Caseload continues to grow at a rate exceeding population growth, and the cases that we handle are becoming more complex and reflect an increase in both number and severity of charges.

The average annual 11-year growth rate, or compound rate of growth (CRG), for cases reflects a consistent pattern of growth with intermittent peaks. Active trial case growth has stabilized at more than two times the state's general population growth rate, while appellate case growth is near triple the state's population growth rate. Workload associated with this growing caseload has increased at a rate one-and-one-half the rate of case growth and over three times the population growth rate.

Many other factors have compounded these case growth trends adding increasing complexity to the types of cases and the workload required to represent these cases. These changes compound existing workload conditions to make it more difficult and time consuming for attorneys to provide effective representation, including: changes in the court such as staffing, docket organization, new specialty courts, and other processes; changes in prosecutorial practice and procedure; newly enacted criminal offenses; changes in classes of criminal offenses; changes in criminal penalties; changes in the time it takes to process a case; and changes in the types, quality, complexity and quantity of evidence, history and documentation associated with a case. This changing environment presents a compounding challenge to The Office's need to achieve the staffing levels that are required to provide effective representation.

The Office adapts to its caseload, complexity and staffing deficit challenges by incorporating efficiencies gained through new technologies, staff development and training, and expanding access to specialized legal resources needed to support cases. In particular, communications and information technologies offer opportunities to better utilize our employees, to restructure our administrative processes, and to avoid duplication of resources in our regional offices. Taking advantage of these opportunities enables The Office to better utilize appropriated financial and staffing resources. During periods of difficult fiscal circumstances, these advances are crucial in the State's continued ability to meet its constitutional, statutory and ethical obligations to provide quality representation to the indigent, to maintain the critical attorney-client relationship, and to continue its commitment to providing service to the poor.

The Public Defender System is administered at the state level by the Colorado State Public Defender, Douglas K. Wilson. The State Administrative Office provides centralized, state-wide administrative services and coordinates all office support functions to assist our regional trial offices and appellate division in providing services to clients. The administrative functions delivered by the State Administrative Office include: all program direction, analysis, and planning, including statistical compilation and development; workforce development, training, personnel policy, compensation analysis and practice development, and payroll and benefits coordination and administration; legislative affairs and statutory analysis; intragovernmental and intergovernmental affairs; budget analysis, development, allocation and management; financial management, analysis, tracking, transaction processing, purchasing, and accounting; grants management and development; facilities planning, development, and lease

negotiating; contracts management; and development, distribution and maintenance of the agency's computer information and telecommunication systems.

CUSTOMER REQUIREMENTS

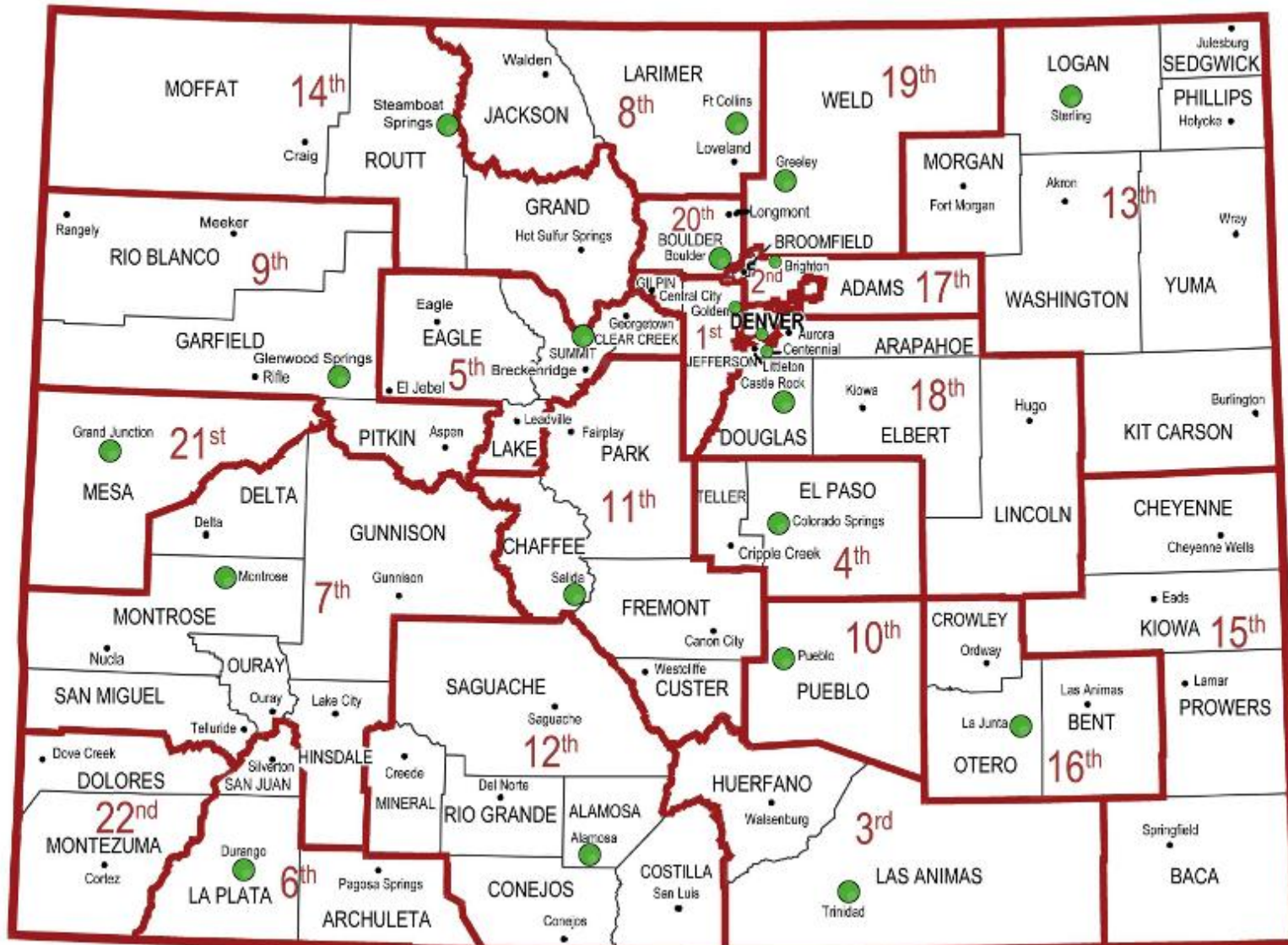
Our customers are indigent people in Colorado whom we are appointed to represent in near 130,000 active cases each year. They are indigent people who are faced with the possibility of incarceration. They are unable to afford private counsel and without counsel would otherwise be denied their constitutional right to a fair trial. A critical element in meeting these requirements is the need to maintain the attorney-client relationship. Attorneys, investigators and legal support staff are necessary to provide effective representation of counsel as mandated by the federal and state constitutions and other legal authority referenced above.

SUMMARY OF PROGRAM RESOURCES

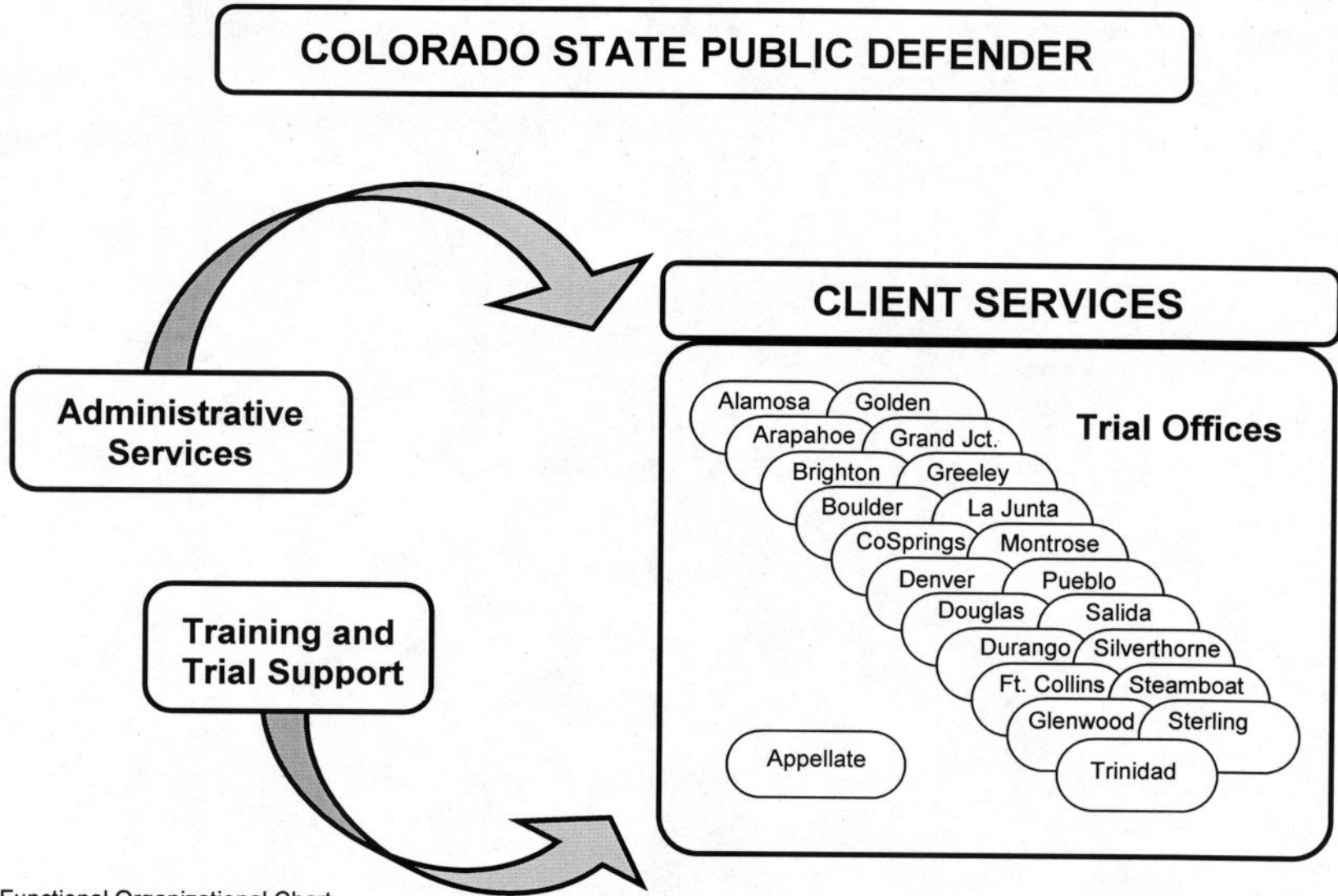
The Office of the State Public Defender is a single purpose program that provides criminal defense representation to indigent clients. It is an independent agency within the Judicial Branch of Colorado State Government. In order to fulfill our statutory responsibility in all proceedings mandated by the statutes, The Office maintains 21 regional trial offices and one appellate division which support the indigent criminal cases of the State's 22 judicial districts and 64 counties. The staff in these offices is entirely devoted to the processing of cases. All administrative and support functions for these offices are handled centrally by the State Administrative Office in Denver. This structure is represented by two graphic portrayals on the following pages.

OFFICES: The following is a map of Colorado's 22 Judicial Districts. The dots on the following map represent OSPD office locations.

CO Public Defender Offices

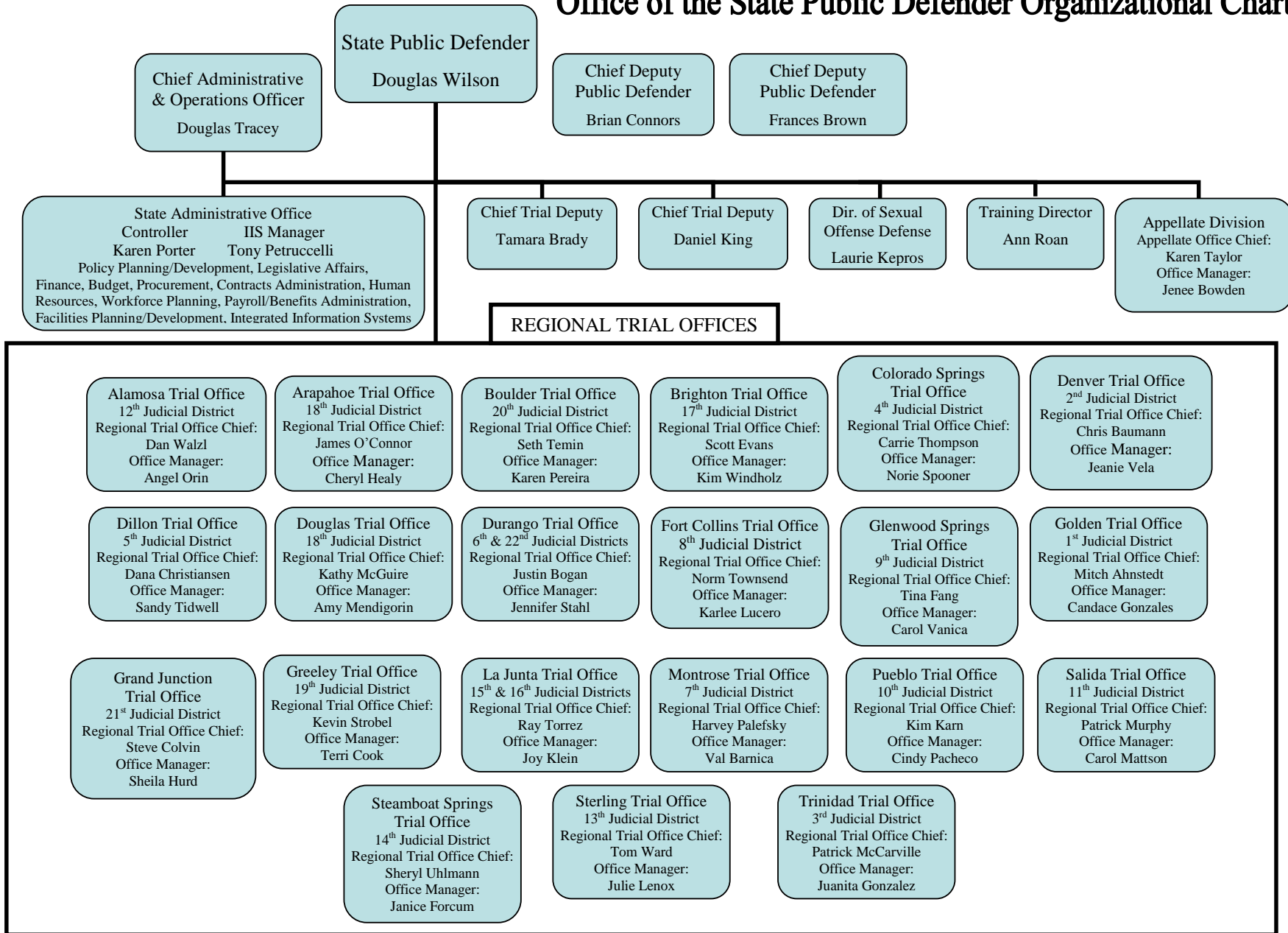


ORGANIZATIONAL CHART: The following chart illustrates the functional organizational structure of The Office.



Functional Organizational Chart
of the
Office of the State Public Defender

Office of the State Public Defender Organizational Chart



STATUTORY AND OTHER AUTHORITY

Colo. Rev. Stat. § 21-1-101 *et seq.*, (1998); U.S. CONST. Amend. VI; COLO. CONST. Art. II, § 16; ABA STANDARDS FOR CRIMINAL JUSTICE, *The Defense Function* (3d ed. 1993); Colo. Rules of Professional Conduct (Colo. RPC); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Alabama v. Shelton*, 535 U.S. 654 (2002); *Rothgery v. Gillespie County*, 554 U.S. 191; *Nikander v. District Court*, 711 P.2d 1260 (Colo. 1986); *Allen v. People*, 157 Colo. 582, 404 P.2d 266 (1965).

The Office of the State Public Defender is established pursuant to C.R.S. § 21-1-101 *et seq.* as an independent entity within the Judicial Branch of Colorado State Government. By statute, The Office is required to “conduct the office in accordance with the Colorado Code of Professional Conduct¹ and with the American Bar Association standards relating to the administration of criminal justice, the defense function.” C.R.S. §21-1-101(1).

OBJECTIVES

Priority	Objective
1.1	Provide effective legal representation in near 136,000 active appellate and trial cases that will be represented in FY 2013.
1.2	Ensure compliance with applicable constitutional and statutory mandates, the American Bar Association standards, the Colorado Rules of Professional Conduct and applicable court rules and case law.
1.3	Maintain a competitive work environment to be able to attract and retain qualified staff.
2.1	Streamline administrative and other routine processes to avoid duplication of resources in regional trial and appellate offices.
2.2	Continue to provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law.
3.1	Better utilize existing resources and new technologies to more efficiently handle increasing caseload and increasingly complex cases.
3.2	Continually evaluate and evolve key functions to ensure the Public Defender System adapts to the changing legal environment.

¹ This has been changed to the Rules of Professional Conduct.

PERFORMANCE MEASURES

OBJECTIVE 1.1: Provide reasonable and effective legal representation.					
		FY 09-10 (actual)	FY 10-11 (actual)	FY 11-12 (proj.)	FY 12-13 (proj.)
MEASURE: To promote efficiency and quality of services, safeguard the independence of The Office from political influence and judicial ² oversight in the same manner and extent as assigned counsel, including funding, payment, staffing, etc. ^{3/4}	Target	100%	100%	100%	100%
	Actual	100%	100%		
MEASURE: Defense counsel's workload is controlled to permit the rendering of quality representation. ^{5/6/7/8}	Target	100%	100%	100%	100%
	Actual	76.6%	81.4%	81.8%	77.8%

² Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

³ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) hereinafter "NAC", Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

⁴ *ABA Ten Principles of a Public Defense Delivery System, Principle 1, American Bar Association (2002)*

⁵ *ABA Ten Principles of a Public Defense Delivery System, Principle 5*: "Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement." *American Bar Association (2002)*

⁶ NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

⁷ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

⁸ ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

MEASURE: Defense counsel's ability, training, and experience match the complexity of the case. ^{9/10}	Target	70%	70%	70%	70%
	Actual	41.8%	44.0%	39.2%	38.9%
MEASURE: New trial cases received	Actual	95,621	94,693	99,065	102,460
MEASURE: Trial cases closed	Actual	95,581	94,219	98,317	103,080
MEASURE: Total active trial cases represented	Actual	120,816	122,949	128,410	134,738
MEASURE: New appellate cases received	Actual	602	575	584	593
MEASURE: Appellate cases closed	Actual	551	557	557	557
MEASURE: Total active appellate cases represented	Actual	1,185	1,209	1,236	1,271
MEASURE: Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	232 : 1	232 : 1	232 : 1	232 : 1
	Actual	361 : 1	343 : 1	340 : 1	354 : 1
MEASURE: Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	52.4%	46.3%	45.1%	50.9%
MEASURE: Percent of compliance with minimum standards for staffing requirements levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	76.6%	81.4%	81.8%	77.8%
MEASURE: Maintain established standards for reasonable Caseload Levels (Appellate Attorney Active Case Ratio)	Target	1 : 27	1 : 27	1 : 27	1 : 27
	Actual	1 : 37	1 : 35	1 : 36	1 : 37

⁹ *ABA Ten Principles of a Public Defense Delivery System, Principle 6:* "Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation." *American Bar Association (2002)*

¹⁰ Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

MEASURE: Maintain established standards for reasonable Caseload Levels (% of General Appellate Active case overload)	Target	0%	0%	0%	0%
	Actual	39.5%	36.1%	39.1%	43.2%
MEASURE: Maintain established standards for reasonable Staff Supervision, Management, Development (Dedicated Staff Supervisor FTE to total employee Ratio) ¹¹	Target	10%	10%	10%	10%
	Actual	3.9%	3.6%	3.5%	3.4%
MEASURE: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. ^{12/13/14}	Target	100%	100%	100%	100%
	Actual	61.6%	69.2%	75.8%	
MEASURE: % of financial resources available as compared to the prosecution's proportionate share	Target	100%	100%	100%	100%
	Actual	61.6%	69.2%	75.8%	
MEASURE: ratio of attorney staffing resources as compared to the prosecution's proportionate share	Target	1 : 1.6	1 : 1.6	1 : 1.6	1 : 1.6
	Actual	1 : 2.3			

¹¹ Question #7 about the dedicated time of supervision FTE to total FTE is addressed on pages 32 and 34, and contained as performance measures on pages 14, 18, and 20.

¹² ABA *Ten Principles of a Public Defense Delivery System, Principle 8*: "There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation." *American Bar Association (2002)*

¹³ NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

¹⁴ ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

MEASURE: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	30	87		
MEASURE: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	4		
MEASURE: Number of legal assistant training sessions offered	Target	13	15	12	12
	Actual	13	15		
MEASURE: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
MEASURE: Provide 3 hours of ethics training focusing on Colorado criminal law each year	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
MEASURE: Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	9		
MEASURE: Office program audits to ensure consistent performance of mission across the state.	Target	5	4	2	0
	Actual	5	4		
MEASURE: Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	9.3 %	11.0 %		
Investigators	Actual	12.5 %	8.6 %		
Administrative	Actual	6.3 %	22.0 %		
Total	Actual	9.4 %	12.0 %		
MEASURE: Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	41.9 %	34.1 %		
Investigators	Actual	41.7 %	22.2 %		
Administrative	Actual	100 %	52.6 %		
Total	Actual	47.9 %	37.5 %		

MEASURE: Percent of experienced, fully capable staff (journey level or higher)	Target				
Attorneys	Actual	41.8%	44.0%	39.2%	38.9%
Investigators	Actual	47.7%	38.1%	33.2%	32.7%
Administrative	Actual	42.4%	29.4%	21.9%	21.6%
Total All Employees	Actual	45.9%	43.7%	37.8%	37.5%

Objective 1.2: Ensure compliance with applicable constitutional and statutory mandates, the American Bar Association standards, the Colorado Code of Professional Conduct and applicable court rules and case law.					
		FY 09-10 (actual)	FY 10-11 (actual)	FY 11-12 (proj.)	FY 12-13 (proj.)
MEASURE: To promote efficiency and quality of services, safeguard the independence of The Office from political influence and judicial ¹⁵ oversight in the same manner and extent as assigned counsel, including funding, payment, staffing, etc. ^{16/17}	Target	100%	100%	100%	100%
	Actual	100%	100%		

¹⁵ Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

¹⁶ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) hereinafter “NAC”], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “NSC”], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA”], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter “Assigned Counsel”], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter “Contracting”], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter “Model Act”], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1(D).

¹⁷ *ABA Ten Principles of a Public Defense Delivery System, principle 1, American Bar Association* (2002)

MEASURE: Defense counsel's workload is controlled to permit the rendering of quality representation. ^{18/19/20/21}	Target	100%	100%	100%	100%
	Actual	76.6%	81.4%	81.8%	77.8%
MEASURE: Defense counsel's ability, training, and experience match the complexity of the case. ^{22/23}	Target	70%	70%	70%	70%
	Actual	41.8%	44.0%	39.2%	38.9%
MEASURE: Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	232 : 1	232 : 1	232 : 1	232 : 1
	Actual	361 : 1	343 : 1	340 : 1	354 : 1
MEASURE: Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	52.4%	46.3%	45.1%	50.9%
MEASURE: Percent of compliance with minimum standards for staffing requirements levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	76.6%	81.4%	81.8%	77.8%

¹⁸ *ABA Ten Principles of a Public Defense Delivery System, principle 5*: "Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement." *American Bar Association (2002)*

¹⁹ NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

²⁰ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations*

Concerning the Cost and Quality of Defense Representation (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

²¹ ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

²² *ABA Ten Principles of a Public Defense Delivery System, principle 6*: Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation. *American Bar Association (2002)*

²³ Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

MEASURE: Maintain established standards for reasonable Caseload Levels (Appellate Attorney Active Case Ratio)	Target	1 : 27	1 : 27	1 : 27	1 : 27
	Actual	1 : 37	1 : 35	1 : 36	1 : 37
MEASURE: Maintain established standards for reasonable Caseload Levels (% of General Appellate Active case overload)	Target	0%	0%	0%	0%
	Actual	39.5%	36.1%	39.1%	43.2%
MEASURE: Maintain established standards for reasonable Staff Supervision, Management, Development (Dedicated Staff Supervisor FTE to total employee Ratio) ²⁴	Target	10%	10%	10%	10%
	Actual	3.9%	3.6%	3.5%	3.4%
MEASURE: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. ^{25/26/27}	Target	100%	100%	100%	100%
	Actual	61.6%	69.2%	75.8%	
MEASURE: % of financial resources available as compared to the prosecution's proportionate share	Target	100%	100%	100%	100%
	Actual	61.6%	69.2%	75.8%	

²⁴ Question #7 about the dedicated time of supervision FTE to total FTE is addressed on pages 32 and 34, and contained as performance measures on pages 14, 18, and 20.

²⁵ *ABA Ten Principles of a Public Defense Delivery System, principle 8:* There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.²³ No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.²⁷ This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation. *American Bar Association (2002)*

²⁶ NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

²⁷ ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

MEASURE: ratio of attorney staffing resources as compared to the prosecution's proportionate share	Target	1 : 1.6	1 : 1.6	1 : 1.6	1 : 1.6
	Actual	1 : 2.3			
MEASURE: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
MEASURE: Provide 3 hours of ethics training focusing on Colorado criminal law each year	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
MEASURE: Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	9		

Objective 1.3: Maintain a competitive work environment to be able to attract and retain qualified staff.					
		FY 09-10 (actual)	FY 10-11 (actual)	FY 11-12 (proj.)	FY 12-13 (proj.)
MEASURE: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	30	87		
MEASURE: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	4		
MEASURE: Number of legal assistant training sessions offered	Target	13	15	12	12
	Actual	13	15		
MEASURE: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
MEASURE: Percent of compliance with market pay practices for Attorney Salaries	Target	100%	100%	100%	100%
	Actual	88%	86.7%	85.4%	
MEASURE: Percent of compliance with market pay practices for All Other Staff	Target	100%	100%	100%	100%
	Actual	96.8%	94.6%	90.6%	

MEASURE: Number of attorney applications received (CY)	Target	175	175	175	175
	Actual	418	779		
MEASURE: Maintain established standards for reasonable Staff Supervision, Management, Development (Dedicated Staff Supervisor FTE to total employee Ratio) ²⁸	Target	10%	10%	10%	10%
	Actual	3.9%	3.6%	3.5%	3.4%
MEASURE: Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	232 : 1	232 : 1	232 : 1	232 : 1
	Actual	361 : 1	343 : 1	340 : 1	354 : 1
MEASURE: Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	52.4%	46.3%	45.1%	50.9%
MEASURE: Percent of compliance with minimum standards for staffing requirements levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	76.6%	81.4%	81.8%	77.8%
MEASURE: Maintain established standards for reasonable Caseload Levels (Appellate Attorney Active Case Ratio)	Target	1 : 27	1 : 27	1 : 27	1 : 27
	Actual	1 : 37	1 : 35	1 : 36	1 : 37
MEASURE: Maintain established standards for reasonable Caseload Levels (% of General Appellate Active case overload)	Target	0%	0%	0%	0%
	Actual	39.5%	36.1%	39.1%	43.2%

²⁸ Question #7 about the dedicated time of supervision FTE to total FTE is addressed on pages 32 and 34, and contained as performance measures on pages 14, 18, and 20.

MEASURE: Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	9.3 %	11.0 %		
Investigators	Actual	12.5 %	8.6 %		
Administrative	Actual	6.3 %	22.0 %		
Total	Actual	9.4 %	12.0 %		
MEASURE: Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	41.9 %	34.1 %		
Investigators	Actual	41.7 %	22.2 %		
Administrative	Actual	100 %	52.6 %		
Total	Actual	47.9 %	37.5 %		
MEASURE: Percent of experienced, fully capable staff (journey level or higher)	Target				
Attorneys	Actual	41.8%	44.0%	39.2%	38.9%
Investigators	Actual	47.7%	38.1%	33.2%	32.7%
Administrative	Actual	42.4%	29.4%	21.9%	21.6%
Total	Actual	45.9%	43.7%	37.8%	37.5%

Objective 2.1: Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.					
		FY 09-10 (actual)	FY 10-11 (actual)	FY 11-12 (proj.)	FY 12-13 (proj.)
MEASURE: Develop and test internet based administrative processes	Target	3	3	3	3
	Actual	5	7		

Objective 2.2: Continue to provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law.

		FY 09-10 (actual)	FY 10-11 (actual)	FY 11-12 (proj.)	FY 12-13 (proj.)
MEASURE: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	30	87		
MEASURE: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	4		
MEASURE: Number of legal assistant training sessions offered	Target	13	15	12	12
	Actual	13	15		
MEASURE: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
MEASURE: Provide 3 hours of ethics training focusing on Colorado criminal law each year.	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		

Objective 3.1: Better utilize existing resources and new technologies to more efficiently handle increasing caseload and increasingly complex cases.

Objective 3.2: Continually evaluate and evolve key functions to ensure the Public Defender system adapts to the changing legal environment.

		FY 09-10 (actual)	FY 10-11 (actual)	FY 11-12 (proj.)	FY 12-13 (proj.)
MEASURE: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	30	87		
MEASURE: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	4		
MEASURE: Number of legal assistant training sessions offered	Target	13	15	12	12
	Actual	13	15		
MEASURE: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		

MEASURE: Develop and test internet based administrative processes.	Target	3	3	3	3
	Actual	5	7		
MEASURE: Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	9		
MEASURE: Office program audits to ensure consistent performance of mission across the state.	Target	5	4	2	0
	Actual	5	4		
MEASURE: Number of focused evaluations of program and administrative processes and policies	Target	2	2	2	2
	Actual	5	5		
MEASURE: Number of revisions/updates to program and administrative processes and policies	Target	2	2	2	2
	Actual	3	3		

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HEARING AGENDA:

INTRODUCTIONS AND OPENING COMMENTS

Introductory remarks about the creation of the Office of the State Public Defender in 1970, our role under the United States and Colorado Constitutions, our overall mission and goals including a summary of our Budget Goals for the 2012-13 Fiscal Year.

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IMPORTANT ISSUES FACING THE OFFICE

The most critical issues The Office faces in the current and coming years are as follows:

The Smart Act. Our annual Budget Submission contains the Office's Strategic Plan developed and maintained in accord with the Smart Act. **This plan is made a part of this Hearing Submission and can be found on page 5 through page 23. Highlights of this Plan and a review of how it reflects The Office's performance of its mission is provided herein beginning on page 30 through page 35.**

Independence. **The importance of assuring the continued unencumbered Independence of the Defense is discussed in detail on pages 36 through 37.**

Unfunded Mandates. Uncontrolled and unfunded mandates lend added threat to the Office's ability to effectively deliver the State's constitutional mandate to provide effective assistance of counsel to all people. Unplanned mandates and their unfunded costs infringe upon higher priorities that directly fulfill this objective, including recruitment and retention of qualified staff, and maintaining reasonable workload levels in accordance with minimum performance standards. This year, The Office is faced with significant costs being imposed upon its already limited resources in the form of the State Justice Center project, a Judicial Department project created to benefit the current and future needs of the Court. The additional costs imposed upon The Office by the Judicial Department to be officed in this new facility directly compete with our two main priorities of achieving minimum staffing levels and achieving competitive levels of compensation. This imposition of unplanned, mandated costs provide a window into the threat to the efficiencies maintained through absolute independence of the Defense from the Court. **This issue is discussed in detail on pages 38 through 39.**

Effective Representation. The Office's primary objective is to ensure that the State successfully delivers its constitutional mandate to provide effective representation to Colorado's growing population of poor equivalent to that afforded non-indigent people. **This is discussed in detail on pages 31 through 35, and on page 41 related to relevant caseload and staffing influence.**

Competitive Pay. ²⁹To ensure the Office's ability to provide effective representation, it must be able to recruit and retain qualified staff. This goal is impacted by several factors, including workload level, adequate training and development, access to necessary resources to perform one's job, and competitive pay practices. The Office has worked over the last several years to reduce workload by more closely meeting established minimum staffing and maximum workload standards. Similarly, it has strategically invested its annual funds to enhance technology, training, and expert consultant resources that are made available to its staff to assist them in successfully delivering its mission to the public. This year The Office has prioritized an incremental plan to deliver competitive pay to its staff to combat the daunting impacts of attrition among its employees. These continued and worsening trends have effectively reduced the overall level of competency with which the Office delivers its program

²⁹ Supports Question # 4 about attorney pay parity.

to the public.

Denver Sobriety Court. Last spring, The Office entered into an agreement with the City and County of Denver to support a sobriety court pilot program that would require additional staffing by State Public Defender staff. The Office's staffing of this program was funded with Cash Funds from the City and County provided as reimbursement to The Office for costs of staff and operations associated with supporting this additional court. The Office's involvement in this program and its funding was authorized by the Legislature in the form of Cash Funds authority in its budget. The Court opened in May of this year.

The intent of this court is to effectively address repeat DUI offenders through a comprehensive system including expedited court case processing, jail and community-based treatment services and court and probation oversight. This court model is based on defined best practices for sobriety courts. The goals of Sobriety Court are:

- Provide a comprehensive, expedited and coordinated judicial response to repeat impaired drivers
- Increase community safety through efficient and effective jail to community treatment and monitoring
- Reduce recidivism for previous DUI offenders through effective treatment and recovery services

At the time this program was proposed, the City and County estimated costs savings in the areas of jail beds, court costs for trials and recidivism reduction. According to the City and County, a full understanding of the cost savings will be part of the Return-On-Investment (ROI), but cannot be conducted until the court has been in operation for at least one year (May, 2012).

A report from the City and County (Attached hereto as Exhibit A) further details this program and its status, and provides an initial analysis of the first 6 months of the court's operations. The analysis includes participants who have been enrolled into Sobriety Court as of December 1st, 2011, including a total of 176 clients that were eligible for Sobriety Court. Of those eligible, more than half enrolled into the program (98 enrolled, 56% of persons eligible). The remaining eligible clients (78 clients; 44% of persons eligible) refused the offer to participate in Sobriety Court.³⁰

The Court program is continuing as planned, and the City and County is currently working to provide continued funding for The Office's continued support of the court through December 2012. In the current request, The Office has requested to permanently refinance these costs from City and County cash funding to State General funds effective January 2013.

³⁰ **Question about the efficacy of the Sobriety Court program is addressed herein.**

Rothgery Suit Update. A lawsuit is ongoing involving the State of Colorado as plaintiff related to the State’s violation of the 6th amendment.³¹ As we are represented defendants in the action, we cannot speak to the plaintiffs intentions. In July, Federal District Court Judge John Kane granted a motion to dismiss the named plaintiffs as parties, but did not dismiss the action. Judge Kane has granted the plaintiffs until the end of January, 2012, to amend the complaint with new plaintiffs. It is my understanding that the plaintiffs are also discussing a legislative “fix” of the issue. However, we have not been party to any of those discussions. If the plaintiffs’ procedural issue is fixed, the likely outcome will be that the plaintiffs will be successful and all or portions of CRS 16-7-301 will be determined to be unconstitutional.

³¹ ***Rothgery v. Gillespie County, 554 U.S. 191***

SMART ACT COMPLIANCE

Strategic Planning

Background. The first formal reference to a strategic plan occurred in The Office's FY 2000-01 budget request, but its key components appear in even earlier versions: role and vision, goals and very basic measures of caseload. Over time, the strategic plan has matured and developed into the document contained herein as presented in The Office's FY 2012-13 Budget Request. Performance goals and measures have been refined and new, relevant measures have been added to highlight emerging trends used in agency program and budget planning and development. New U.S. Supreme Court decisions that affect The State's and The Office's responsibilities for indigent clients have been added. The Strategic Plan's core elements remain the same year-over-year and various components are updated and amended as needed to reflect both trends and funding priorities in any given year.³²

Fulfilling Our Mission. The Office consists of 21 regional trial offices, a central administrative office and an appellate office. In the current year, The Office will carry near 130,000 active trial and appellate cases with a total FTE staffing allocation of 650.3, including 413.3 attorney FTE. The Office should be staffed at approximately 795 total FTE, including 457 attorney FTE based on established weighted caseload standards.

Clientele. The Office has no control over its clientele as defense of indigent people accused of a crime in Colorado is constitutionally mandated in any case where the defendant faces imprisonment. Who becomes a client of The Office and indigence in criminal proceedings are set forth in Chief Justice Directive 04-04. Defendants complete an application form and submit the form through The Office to The Court. The Court makes the final determination as to the assignment of state-funded criminal defense. Attachment A to CJD 04-04 provides a calculator based on family size and all sources of income as compared to expenses. The Court uses this calculator to determine indigence. Indigence is fixed at or below 125 percent of the federal poverty level. Once indigence is determined by The Court, the client pays no costs for his or her defense; The State (The Office) pays 100 percent of the costs incurred in the defense of the case.³³

Objectives and Performance Measures. As noted above, the core objectives of The Office's single-purpose function remain generally the same. The measures used to assess The Office's adherence to and progress toward those core objectives are refined to keep up with caseload and other trends that are constantly in flux. While these measures view activities of The Office through differing metrics, they are directly related to the core concerns of The Office – independence and the ethical considerations of providing effective legal counsel to and representation of indigent clientele on par with that afforded to non-indigent clientele.

³² Question #1 regarding how Strategic Plan was develop is addressed herein.

³³ Question #12 regarding determination of indigence is addressed herein.

Summary of Most Important Objective/Goal & Related Performance Measures³⁴

Delivering Adequate Representation To Colorado's Growing Population Of Indigent People. Delivering adequate representation to Colorado's growing population of indigent people is our singular, unique mission and therefore also our definitive, overarching priority goal. Accomplishing this requires that two primary objectives are met, and that several related measures and targets associated with them are successfully addressed in concert with one another. These primary objectives include preserving independence of the Defense to ensure unfettered control over its ability to deliver its unique mission, and maintaining reasonable workload levels by achieving and maintaining compliance with minimum staffing standards.

Preservation of Independence of the Defense. As further discussed herein, Independence of the Defense must remain absolute to ensure the Defense's ability to effectively and efficiently manage its program and to prioritize and deliver its resources in the interests of its clients. This is critical in a changing environment, under increasingly challenging circumstances, and must occur without added delay, inefficiency or influence of intermediaries or the political, policy, procedural interests of external entities that are not specifically dedicated to the preservation of adequate defense.

Maintaining Reasonable Workload Levels/Meeting Caseload Standards.³⁵ Maintaining reasonable workload levels and meeting minimum caseload standards is critical to ensure the minimum standard of practice is being delivered to every client in every case. This requires adequate staffing which is directly driven by the Office's performance under the following measures:

- **Maintain Adequate Attorney Staff.** An adequate number of trial and appellate attorneys must be available to support cases based upon established *minimum* staffing standards. Our target for the current year is 457 FTE. Our performance is 413 FTE; 10 percent below minimum standards of performance.
- **Maintain Adequate Support Staff.** Adequate support staff must also be made available for attorneys in casework based upon established *minimum* staffing standards. Our target for the current year is 338 FTE. Our performance is 237 FTE; 30 percent below minimum standards of performance.
- **Attract and Retain Qualified Staff.** ³⁶Staffing and caseload levels are directly impacted by our ability to attract and retain qualified staff. Prior to the most recent recession, overall staff departures were quite high (96 in FY 2007-08). During the recession, those departures dropped to 47 and 48 respectively in FY 2008-09 and FY 2009-10. However, in FY 2010-11, the level of departures has begun to rise again, reaching 71. FY 2011-12 is on track to see at least that many departures as FY 2010-11.

³⁴ Information inquiry about most important goal and objective of our strategic plan is addressed herein.

³⁵ Question # 3 about processes and measures used to determine effective representation of clients is addressed in depth on pages 31-35 and page 41.

³⁶ Supports Question # 4 about attorney pay parity.

As another measure, our target for departures of total staff in first 3 years of employment is that it should not exceed 12 percent. Last year, it was 37.5 percent, more than triple our target rate. Similarly, while attorney departures as a percentage of total attorney FTE has remained below the 12 percent target in FY 2009-10 (9.3%) and FY 2010-11 (11.0%), attorneys departing within the first three years of employment is very high – 41.8% and 44.0% respectively in the last two complete fiscal years. This has a remarkable impact on another measure – the shift between a cadre of journey level and career level attorneys and beginning attorneys and the diminishing level of overall competency of the staff.³⁷

- **Competitive Pay Practices.** To ensure we can attract and retain qualified staff, we must maintain competitive compensation practices. Our target is pay equivalent to 100 percent of market pay practices for publicly employed attorneys in Colorado, as well as for all other relevant job classifications. Our performance is 85 percent of market for attorneys and 91 percent of market for all other staff.
- **Ratio of Experienced Versus Inexperienced Staff.** Without competitive salaries, attrition continues to diminish the ratio of competent, experienced staff as compared to that of beginning staff. In the past 10 or more years as Colorado has suffered through two recessions and sporadic infusions of pay parity and merit funding resources, The Office has experienced a remarkable departure of more experienced and leadership-qualified (journey and career level) staff. In FY 2004-05, 62% of attorney, 64% of investigative and 42% of legal assistant staff were either at the journey or career levels. In FY 2010-11, 44% of attorney (31 percent decline), 38% of investigative (41 percent decline) and 30% of legal assistant staff (29 percent decline) are at the journey or career levels. The current target level for fully capable, experienced staff is 70 percent. Our overall performance is 37.8 percent of staff that are fully capable, near half of the target level, thereby making inexperienced staff a majority population that clearly exceeds acceptable levels that would otherwise ensure effective representation.

Competency to Deliver the Mission

As mentioned herein, to ensure full efficiency and effectiveness of our staff in their delivery of The Office's mission, The Office has established the reasonable target ratio of 70 percent³⁸ of journey and career staff to 30 percent beginning staff. While this 30 percent ratio is variable among any number of industry, government or other standards, at current performance levels, it is clear that The Office is nowhere near that ratio. The impact is remarkable.

Journey and career level staff are fully capable, highly skilled, fully independent staff that can mentor, train, and supervise developing staff, as well as carry a heavier burden of both a higher volume of workload and higher share of more complex workload to ease the burden of workload on developing staff. Meanwhile, developing staff can effectively continue to grow in their ability to eventually become fully capable, skilled, independent staff themselves. This

³⁷ **Question #4 about attrition during good and poor economies is addressed herein.**

³⁸ **Question #6 about the 70/30 ratio of experienced/ inexperienced attorney staff is addressed herein.**

ensures that all staff are performing effectively at their relative levels of expertise and that every case and every client is effectively represented.

For example, like other staff, new attorneys do not come out of (law) school prepared to handle a workload anywhere near the volume or complexity of a journey or career level attorney. They require extensive targeted training, mentoring, quality control of their casework, supervision, management and come with additional administration burdens. While new attorneys continue to develop in their competency, experienced attorneys must meet their own normal case workload requirements aligned with established staffing and caseload standards, as well as fulfill these additional oversight requirements, and carry a disproportionately higher number of cases and the majority of more complex, work-intensive cases. These additional workload burdens effectively increase the requirement of necessary journey and career-level staff.

The primary requirement is to have 40% of total staff be fully capable, fully independent journey and career level staff dedicated specifically to their proportionate share of total workload as defined by established minimum staffing/maximum workload standards. Additionally, another 30% of all staff are needed at the journey and career level to fulfill workload associated with administering office and district activities; supervising, mentoring, and managing inexperienced staff; absorbing the inefficiency of performance normally expected with developing staff in the share of the proportionate caseload they cannot carry; and applying additional workload necessary to carry a disproportionate level of the more complex, work intensive workload as developing staff continue to grow in their ability to handle a full caseload and to independently represent any type of more serious cases.

The compounding 30% of journey and career level staffing demand breaks down as follows. At full performance level defined by minimum staffing/maximum caseload standards, journey and career-level staff must fulfill the need for a minimum of near 13 percent of total staff time for oversight and management (10 percent for mentoring, quality control, supervision and management³⁹; and, 2.5 percent for regional and district administration outside the office). It is also estimated that experienced staff must carry a compounding 7.5 percent of the total workload to ease the burden of high volumes of work being placed on developing staff to ensure that work is performed effectively and efficiently by them. Lastly, it is also estimated that experienced staff carry a further compounding 10 percent of the total workload as a result of carrying a disproportionate majority of the most complex workload to ease the burden of inexperienced staff as they learn on the job, and to ensure all work is performed by sufficiently competent staff.

These additional compounding workload pressures cumulatively reduce the effective ratio of experienced staff to merely 40 percent of total staff dedicated to normal, proportionately distributed workload staffing levels independent of other compounding workload pressures. In reality, the 70/30 target ratio is actually broken down as 40/30/30: 40 percent of staff are experienced staff supporting their proportionate share of established workload levels; plus 30

³⁹ Question #7 about the dedicated time of supervision FTE to total FTE is addressed on pages 33 and 34, and contained as performance measures on pages 14, 18, and 20.

percent of staff that are experienced staff fulfilling additional requirements to meet the added workload burdens (management, supervision, mentoring, administration, additional volume of workload, and increased share of more complex workload) that result from a 30 percent population of inexperienced staff carrying decreased amounts of work and less complex workload requirements.

In the absence of adequate performance of the objectives discussed herein, we are delivering representation with both inexperienced and inadequately supervised staff, and overall with too few staff to ensure adequate representation of our clients. This is a compounding problem resulting in the minority of experienced attorneys carrying unreasonably high caseloads as well as the majority of serious cases. Additionally, this dwindling population of experienced staff must also mentor, supervise and manage the inexperienced staff as well as administer the program offices at the regional and district level. It is critical that we find a way to retain beginning/developing staff so that they might continue to represent our clients as fully capable staff. It is equally critical that we maintain currently, fully capable, highly skilled staff to support current caseload, to support the successful development of our beginning staff, and to provide oversight and assurance that our clients are being adequately represented.

Losses of Efficiency

Inadequate Levels of Experienced Staff. The current underperforming level of the ratio of experienced staff to inexperienced staff effectively adds an additional 6.5 percent staffing resource requirement over current staffing deficits, which is necessary to offset this added inefficiency. This added level of inefficiency results in a loss of productivity and competency equal to 29.7 attorney FTE at a cost of \$2,159,379, or 6.5% of our current estimated full attorney staffing requirement costs, not including competitive salary funding requirements.⁴⁰ This demonstrates how inadequate levels of experienced staff compound already significant challenges associated with staffing deficits and case overload.

Inadequate Levels of Supervision/Management Staff.⁴¹ An additional, compounding loss of efficiency that is difficult to measure economically is the loss of time available to adequately supervise, manage, mentor and train developing staff as we continue to lose fully capable journey and career level staff that would be capable of fulfilling this necessary requirement. This loss of time directly impacts the ability to ensure that staff becomes competent in the performance of their work in a timely manner. The extended time it takes to achieve competency and the resulting lower level of competency overall have definite cost impacts. Established standards for indigent defense require that total staff work time or FTE be met with an equivalent 10% of FTE dedicated to management, supervision, mentoring of staff, and quality control of case work and other work product to ensure adequate defense is being delivered. Currently, the OSPD is dedicating only 3.4% of its total attorney FTE hours to this

⁴⁰ **Information inquiry about measures of added inefficiency and the cost of the continual loss of experience on an annual basis is addressed herein.**

⁴¹ **Question #7 about the dedicated time of supervision FTE to total FTE is addressed on pages 33 and 34, and contained as performance measures on pages 14, 18, and 20.**

requirement. This already underperforming level continues to drop as attrition of qualified staff continues and as the proportionate share of developing staff increasingly dominate our employee population.

Unrealized Benefits of Resources Expended. Similarly, as staff continue to leave before they are fully capable, resources dedicated to training and development programs cannot be fully realized by the State in the form of competent employees serving the public with efficacy. That investment by the State then goes to the benefit, advantage, and efficiency of private firms that the staff continually choose as a replacement to their public service careers.

Impact to the Greater Justice System. Lastly, other inefficiencies are realized by our partners in the greater Criminal Justice System who must also work at compromised performance levels when collaborating with an increasing number of inexperienced Public Defender staff. Processes are slowed, and cases become backlogged as a result of inexperienced players in the justice process. The entire system suffers inefficiency that cannot be adequately measured.

INDEPENDENCE OF THE DEFENSE FUNCTION

In 1963, The United States Supreme Court ruled in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that the indigent accused of crimes must be represented by counsel in order to effectuate the right to counsel pursuant to the U.S. Const. Amend. VI and Colo. Const. Art. II, Sec. 16. The *Gideon* decision established for the first time the right to counsel for the poor accused of crimes at the Federal, State and Local level. Subsequent cases have affirmed that constitutional right. *Alabama v. Shelton*, 535 U.S. 654 (2002); *Rothgery v. Gillespie County*, 554 U.S. 191 (2008); *Allen v. People*, 157 Colo. 582, 404 P.2d 266 (1965); *Nikander v. District Court*, 711 P.2d 1260 (Colo. 1986).

In order to ensure this constitutional right, Colorado established the OSPD as an autonomous agency within the judicial branch of our state government. This concept of the separation of the OSPD from the influence of any of the three branches of government was best stated by the Colorado State Auditor in our latest audit:

“The Constitutions of Colorado and of the United States establish the rights to counsel and to a speedy public trial. In Colorado, the Office of the State Public Defender (the Office or the OSPD) has responsibility for ensuring these rights are upheld for indigent clients. The Office was created in 1970. It is an autonomous agency within the Judicial Branch that provides criminal defense counsel, without charge, to indigent persons requesting legal representation. The Office's primary objective as stated in its mission is: The single overriding objective of the Office of the State Public Defender is to provide reasonable and effective criminal defense representation for our clients and fulfill this constitutional requirement.”

In response to the United States Supreme Court's *Gideon* decision in 1963, Colorado's General Assembly passed the Colorado Public Defender Act in 1969. At that time, four county public defender offices were established. In 1970, the State Legislature passed the Administrative Re-Organization Act. The State began to oversee the court system, which assumed responsibility for the appointment and funding of counsel for indigent defendants. Initially, the Colorado Supreme Court appointed the State Public Defender. In 1979, under HB 79-1396, the state legislature repealed that process, effectively removing the influence of the Court over the Defense, to highlight the independence of the defense of indigent defendants by establishing an independent five member commission to select the State Public Defender. (CRS 21-1-101, et. seq.) That selection process continues today.

The American Bar Association also recognizes in its ethical standards the need to have complete separation of the defense and prosecution functions not only between one another but also from improper influence of the courts. In Colorado, the Attorney General provides oversight of the prosecution function, but prosecutors are elected independently and serve their constituents in specified judicial districts. Funding of prosecutorial operations is controlled by county commissioners. As already noted above, the indigent defense function in Colorado is provided independence in statute. The OSPD enabling statute further required that it comply with ABA standards related to the Defense Function, thereby explicitly requiring the OSPD to maintain its independence from the Court.

For over 40 years, the State of Colorado has continued to lead the way in keeping the Promise

made to our citizens in the *Gideon* decision. This separation and autonomy is a critical component of that promise, just as the separation of the three branches of our government from influence is critical to our democratic government.

With the advent of the State Justice Center, independence of The Office, however nuanced, has emerged as a policy concern. There have been discussions (informal and otherwise) of possible cost savings through the sharing of certain functions among the several agencies that will be tenants in the State Justice Center. While the possibility of cost savings appears to serve the greater fiscal good of the State, it also can become an intrusion into the very independence protected under the law. If accounting, human resources or other functions are somehow combined, it places the Courts in a managerial and process oversight capacity not only over an executive branch function (Department of Law) but also over the independent decision making of the indigent defense and child's representatives functions.

Furthermore, the ability of the State Court Administrator's Office to set rental rates, allocate usable rental space and even perform cost allocation functions infringes on the independence of tenants who have been cast in the position of tenants under SB 08-206. This can only be viewed as an unintended consequence of an otherwise cost-saving endeavor. Without the ability to have equal input into the processes that assign rates and in turn long-term costs upon The Office, then The Office is placed in a position of dependence as independent decisions by the State Court Administrator's Office now will have a bearing upon The Office's own ability to serve its clients as finite State General Fund resources that would otherwise support The Office's function would be unnecessarily dedicated toward other activities involving the State Justice Center.

UNFUNDED MANDATES

State Justice Center Project (SJC)

Project Inception. The SJC project was initiated by the Judicial Department (JD) to help unite its staff (then spread across several private leases and the former Supreme Court building) into a facility that it could continue to grow into as time goes by. The benefits of this project are that it builds a facility at current financing and construction rates which are at historic lows now, thereby saving the State many millions of dollars more for each year it might have been delayed or put off to the future. Another great benefit is that it would save the state many millions of dollars in higher rent costs associated with private lease rates, as well as many more millions of dollars associated with escalating rent and operating costs in private leases. Realizing the building would include a lot of future space at additional cost to the State, The OSPD agreed to move into SJC to help the State offset costs with rent funds currently dedicated to private landlords.

Estimating Rent Costs. Based upon limited information provided to The OSPD for planning, The OSPD assumed a reduced rental rate per gross rentable square foot (GRSF) from its current private lease rate as a result of the absence of a private profit figure included in rent. This reduced rate would result in a small increase to The OSPD's total annual rent expenditure in the new SJC building including accounting for the addition of increased space needed to meet current staff office requirements. Based upon a rate of \$14.41/GRSF for a planned total 43,300 GRSF, the total annual rent estimated to be paid by The OSPD was \$623,953. At its current facility, The OSPD will pay \$449,155 in total annual rent at the time it moves into the SJC, including all operating costs and common area charges. This equates to a planned increase of \$174,798 on an annual basis to move into the SJC at double The OSPD's current total GRSF. However, the unplanned addition of a compounding 16,757 in GRSF planned by the JD to support common area needs of the SCAO, CSC, CCA, and DOL officed in both the court and office tower buildings has resulted in the addition of a compounding \$241,468 in unplanned annual rent costs to The OSPD's budget for which The OSPD had no input in either planning or accepting. This equates to an unplanned 54 percent increase to current leased space costs paid by The OSPD at 1290 Broadway that directly conflicts with The OSPD's core mission-directed budgetary priorities of staffing and pay parity. While the JD has the flexibility to refinance cash funds and to tap into pools of reserved revolving court fees to cover such costs, The OSPD is specifically General Funded and has no ability to absorb such an increase without directly sacrificing specifically performance related priorities that actually enable it to successfully deliver its mission.

Tenant Space Requirements. The JD asked The OSPD to project space requirements through 2020 and 2030 based upon current staffing projections to enable the JD to design a building that would meet future space needs of tenants. The OSPD does not intend to take on space required for 10 or 20 years out, as this would result in significant additional cost. Such a large increase in OSPD rent costs would directly conflict with the OSPD's core mission related performance objectives, which focus on staffing, competitive pay, and efficiencies gained from technology and training. The OSPD is currently working with the JD to establish its initial space requirement based upon our current through 2015 staffing projections and space

needs. The OSPD is crafting a lease with the JD that would enable the OSPD to grow every 3-4 years to take on additional space needed for the next three-to-four years. This approach enables the agency to minimize unnecessary growth in rent expenditures by minimizing unnecessary space to a reasonable level, and enables the agency to focus on critical resources related to competitive pay practices and staffing. This approach is similar to the OSPD's current practice in negotiating long-term leases with private landlords for its other 21 offices across the state. Meanwhile, similar to other landlords, space not used is available to be developed for other, short-term tenants, and leased at a higher rate to cover the lessor's costs for that unused space.

Project Space Requirements. The JD planned the inclusion of large common area spaces to support Colorado Supreme Court (CSC), Colorado Court of Appeals (CCA), State Court Administrator (SCAO), and Department of Law (DOL) staff officed in both buildings. This space includes food service areas, conference facilities, redundant IT closets, fitness centers, catering support facilities, courtrooms, copy centers, library, and common corridor and rest room facilities associated with them. While these luxuries are nice to have in a new facility, the OSPD was not a party to the planning, discussion or decisions to incorporate these spaces; and the OSPD has little need for this space as a minority tenant, the majority of whose staff is not located in the Capitol Complex area. The OSPD did not plan for the significant added cost impact that accompanies these JD and DOL targeted space investments. The addition of these spaces will increase the OSPD's actual initial space requirement by 50% for space we would rarely require and had no decision in. This is equal to unplanned and unneeded resources of near \$300,000 per year directly competing with more critical, mission-specific investment priorities of the agency.

JD Reported Savings. The OSPD recently learned that the JD promised the Legislature an additional \$60 million in savings to help defray the cost of the project and the upfront annual rent increase associated with the very large increase in State leased space costs. The OSPD was not a party to those discussions or calculations, and cannot speak to how those figures were derived or how the JD plans to accomplish that goal. The OSPD was recently contacted by the Office of the State Auditor (OSA), to assist in the process of developing an RFP to audit state leased space costs, including the SJC and the promised \$60 million in savings.

CASELOAD AND STAFFING OVERVIEW

Case Trends, Policy Impacting The Office

The Office is impacted by both natural changes in case trends as well as policy in terms of laws passed by the General Assembly. These are summarized as follows:

General Case Trends and Source of Impact. Felony cases have generally been slowing in growth (however, workload to litigate them and all cases generally has increased), while misdemeanor cases have been trending upward. The Office is unable to definitively pinpoint any specific reason for these changes in case trends⁴². Sentencing alternatives, including treatment services versus imprisonment could be helping in the areas of recidivism. The General Assembly has also changed the severity of some sentences. However, it is not possible for The Office to declare one policy or another as the basis for these changes in case trends.

HB 10-1352 Impact. HB 10-1352 sought to reduce the severity of more common and less dangerous illegal substance cases, differentiating between both quantities of illegal substances involved and between types of illegal substances (e.g. marijuana versus all others). In 2010, the Colorado Division of Criminal Justice completed its first post-implementation review of HB 10-1352; it is available on its Research and Statistics Office website. The impact on The Office as of 2010 was not definitive. Since the implementation date of the bill was August 2010, it impossible to say with statistical certainty that the changes in case classes were the result of HB 1352 or attributable to normal annual or seasonal case fluctuations. The Division is in the process of reviewing 2010 and 2011 data and should be producing an updated report in the near future.⁴³

Habitual Case Cost.⁴⁴ C.R.S. 18-1.3-801 outlines the penalty impact to habitual criminal offenders. Under the statute, if a defendant has 2 prior convictions of any type within the 10 years prior to the current charge & the 3rd and current charge is a class 1 through 5 Felony offense of any type, the penalty associated with the charge in the current case is raised to a sentence length that is up to 3 times the maximum presumptive range of the normal sentence for the current charge. Additionally, the statute holds that if a defendant has 3 prior convictions of any type prior to the current charge & the 4th and current charge is an offense of any type or class, the penalty associated with the charge in the current case is raised to a sentence length that is up to 4 times the maximum presumptive range of the normal sentence for the current charge.

The increase in the effective penalty as a result of the Habitual Criminal Statute similarly increases the effective workload associated with the case as defined in established case weighted standards. This increase in workload results in costs that otherwise would not be expended were it not for the impact of this law. In FY 2011, the Office represented 403

⁴² **Question #11 about source of impact of case trends and policy impacts is addressed herein.**

⁴³ **Information inquiry about 1352 Drug bill impacts is addressed herein.**

⁴⁴ **Information inquiry about the cost of habitual offender statutes is addressed herein.**

Felony habitual cases, which resulted in the additional work equivalent to near 4,000 attorney hours in total plus additional support staff time to assist the attorneys in their representation of the case. Effectively, the existence of the habitual statutes has increased costs related to the defense of these cases equal to \$208,000 in support of 2.5 FTE of combined attorney and support staff that year.

Cases & Staffing⁴⁵

Though experienced attorneys handle a mix of cases (felony, misdemeanor and juvenile), The Office's weighted caseload standards estimate that each attorney can effectively represent a maximum of 239 cases and proceedings that will be closed this year. It is similarly estimated that Appellate attorneys can effectively represent 32 active appellate cases this year.

Felony cases. To adequately support the estimated 45,202 felony cases that will be closed in FY 2011-12, The Office requires 241 attorneys, and a complement of 96 investigative and 67 legal assistant staff, as well as necessary central administrative processing and program direction staff.

Misdemeanor Cases. To support the estimated 45,083 misdemeanor cases that will be closed in FY 2011-12, The Office requires 146 attorneys, and a complement of 53 investigative and 40 legal assistant staff, as well as necessary central administrative processing and program direction staff.

Juvenile Cases. To support the estimated 8,032 juvenile cases that will be closed in FY 2011-12, The Office requires 24 attorneys, and a complement of 9 investigative and 7 legal assistant staff, as well as necessary central administrative processing and program direction staff.

Appellate Cases. To support the estimated 1,236 active appellate cases that will be carried in FY 2011-12, The Office requires 46 attorneys, and a complement of 17 paralegal, 12 legal assistant staff, as well as necessary central administrative processing and program direction staff.

The Reality. Economic forces and competing funding priorities limits The Office's total FY 2011-12 FTE to 650.3 compared to the estimated 795 needed under minimum caseload standards – a shortfall of 18 percent. Given the additional impact of reduced work force associated with attrition, normal employee absences and low ratio of supervisory and experienced attorneys, the effective shortfall is much higher than the simple mathematical one indicated above.

⁴⁵ **Question # 3 about processes and measures used to determine effective representation of clients is addressed in depth on pages 31-35 and page 41.**

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**HEARING AGENDA:
COMMITTEE
HEARING QUESTIONS**

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QUESTIONS COMMON TO ALL DEPARTMENTS

- I. (Common Question). Please describe the process the OSPD used to develop its strategic plan.

(previously discussed on page 30)

- II. (Common Question). How does the OSPD define FTE? Is the OSPD using more FTE than are appropriated to the OSPD in the Long Bill and separate legislation? How many vacant FTE did the OSPD have in FY 2009-10 and FY 2010-11?

The Office uses the total number of available work hours available in a given year (2,080) and then divides that number into the total number of hours worked by each employee. Using a combination of PT and FT staff The Office allocates no more than the maximum FTE authorized by various appropriations bills. The Office did not leave any positions vacant in either FY 2009-10 or FY 2010-11.

QUESTIONS SPECIFIC TO THE OSPD

- III. (OSPD Specific Question 1). Please provide an overview of the processes or measures the OSPD uses to determine whether OSPD attorneys are providing effective legal representation.

Matters such as adequate supervision, minimizing attrition, recruiting and retaining qualified staff, accomplishing pay parity, and minimizing caseloads are all means to ensure that the Office is capable of successfully delivering effective legal representation to its clients. **These matters have all been thoroughly addressed on pages 31-35 and 41.**

There are additional factors that enable The Office to ensure its staff is prepared to provide effective legal representation. At the very basic level, newly hired attorneys must have successfully been awarded a *juris doctor* degree from an accredited law school (many have been pre-screened and have completed internships in The Office's trial offices), must have passed the Colorado Bar, must have completed required ethics and continuing legal education training requirements, and must be licensed with the State. Additionally, employees receive extensive targeted training to increase their competency in specialized areas of practice. New attorneys attend new lawyer training (at their assigned office), core skills training and finally boot camp, which provides senior management more of an evaluative assessment of a new attorney's abilities to fulfill their hire role. New attorneys cannot advance professionally without having successfully completed boot camp. Each year, all attorneys are required to attend an annual conference where they earn continuing legal education credits as validated by the Supreme Court. Finally, attorneys receive formal performance evaluations on an annual basis.

IV. (OSPD Specific Question 2). Decision Item # 1 (Attorney Salary Parity⁴⁶)

Please provide several years of data related to staff attrition rates, by category (i.e. attorneys, investigators and administrative staff). With respect to attorneys, please break out the data based on level of experience.

Attrition Rate	<u>FY07</u>	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>
Attorney Total	22.8%	17.9%	10.5%	9.3%	11.6%
<i>Attorney Beginning</i>	5.2%	7.4%	6.0%	5.7%	8.2%
<i>Attorney Journey/Career</i>	17.6%	10.5%	4.5%	3.6%	3.4%
Investigators	24.5%	18.4%	8.4%	12.5%	9.3%
Administrative	31.9%	33.3%	12.7%	6.3%	23.6%

What types of candidates are attracted to work as an attorney for the OSPD?

With the rare exception, all attorneys hired by The Office are attorneys who have just passed the Bar. Furthermore, they have been pre-screened by senior management including a one-on-one interview with the State Public Defender. We rely heavily upon candidates graduating from law schools that offer criminal defense practicums. Many have completed internships in The Office’s trial offices or other clinical programs and intern/externships elsewhere. Candidates that are hired tend to exhibit a personal dedication to social issues and other concerns that would point toward their (hopeful) continued career as an attorney representing poor people.

What types of positions do attorneys who leave the OSPD take?

With the rare exception, all attorneys leaving The Office are taking positions in private practice.

Are employees more or less likely to leave the OSPD during an economic downturn?

It would appear less likely, as data for attrition prior to the downturn is near double current rates. At the time of the downturn, fewer people left, but as time goes by, this trend is turning around.

V. (OSPD Specific Question 3) Has the OSPD considered actions other than increasing attorney salaries to reduce attrition rates?

The Office has focused on reducing caseload by hiring attorney positions and deferring administrative support staffing. Additionally, The Office has strategically focused available operating funds toward the enhancement resources and tools available to its staff in the performance of their jobs, most notably in the areas of training and technology. Prior to the downturn, The Office offered RTD subsidies

⁴⁶ This topic is further addressed in detail on pages 27 and 32.

for staff that commuted. Other than these measures, there is little The Office can do to impact attrition.

- VI. (OSPD Specific Question 4) Please describe the basis for your goal of having 70 percent of OSPD attorneys at the “journey” or “career” experience levels, and 30 percent at the “beginning” level of experience.

(Previously discussed above on Pages 32 to 34)

- VII. (OSPD Specific Question 5) How much supervision is required for an attorney at the “beginning” level of experience?

(Previously discussed on page 32 in the context of competency; on page 34 framed as a loss of efficiency; as well as provided as performance measures on pages 14, 18, and 20.)

- VIII. (OSPD Specific Question 6) How much does the OSPD spend for recruitment and training activities?

The total expenditure for recruitment and training activities in FY2009-10 was \$67,537; in FY 2010-11 it was \$100,263. These costs are further offset by \$21,550 (in FY 2009-10) and \$20,975 (in FY 2010-11) in reimbursements provided by private bar attendees of conferences and trainings. The net cost to the State for these expenses was \$45,987 in FY 2009-10 and \$79,288 in FY 2010-11 in support of all staff training and recruitment.

Recruitment costs include limited mileage, lodging and materials expenses related to attending regional law school graduate recruitment fairs. Training includes mileage, lodging and materials expenses associated with The Office’s annual training conference, attorney core skills trainings, attorney boot camp trainings, support staff trainings, as well as specialized training activities offered regionally.

- IX. (OSPD Specific Question 7) Do law schools adequately prepare students for the duties of a staff attorney employed by the OSPD?

The Office cannot speak to all law schools and their academic success in preparing students for work as public defenders. As previously stated, to help ensure that candidates are prepared as best possible to work as a public defender, The Office relies heavily upon candidates graduating from law schools that offer criminal defense practicums. The Office also relies upon intern and externships within its own agency. Both the clinical programs and intern/externships are critical to its hiring decisions as The Office is able to, under strict supervision, expose the students to the actual practice of criminal law in the court room. Unlike many firms, The Office expects its new hires to immediately begin handling misdemeanor cases, therefore, their clinical work and internships give it the opportunity to observe them in the courtroom setting as well as the office and correctional facilities. Additionally,

The Office prides itself on providing extensive and thorough training for every attorney that is hired. However, because The Office hires almost exclusively students right out of law school, depending on their skill set, they are not prepared to handle felony cases for several years.

- X. (OSPD Specific Question 8) Decision Item # 3 (Refinance for Denver Sobriety Court)
Please provide any available data concerning the efficacy of the Denver Sobriety Court (or sobriety courts in general), and the types and amount of resulting savings.

(previously discussed above on Page 28, and described in detail in attached Exhibit A: Sobriety Court Report)

- XI. (Miscellaneous Question # 1) Please provide data indicating the OSPD workload and cost of various types of cases.

The Office discussed the workload impact from various case types previously on Page 41. However, The Office is not able to cost out its services based on the type of case as attorneys may open, carry and close a variety of case types and classes (as well as all other miscellaneous proceedings) during any given year.

- XII. (Miscellaneous Question # 2) Please describe the financial criteria for an individual to be eligible for state-funded legal representation. Are eligible defendants required to pay fees or any share of the costs of legal representation?

Previously discussed above on Page 30 under “Clientele”.

Have these policies changed over time?

No the policies have not changed.

Please provide trend data concerning the number and percent of cases in which a defendant is eligible for state funded legal representation.

The Office does not have 100% reliable case data in terms of how The Office counts “a case” and how the courts count “a case”. However, the table below closely correlates The Office’s share of total criminal cases within the courts, comparing both The Office’s closed case data and the courts’ terminations data. The data demonstrates that the Office’s share of total State criminal cases closed in the courts is increasing each year and equates to a current estimated majority of 71% of all cases and proceedings, excluding traffic cases not involving jail and pro se traffic cases, which The Office cannot represent, and which have minimal workload associated with them. As shown in the table, even at the specific case type level (Felony, Misdemeanor, Juvenile), The Office represents a significant majority of all State criminal cases, and this trend continues to grow each year.

Comparisons of Closings By Case Type: Court Totals (DAs Cases) vs. OSPD, w/ Proportionate Shares	FY 2000	FY 2010	FY 2011 Est	FY 2012 Est	FY 2013 Est	Cumulative Growth by 2011	Cumulative Growth by 2012	Cumulative Growth by 2013	Annual Compound Rate of Growth
State Total All Terminated Criminal Cases & Proceedings-No Traffic	164,497	153,984	153,071	152,180	151,309	-6.95%	-7.49%	-8.02%	-0.66%
OSPD Total All Terminated Criminal Cases & Proceedings-No Traffic	64,779	95,581	94,219	98,317	107,080	45.45%	51.77%	65.30%	3.97%
Ratio of OSPD Total Criminal Cases to State Total Criminal Cases	39.4%	62.1%	61.6%	64.6%	70.8%	56.30%	64.06%	79.71%	4.66%
State Total Felony Terminated Cases & Proceedings	55,780	54,700	54,593	54,487	54,380	-2.13%	-2.32%	-2.51%	-0.20%
OSPD Total Felony Terminated Cases & Proceedings	35,999	46,581	44,603	45,202	49,917	23.90%	25.56%	38.66%	2.61%
Ratio of Total OSPD Felony Cases to Total State Felony Cases	64.5%	85.2%	81.7%	83.0%	91.8%	26.59%	28.55%	42.23%	2.81%
Misd. Terminated Cases of Court	90,948	87,644	87,320	86,998	86,676	-3.99%	-4.34%	-4.70%	-0.37%
OSPD Misdemeanor Cases	18,535	40,147	41,445	45,083	49,236	123.60%	143.23%	165.64%	8.04%
Ratio of OSPD Misd Cases to Total All Court Misd Cases	20.38%	45.81%	47.46%	51.82%	56.80%	132.89%	154.28%	178.73%	8.44%
Juv Terminated Cases of Court	17,769	11,640	11,158	10,696	10,253	-37.21%	-39.81%	-42.30%	-4.14%
OSPD Juvenile	10,245	8,853	8,171	8,032	7,927	-20.24%	-21.60%	-22.63%	-1.45%
Ratio of OSPD JUV Cases to Total All Court JUV Cases	57.66%	76.06%	73.23%	75.10%	77.32%	27.01%	30.25%	34.10%	2.81%

XIII. (Addendum: Other Questions for Which Solely Written Responses Are Requested)

Please list and briefly describe any programs that the OSPD administers or services that the OSPD provides that directly benefit public schools (e.g. school based health clinics, educator preparation programs, interest-free cash flow loan program, etc.)

The Office administers or provides no such program or services.

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EXHIBIT A: SOBRIETY COURT REPORT

(as submitted by the City and County of Denver)

Sobriety Court Report
Crime Prevention and Control Commission
December 2011

Denver Sobriety Court Overview

Sobriety Court opened May 24, 2011 with the intention to effectively address repeat DUI offenders through a comprehensive system including expedited court case processing, jail and community-based treatment services and court and probation oversight. The model is based on best practices in Sobriety Courts.

Denver's Sobriety Court (Sobriety Court) mission is to provide an efficient, judicially supervised, accountable systemic process to address addiction, offender success and recovery. The goals of Sobriety Court are:

- Provide a comprehensive, expedited and coordinated judicial response to repeat impaired drivers
- Increase community safety through efficient and effective jail to community treatment and monitoring
- Reduce recidivism for previous DUI offenders through effective treatment and recovery services

The Sobriety Court was established through efforts of the Crime Prevention and Control Commission (The Commission), Denver County Court and Probation (DCC), Denver District Attorney's Office (DDAO), Denver Office of the Public Defender (OPD), representative of the Colorado Defense Bar, Denver Police Department (DPD), Denver Sheriff Department (DSD), and representatives of the Colorado Division of Behavior Health (CDBH).

The Sobriety Court serves offenders charged with repeat (2nd, 3rd or more) impaired driving offenses. The Sobriety Court staff/stakeholders includes a Sobriety Court Judge, Denver County Court Probation Officers (including a supervising officer in the position of coordinator), clerks, members of the DDAO, members of the OPD, members of the Colorado Defense Bar, DSD, and treatment providers.

The Process

The DDAO reviews all impaired driving arrests occurring in Denver within 48 hours after an offender's arrest. The DDAO determines if an offender is eligible for Sobriety Court. Generally, repeat driving offenders charged with crimes listed under C.R.S. 42-4-1301 are eligible to participate. Offenders may be excluded for a number of reasons (e.g., pending felony charges, severe mental health issues, or demonstrate a history of violent behavior, to name a few). Members of the OPD are present to represent all eligible or in custody Sobriety Court offenders at advisement, plea, sentencing, and reviews/revocation hearings.

Once the DDAO has determined if an offender is Sobriety Court eligible, the offender is set for an advisement in Sobriety Court. An offender, with counsel if applicable, is presented with an offer by the DDAO. If an offender accepts this offer and pleads guilty, the offender is quickly sentenced in Sobriety Court. At the time of sentencing, an offender is immediately sentenced to jail (as required by state law) and, when applicable, placed in the Recovery In a Secure Environment (RISE) DUI treatment unit where they will receive core treatment and reentry services. At sentencing, the Sobriety Court Judge orders an offender be released from jail to probation whenever possible or is ordered to report to probation on the next business day.

The Denver County Probation Department is responsible for community-based supervision of offenders sentenced to the Sobriety Court. The Sobriety Court supervision model is organized in a phased system allowing an offender to move through the phases based on his/her risk and needs and level of compliance within each phase. Minimum contact standards are defined within the phased system; however, the risk and needs of the offender may require modification of Terms and Conditions in order to maintain offender compliance and proper case management of higher risk offenders.

A primary emphasis in the Sobriety Court is judicial contact for each offender. That contact is achieved through regular review hearings scheduled before a Sobriety Court Judge. The hearings are scheduled in accordance with an offender's phase as well as an offender's level of compliance or non-compliance. Public Defenders, District Attorneys, Judge, and Probation Officers, along with treatment providers as appropriate, are present at review hearings.

In order to graduate, clients must have completed the required DUI treatment track, be substance free and have maintained continuous monitored sobriety for 180 days. It is estimated that it will take a minimum of 18 months to complete the program.

According to DPD arrest data, the total number of DUI's arrested in 2010 was 3,276, down from 4,043 in 2009. The Sobriety Court planning team estimated that, about 5 – 10% of those arrested will meet the court's targeted population of repeat DUI offenders (3 or more previous DUI offenses in a lifetime and 2 or more cases with a .17 BAC)

Cost and Benefits

At the time initial funding was sought in February, 2011 the committee estimated costs savings in the areas of jail beds, court costs for trials and recidivism reduction. A full understanding of the cost savings will be part of the Return-On-Investment (ROI), but cannot be conducted until the court has been in operation for at least one year (May, 2012).

This report is an initial analysis of the first 6 months of the court's operations. The analysis includes participants who have been enrolled into Sobriety Court as of December 1st, 2011. Since May 24, 2011, there were a total of 286 DUI offenders reviewed by the DDAO. Of those cases, a total of 179 offenders were eligible for Sobriety Court. Of those eligible, more than half enrolled into the program (98 enrolled, 55% of persons eligible). The remaining eligible offenders (73 clients; 41% of persons eligible) refused the offer to participate or were later found to be

ineligible for Sobriety Court; Eight cases are pending. There are 116 cases involving 106 offenders. With the exception of the jail bed day savings, the remaining report reflects data for the 98 currently enrolled offenders. The jail bed data includes the 98 enrolled and the 8 pending cases.

Of the 98 clients enrolled in Sobriety Court, 14 were females and 84 were males. The average age was 40 years old (Range: 22 to 67). In terms of the race/ethnicity breakdown, 16% reported being Black, 37% reported being Hispanic/Latino, and 45% reported being White.

At the time this report was written, 98% were repeat violators (average prior DUI arrest = 2.13). The table below shows the actual breakdown of prior arrests for 98 Sobriety Court cases.

Prior DUI Convictions	Percentage of Sobriety Court Cases (N = 98)
0	2%
1	30%
2	37%
3	21%
4 to 8	10%

In terms of costs, during 2011 when Sobriety Court was running (May to December), probation costs ran \$160,577.32. Sobriety Court costs also provides two Public Defenders and two District Attorneys for \$154,903 during that timeframe in 2011. Of the 98 current Sobriety Court clients, 58 (59%) are Public Defender clients. Of the remaining clients, 28 (29%) are represented by private attorneys and 12 (12%) are pro se.

Also in considering costs, the time spent by staff to operate Sobriety Court must be considered. Sobriety Court averages 9 court dockets per month with each docket taking an average of 4.5 hrs of time. Nine court dockets x 4.5 hours comes to 40.5 hours each month. Staffing for these hours include Probation Officers, Judge, DDAO, OPD, and treatment providers. In addition, the time it takes for the Judge to review court documents amounts to 10-15 hours per week, or 40-60 hours per month. Finally, another factor of time attributed to Sobriety Court also includes meeting time. Team meetings take place twice a month at 1.5 hours per meeting, or 3 hours per month. Additional meetings include a 2-day training that took place in November, and quarterly meetings, that consume 1.5 hours of time, for all Sobriety Court staff.

In planning the court, better use of jail resources, both in cost savings and initiating treatment at the earliest point in-time were critical areas of consideration. The following jail bed includes the entire current enrolled (N=98) plus the 8 pending offenders for a total of 106 offenders. The district attorney is tracking what they would have requested for a jail sentence had the defendant not enrolled in Sobriety Court. Requested sentences for this group would have ranged from 10 to 720 days for these 106 clients. The actual sentences imposed for these 106 offenders ranged from 3 days to 365 days for an average of 108 days. With the implementation of the Sobriety Court, a total number of 10,087 jail bed days were saved. According to the Denver Sheriff's Department, the average daily jail-bed cost is \$56.18, so the total jail bed cost savings is \$566,687.66 due to the reduction of jail bed days alone. It important to note that in-home detention sentences, often

given to persons with a 2nd DUI, are not included in this report.

Upon incarceration, offenders may be placed in the jail RISE treatment unit or, if they currently have a job, are given work release. To date, 28 offenders have been in the RISE treatment unit, which started in July 2011, and benefit from the DUI Level II treatment and therapy they receive at no cost to them. On average, the jail RISE treatment unit provides 30 hours of Level II DUI treatment and therapy to each client. The cost for this treatment, otherwise paid by the client while in the community, is \$25 per hour. To date a total of \$21,000 of treatment costs (30 hours x \$25 per hour = \$750 x 28 offenders = \$21,000) have been paid through the County Jail.

Another goal of Sobriety Court was to increase the efficiency of the courts to process cases. One way to do so is by decreasing the amount of time it takes an offender to be sentenced from the time of arrest. Non-sobriety court offenders average 12 to 16 weeks (84 – 112 days) to reach a sentence. Implementation of the Sobriety Court model has drastically reduced this case processing time to an average 16 days for the current Sobriety Court clients who were not already in the system to be sentenced. This is a substantial improvement and reduces the amount of back-log that exists in the regular court system.

Another savings for Sobriety Court comes in the form of recidivism. At the time this report was written, 38 of the 98 clients were serving their initial sentences. However, the remaining 60 clients were in the community and had not re-offended at the time of the report. The Denver Sheriff's Department averaged out the cost of processing an arrest at approximately \$160.00 per arrest. These cost/benefit calculations will be included in future ROI analysis.

Future analysis of Sobriety Court will address the following information:

- How do Sobriety Court clients compare to similar non-Sobriety Court clients?
- How successful are Sobriety Court clients on key project variables, such as program compliance, completion, treatment outcomes, UA's, etc?
- How do recidivism rates compare between Sobriety Court clients and comparison clients?
- What costs are associated with implementation of the Sobriety Court and how does this compare to costs for clients who move through the typical court process?
- What other effects does the Sobriety Court have on case processing throughout the court system?
- Determine a plan for sustainability and provide recommendations based on findings.

TOTAL RESOURCE REQUIREMENTS

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TOTAL RESOURCE IMPACT

REQUIREMENT TO ACHIEVE 100% STAFFING

If the current long-term growth trends that developed from 2000 through 2011 continue, it is expected that the State’s indigent criminal defense caseload will be near 136 thousand active cases by the year 2013. In order to meet 100 percent of the minimum caseload standards for representation of closed cases in FY 2012-13, and to ensure the Public Defender is effectively serving its clients, the Public Defender would need to acquire (above its FY 2012-13 base request of 650.3 FTE) an additional 185.7 FTE, including 68.3 trial office and appellate attorneys plus necessary support staff at annualized cost of about 12.1 million dollars, equivalent to a monetary resource deficit of near 19 percent more than the FY 2013 full continuation base budget requirement.

The summary 100% staffing requirements described above are provided in more detail below. Total staffing needs consist of:

- 486.5 Attorney FTE
- 185.0 Investigator FTE
- 134.6 Legal Assistant FTE
- 40.0 State Administration/Direction FTE

Total Staffing Needed for FY13 as adjusted by Current / Request Year Staff Allocations

<u>Staffing Needs</u>	<u>Total Needs</u>	<u>FY 12 Staff Allocation</u>	<u>Net Need FY13 Base</u>	<u>FY 13 Request</u>	<u>Net Need FY13</u>
Total Attorney Need FY13	484.3	413.1	71.2	2.9	68.3
Total Investigators Required	184.2	111.5	72.7	1.5	71.2
Total Admin Assistant Need	134.0	91.3	42.7	1.1	41.6
Central Office Support Staff Req.	39.7	34.4	5.3	0.6	4.7
Grand Total	842.2	650.3	192.0	6.1	185.9
FY 2013 Total Request	\$ 63,905,162		22.8%	% FTE Shortfall	22.1%
Additional Amt for 100% Staffing	\$ 12,115,691	(FY14 Fully Annualized Amount)			
Total FY13 to Meet 100% Staffing Need	\$ 76,020,853				

**Current Total Resource Requirement for FY 2012-13
To Meet 100% of Minimum Case Staffing Standards**

Funding for 100% Staffing Rqmts	No. of Mos.	12	FY 2013-14 Full Year Annualized Funding		
	Total FTE	Requireme	FY14 Jun-Dec	FY14 Jan-May	Total
		Long Bill FTE			
Staffing					
Attorneys	68.4	68.4	2,134,012	1,524,294	3,658,306
Investigators/Paralegals	71.2	71.2	1,519,123	1,085,088	2,604,211
Secretaries	41.6	41.6	553,571	395,408	948,979
Administrative Support	4.6	4.6	146,929	104,949	251,878
Total Staffing / Subtotal Gross Salary	185.8	185.8	4,353,635	3,109,739	7,463,374
PERA @ 7.65% (Jun 2012), 10.15% (Jul '12 to May '13)			441,894	315,639	757,533
FICA @ 1.45 %		FTE	63,128	45,091	108,219
Total Staffing Request		185.8	4,858,657	3,470,469	8,329,126
HLD @ FY11 ave \$6,879.45 pp rate (per August 2011 DPA rate)	Positions	188			1,293,832
STD @ .177%			7,706	5,504	13,210
AED @ 3.0, 3.4, 3.8 %			148,024	118,170	266,194
SAED @ 2.5, 3.0, 3.5 %		FTE	130,609	108,841	239,450
Subtotal Personal Services		185.8			10,141,812
Operating					
Operating pp \$500 Genl Op, \$450 Tele.	FTE	185.8			176,556
Travel [(Est Costs/FTE Usage) times (1+proj case)] times Req					
FTE	FTE	185.8			153,752
Capital Outlay \$4,703 pp per OSPB Budget Instructions	Positions	188.0			-
Rent p/te ave cost per sq foot	Positions	188.0			1,643,571
Subtotal Operating					1,973,879
	Total FTE	Long Bill FTE	Total FTE		
Total Decision Item Amount	185.8	185.8	185.8		12,115,691

The table above provides the annualized calculations of salary and operating, using current common policy metrics, to achieve 100% of staffing. Note that this amount would be **in addition to** the Office's fully funded FY 2012-13 Base Continuation Request of 650.3 FTE and \$62.5 million, which does not include decision items. If funded as detailed herein, 100% funding would provide for 842.2 FTE and \$76.0 million (General Fund).

TOTAL RESOURCE IMPACT

REQUIREMENT TO ACHIEVE 100% ATTORNEY PAY PARITY

In total, to fully address the current pay disparity carried by Public Defender attorneys, the Office would require \$2.9 million as detailed in the table below.

Total Three-year Amount to Achieve Attorney Pay Parity with the 2011 Market

Pay Parity Amount	
Gross Salaries	\$ 2,416,099
PERA	\$ 243,478
FICA	\$ 35,034
STD	\$ 4,276
AED	\$ 86,762
SAED	\$ 78,251
Total Pay Parity Amt	\$ 2,863,900

This increase would address pay inconsistencies in two ways:

First, it would correctly classify attorneys to the appropriate benchmark position level that is commensurate with their years of experience and level of responsibility. These attorneys represent individuals who have progressed to higher skill and responsibility levels as attorneys required of their job, but who are frozen at lower skill and experience, entry-level attorney benchmark grades. These attorneys are the lowest paid attorneys in the agency, have achieved the same level of expertise and responsibility as those at the grade they will be promoted to (as well as their peers in similar positions in the broader market).

The second aspect of the increase is to then provide salary survey increases to all correctly classified attorneys to meet the market average salary associated with their benchmark position level.

TOTAL RESOURCE IMPACT

TOTAL COMPENSATION

Impact from Governor's Annual Compensation Study. The below is provided for informational purposes only. It provides the cost in FY 2012-13 to provide for salary adjustments based on the Department of Personnel and Administration's August 2011 Annual Compensation Report; and, to increase HLD rates to 100% of current market levels.

The Office's formal request reflects common policies as announced by the Executive Branch for the November budget request.

Full fiscal impact of funding the DPA's August 2011 ACR

DPA ACR Full Funding Impacts		
Type of Compensation	Cost to Reach Prevailing Market Compensation	Amount Requested
Salary Adjustments	1,863,777	0
STD, AED and SAED Impact	90,241	0
HLD Contributions (100% Market Rate)	829,394	0
Incremental Cost	\$ 2,783,412	\$ -

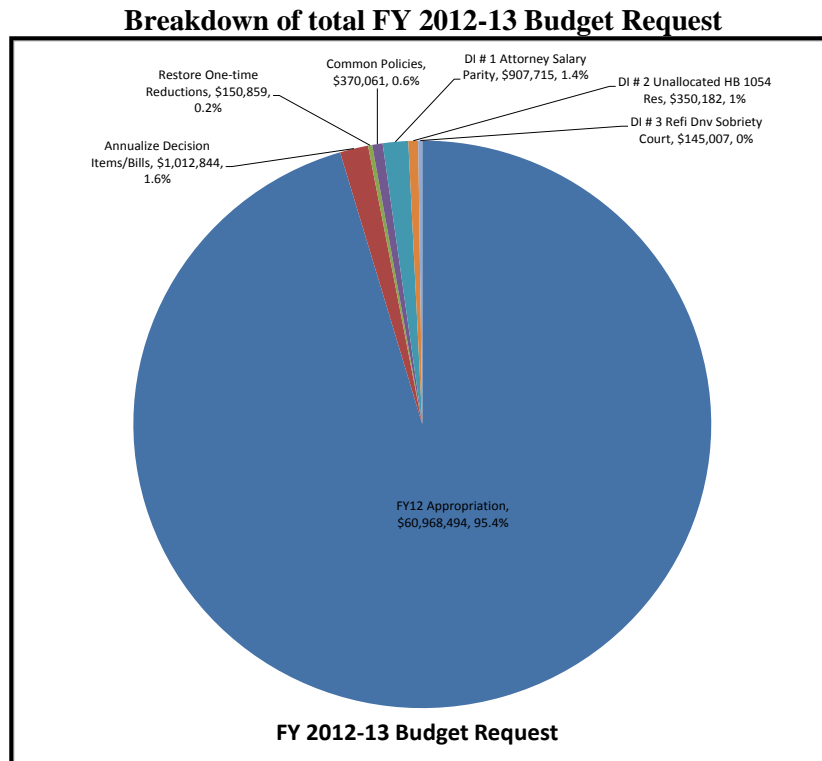
BUDGET REQUEST SUMMARY

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FY 2012-13 BUDGET REQUEST

The FY 2012-13 Budget Request for the Office of the State Public Defender is \$63,905,162 and 656.4 FTE. This represents a 15.9% reduction from the full budget requirement needed to meet MINIMUM staffing standards of attorney pay that is comparable to that provided to government attorneys across the state. The components of the Budget Request are as follows as well as depicted in table below:

- FY 2011-12 Appropriation of \$60,968,494 and 650.3 FTE
- Annualize FY 2012 decision item and SB 11-076 (PERA Employer Rate Reduction) for a total of \$1,012,844.
- Restore a one-time base reduction of \$150,859 to the Operating Expenses line used to balance the State’s FY 2012 budget.
- A request to provide for Attorney Pay Parity with prevailing markets rates at an amount of \$907,715
- A request to fund the remaining portion of HB 07-1054 consisting of 5.1 FTE and \$350,182.
- Refinancing of Denver Sobriety Court FTE from Cash Funds to General Funds at a net increase of \$145,007 and 1.0 FTE.
- Common Policy increases of \$370,061 consisting of market rate increases for Health, Life and Dental employer contributions; statutory rate increases to AED and SAED; and, adjustments to leased vehicle payments to the Department of Personnel and Administration.



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**JUDICIAL BRANCH:
Office of the State Public Defender; and Office of the Alternate Defense Counsel
FY 2012-13 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Wednesday, December 14, 2011
11:00 am – Noon**

OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC)

11:40-12:00

INTRODUCTIONS AND OPENING COMMENTS

1. Please describe the process the OADC used to develop its strategic plan.

The Office of the Alternate Defense Counsel developed its strategic plan in fiscal year 2007-2008. It is based on the agency's statutory mandate to "provide to indigent persons accused of crimes legal services that are commensurate with those available to non-indigents, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association Standards relating to the administration of criminal justice, the defense function." C.R.S §21-2-101(1). The agency determined that there are 2 objectives in its mandate:

1. To provide competent legal representation state-wide.
2. To provide cost-effective legal representation state-wide.

Performance standards were then developed to measure whether the agency is meeting these objectives. Although some of the performance standards were already in practice and others were developed as part of a 5 year plan, they were not formally documented until the FY2008-2009 Budget Request.

2. Please provide an overview of the processes or measures the OADC uses to determine whether attorneys are providing competent legal representation.

The OADC uses the following processes to determine whether attorneys are providing competent legal representation:

- 1) The agency has a rigorous contract renewal process. This includes:
 - a) Submission of a renewal application that includes sample motions or briefs.

- b) Formal interview.
- c) Input from judges.
- d) Attorney Regulation records check.

- 2) When possible, attorneys are observed in-court or during oral arguments.
- 3) Client and family member letters are reviewed for complaints and compliments about OADC attorneys.
- 4) State-wide training program.
- 5) Brief and motions bank.
- 6) Legal research assistance project.
- 7) Scrutinizing expert requests.
- 8) Auditing and reviewing attorney bills.

3. Please describe how the targets for the number of attorney hours billed per case were determined.

When the agency developed its strategic plan in FY2008-2009, an extensive analysis of attorney hours billed per case type was conducted. This data was used to determine the targets for the number of attorney hours billed per case at that time. This analysis revealed that the number of hours per case had been steadily increasing over the years. An evaluation was conducted to determine the costs that the agency could control, and those that were uncontrollable. As a result of this evaluation, the OADC developed and implemented changes to create efficiencies that would reduce billable attorney hours. These changes include:

- a). Reducing travel time by matching attorneys and jurisdictions more appropriately.
- b). Providing access to electronic court records free of charge for OADC contract attorneys.
- c). Development of an in-house appellate and post-conviction case management system.
- d). Training sessions to address time management inefficiencies.
- e). Increasing the use of the OADC brief and motions bank and legal research assistance.
- f). Contracting with document management and paralegal professionals who specialize in organization and distribution of discovery in multi-codefendant and voluminous cases.

Based on the above processes, as efficiencies are implemented, the OADC revises the targets for the number of attorney hours billed per case.

4. How does the OADC define FTE? Is the OADC using more FTE than are appropriated to the OADC in the Long Bill and separate legislation? How many vacant FTE did the OADC have in FY 2009-10 and FY 2010-11?

The OADC defines an FTE as one permanent position continuously filled by either a full time or part time person, using 2,080 hours as the base calculation for each year for a full time equivalent or partial FTE. It does not include contractual or temporary (less than 6 months) services.

The OADC is not using more FTE than are appropriated in the Long Bill or separate legislation.

The OADC did not have any vacant FTE positions in FY2009-2010. For FY2010-2011, the agency's administrative support position (which is a 0.5 FTE) personnel changed which resulted in a 0.04 FTE vacancy.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED

5. Please list and briefly describe any programs that the OADC administers or services that the OADC provides that directly benefit public schools (e.g., school based health clinics, educator preparation programs, interest-free cash flow loan program, etc.).

The OADC doesn't provide or administer any services that would benefit public schools.
