

**JUDICIAL BRANCH  
FY 2013-14 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Friday, December 14, 2012  
9:00 am – Noon**

**JUDICIAL DEPARTMENT (including the Supreme Court, Court of Appeals, Courts  
Administration, Trial Courts, and Probation)**

**9:00-9:15 INTRODUCTION AND OPENING COMMENTS**

**9:15-9:20 QUESTIONS COMMON TO ALL DEPARTMENTS**

1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"

**9:20-10:10 QUESTIONS RELATED TO FY 2013-14 BUDGET PRIORITIES**

General Questions

2. [Background Information: The Committee periodically hears about resource inequities and a lack of coordinated planning within the justice system, including:
  - Disparities in salaries paid to judges, the Attorney General, District Attorneys, and to attorneys employed by the Department of Law, and District Attorneys' offices, and the Office of the State Public Defender (OSPD);
  - Disparities in hourly rates paid and technical support provided to private attorneys by the State Court Administrator's Office, the Office of the Alternate Defense Counsel (OADC), and the Office of the Child's Representative (OCR);
  - An imbalance in staffing levels for the defense (including OSPD and OADC) and the prosecution (including District Attorneys' offices and the Department of Law); and
  - A lack of coordination when the courts initiate changes that impact the workload or costs incurred by the Department of Law, District Attorneys' offices, OSPD, OADC, or OCR.]
  - a. To what extent do resource inequities affect the outcome of cases that come before the Court?
  - b. What individual or entity is the best position to evaluate whether resource inequities exist and determine how to best address them?
  - c. By default, resource balancing decisions are often made by the Joint Budget Committee with inputs from various entities. Is the Judicial Branch satisfied with the current system? If not, what reforms would you suggest?

3. Please provide an overview of moneys available in the Judicial Stabilization Cash Fund, including:
  - a. An update on any actual or planned changes in fees that are credited to the Fund;
  - b. A recent history of revenues and expenditures from the Fund; and
  - c. Projections of fund revenues and expenditures should the Branch's FY 2013-14 request be approved.
4. Please explain how you determined which priorities would be requested from the General Fund and which would be requested from the Judicial Stabilization Cash Fund.

(JUD R-2) Procedural Fairness and Leadership Education

5. Last Spring the General Assembly approved a request for \$585,500 cash funds from the Judicial Stabilization Cash Fund to address critical education and training needs for judges. The request includes another \$517,500 cash funds from the Judicial Stabilization Cash Fund to provide ongoing training and technical assistance throughout the Branch concerning procedural fairness. Please explain the need for additional resources for this purpose. Is this a management issue?

(JUD R-4) Self-represented Litigant Coordinators

6. Last spring the General Assembly approved a request for \$840,676 cash funds from the Judicial Stabilization Cash Fund and 12.0 FTE to begin creating a statewide network of services to assist self-represented litigants. The request includes another \$705,489 and 10.0 FTE to expand such services in FY 2013-14. Please describe the services that judicial districts have implemented to date with the funds appropriated for FY 2012-13. In addition, please include any data or information about the impact of such services.
7. Please describe any "lessons learned" related to self-represented litigants. Should the General Assembly consider any statutory changes to protect self-represented litigants and ensure that they are treated fairly?

(JUD R-6) Problem-solving Court Coordinators

8. For FY 2012-13, the General Assembly appropriated \$1,000,000 General Fund to the Department of Military and Veterans Affairs for veterans services, and \$367,197 General Fund to the Judicial Branch for treatment and services for offenders participating in veterans trauma courts. Should the General Assembly adjust this mix of funding for FY 2013-14?

(JUD R-7) Implementation of Evidence-based Practices

9. The request includes \$291,447 General Fund and 3.0 FTE for the Division of Probation Services to support the statewide implementation of evidence-based and promising programs and practices. Please explain the need for additional resources for this purpose.
10. Please describe the impact or outcomes that you anticipate should this request be approved.

**10:10-10:30 OTHER ISSUES**

Probation Services

11. The Correctional Treatment Board has submitted its offender treatment funding plan for FY 2013-14. Has the Board or the Division of Probation Services discussed the potential impact of Amendment 64 (concerning the use and regulation of marijuana) on prosecution practices and the need for substance abuse treatment for offenders? If not, do you plan to do so?
12. During a recent tour of a Division of Youth Corrections facility, the Committee heard that it would be helpful if client managers could be more involved in pre-sentence screening and assessment processes. Please describe the current processes and entities involved in assessing juveniles and providing information to the court prior to sentencing. Further, please indicate whether the General Assembly should consider any statutory changes to make these processes more effective and/or to improve outcomes.

(JUD R-6) Ralph L. Carr Colorado Judicial Center

13. Please provide an update on two issues associated with the new facility:
  - a. The status of the lease agreements with the various state agencies that will be moving into the facility; and
  - b. The status of efforts to find tenants for the portion of the office building that will not be occupied by justice-related state agencies.

Criminal Appellate Case Backlog

14. [Background Information: The Department of Law has requested funding to add six Assistant Attorneys General to its Appellate Unit, four of which would be temporary positions, to reduce its backlog of criminal appeals cases awaiting the filing of an Answer Brief over the next six years, from the current level of more than 600 to a more manageable level of 60. More than 40 percent of Opening Briefs received by the Appellate Unit in FY 2011-12 were filed by the Office of the State Public Defender (OSPD), and the Appellate Unit estimates that about half of its existing case backlog consists of cases filed by the OSPD. In addition, it is our understanding that a significant backlog exists earlier in the appellate process, and more than 1,200 cases await an Opening Brief to be filed by the OSPD.]
  - a. The Committee asked the Department of Law whether it anticipates any decrease in the number of criminal appellate cases given recent declines in the number of felony criminal

filings. The Department responded that, "Theoretically, a decreasing number of criminal filings frees up the trial court system so fewer cases have to be plea-bargained, and more cases can go to trial. If more cases are tried, we have more direct appeals, which take more time and are more complicated than postconviction appeals." From the trial court perspective, is it likely that the reduction in felony cases will cause more of these cases to go to trial?

- b. Assuming that the Department of Law's Appellate Unit is successful in reducing its case backlog as projected, what would be the estimated workload impact to the Colorado Court of Appeals? What additional resources would the Court of Appeals require, if any, to ensure that this backlog of cases does not simply shift to another part of the process?
- c. If the General Assembly's goal is to reduce the overall time required to process criminal appeals cases, and thus to address the OSPD backlog as well, what additional resources would the Court of Appeals require (if any)?

#### Trends in District and County Court Case Filings

15. Please discuss general trends related to the numbers and types of civil cases filed in district and county courts.
  - a. Do these trends represent a paradigm shift for courts?
  - b. Should the General Assembly consider taking any action to react to these trends?

#### Implementation of An In-house E-filing System

16. The General Assembly recently appropriated \$1,660,000 cash funds from the Judicial Department Information Technology Cash Fund to replace four servers and three storage controller units in advance of the statewide rollout of the new e-filing system and the Department's relocation to the Carr Center. Please describe the impact of this hardware on the reliability and efficiency of the Department's IT infrastructure.

#### **ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED**

17. The Joint Budget Committee has recently reviewed the State Auditor's Office *Annual Report of Audit Recommendations Not Fully Implemented* (October 2012). If this report identifies any recommendations for the Department that have not yet been fully implemented and that fall within the following categories, please provide an update on the implementation status and the reason for any delay.
  - a. Financial audit recommendations classified as material weaknesses or significant deficiencies;
  - b. Financial, information technology, and performance audit recommendations that have been outstanding for three or more years.

NOTE: The Judicial Branch does not have any audit recommendations that fall within the above categories.

**10:30-10:45 BREAK**

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**10:45-11:30 OFFICE OF THE STATE PUBLIC DEFENDER (OSPD)**

**INTRODUCTIONS AND OPENING COMMENTS**

**QUESTIONS COMMON TO ALL DEPARTMENTS**

1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"

**(Common Policy) Salary Survey and Merit Pay, and (OSPD R-1) Attorney Pay Parity**

2. Please provide a recent history of OSPD employee salary increases that have been approved and funded by the General Assembly.
3. The OSPD, in cooperation with the Department of Law, recently contracted with an independent compensation research and consulting firm to assess market compensation practices for attorneys in comparable positions in Colorado public sector attorney organizations. Please describe the results of this study, including a comparison of market salaries for specific "benchmark" attorney job classifications with those of attorneys employed by the OSPD.
4. Please discuss whether the recent compensation study considers employee retirement benefits. Specifically, do the attorneys employed by the various organizations that were surveyed as part of the study participate in the Public Employees' Retirement Association (PERA) or receive comparable retirement benefits?
5. Last year, the OSPD requested an increase of \$2,863,900 General Fund over three fiscal years to bring its attorneys' salaries in line with market pay practices. Please explain why you are now requesting \$5,777,182 for this purpose, and why you are not proposing a phased approach.
6. If the General Assembly approves this request, will it eliminate the gap between OSPD attorney salaries and market pay practices?

**(OSPD R-2) Operating Shortfalls**

7. The request includes \$1,160,693 to address funding shortfalls in various operational appropriations. Please describe the need for this request.

### Rates Charged by Prosecuting Attorneys for Duplicating Discoverable Materials

8. [Background Information: Colorado Supreme Court Rule 16 requires the prosecuting attorney to make available to the defense certain material and information which is within his or her control and to provide duplicates upon request. The rule requires that the "cost of duplicating" any discoverable materials shall be paid by the party receiving the material, and shall be based on the "actual cost of copying" the materials.]
- a. Please provide a recent history of total OSPD payments to District Attorney's offices and to the Department of Law for discoverable materials.
  - b. Please provide data that indicates the range and variation in rates charged by District Attorneys' offices and the Department of Law for discoverable materials.
  - c. Please describe any efforts the OSPD has made to resolve disagreements concerning procedures and fees associated with duplicating discoverable materials.
  - d. What actions should the Joint Budget Committee and/or the General Assembly consider taking to develop and implement a workable solution to resolve these disagreements?

### Criminal Appellate Case Backlog

9. [Background Information: The Department of Law has requested funding to add six Assistant Attorneys General to its Appellate Unit, four of which would be temporary positions, to reduce its backlog of criminal appeals cases awaiting the filing of an Answer Brief over the next six years, from the current level of more than 600 to a more manageable level of 60. More than 40 percent of Opening Briefs received by the Appellate Unit in FY 2011-12 were filed by the OSPD, and the Appellate Unit estimates that about half of its existing case backlog consists of cases filed by the OSPD.]
- a. Assuming that the Department of Law's Appellate Unit is successful in reducing its case backlog as projected, what would be the estimated workload impact to the OSPD? What additional resources would the OSPD require, if any, to ensure that this backlog of cases does not simply shift to the OSPD?
  - b. It is our understanding that a significant backlog exists earlier in the appellate process, and more than 1,200 cases await an Opening Brief to be filed by the OSPD. If the General Assembly's goal is to reduce the overall time required to process criminal appeals cases, and thus to address both of these backlogs, what additional resources would the OSPD require?
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**11:30-11:50      OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC)**

**INTRODUCTIONS AND OPENING COMMENTS**

1. [Background Information: Colorado Supreme Court Rule 16 requires the prosecuting attorney to make available to the defense certain material and information which is within his or her control and to provide duplicates upon request. The rule requires that the "cost of duplicating" any discoverable materials shall be paid by the party receiving the material, and shall be based on the "actual cost of copying" the materials.]
    - a. Please provide a recent history of total OADC payments to District Attorney's offices and to the Department of Law for discoverable materials.
    - b. Please provide data that indicates the range and variation in rates charged by District Attorneys' offices and the Department of Law for discoverable materials.
    - c. Please describe any efforts the OADC has made to resolve disagreements concerning procedures and fees associated with duplicating discoverable materials.
    - d. What actions should the Joint Budget Committee and/or the General Assembly consider taking to develop and implement a workable solution to resolve these disagreements?
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**11:50-12:00      OFFICE OF THE CHILD'S REPRESENTATIVE (OCR)**

**INTRODUCTIONS AND OPENING COMMENTS**

**QUESTIONS COMMON TO ALL DEPARTMENTS**

1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"
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For the coming year, Judicial has three main areas of focus:

- **Salary**
- **Training and Education**
- **Resources**

Priority	Decision Items	FTE	Total	GF	CF	RF	FF
1	New District Judges & Staff	8.0	\$ 892,951		892,951		
2	Procedural Fairness and Leadership Education		\$ 517,500		517,500		
3	Legal FTE	1.6	\$ 181,702	181,702	-	-	-
4	Self-Represented Litigant Coordinators	10.0	\$ 705,489		705,489		
5	Court-Appointed Professional Coordinator	1.0	\$ 91,456	91,456			
6	Problem-Solving Courts	5.0	\$ 451,133		451,133		
7	Evidence-Based Practice Implementation	3.0	\$ 291,447	291,447			

**9:15-9:20 QUESTIONS COMMON TO ALL DEPARTMENTS**

1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"

**Historically, Judicial has experienced this unintended consequence like many other Departments. Recently, other factors have mitigated the impact. The lack of salary increases and increased turnover has caused salary costs to decline at a faster rate than vacancy savings has increased, thereby, temporarily mitigating the "death spiral". We fully expect this to become a larger problem again as salary increases return and our workforce stabilizes.**



## 9:20-10:10 QUESTIONS RELATED TO FY 2013-14 BUDGET PRIORITIES

### General Questions

2. [Background Information: The Committee periodically hears about resource inequities and a lack of coordinated planning within the justice system, including:
- Disparities in salaries paid to judges, the Attorney General, District Attorneys, and to attorneys employed by the Department of Law, and District Attorneys' offices, and the Office of the State Public Defender (OSPD);
  - Disparities in hourly rates paid and technical support provided to private attorneys by the State Court Administrator's Office, the Office of the Alternate Defense Counsel (OADC), and the Office of the Child's Representative (OCR);
  - An imbalance in staffing levels for the defense (including OSPD and OADC) and the prosecution (including District Attorneys' offices and the Department of Law); and
  - A lack of coordination when the courts initiate changes that impact the workload or costs incurred by the Department of Law, District Attorneys' offices, OSPD, OADC, or OCR.]
- a. To what extent do resource inequities affect the outcome of cases that come before the Court?

**The successful operation of the court system relies on more than just adequately staffing judgeships and clerk staff. This complex system requires all entities to have a minimal staffing level for cases to proceed. As pointed out in this question, equitable staffing among the various agencies is imperative for the system to operate in a fair manner. Since defendants have a right to counsel, the result of underfunding the defense side of the equation does not result in parties appearing without representation. However, the quality of representation may be impacted by attorneys who have heavy caseloads. Similarly, inadequate staffing of prosecutors can result in delay or decisions to decline prosecution of some matters. Inadequate staffing of either the district attorney or public defender may also impact an attorney's willingness to push for a plea bargain rather than trial. On the court side, inadequate funding may lead to delay, or in the extreme, cases lost for speedy trial reasons.**

**The concern about resource inequity affecting the outcome of cases is real. While there is no statistical data to illustrate the concern, the legislature's creation of the Office of the Alternate Defense Counsel and the Office of Child's Representative grew out of a similar concern. Because the Public Defender's Office is a statewide attorney office, resources can be shared more easily as the need arises. The District Attorney's offices are judicial district-wide offices, leading to a constant discussion about the potential, and sometimes realized, disparity in staffing and support in mostly rural locations. This disparity is most pronounced in these instances.**

- b. What individual or entity is the best position to evaluate whether resource inequities exist and determine how to best address them?

**For the Courts and Probation budget, the legislature is in the best position to evaluate the resource needs as it would not be appropriate for the Governor to review and approve the budget requests. To the extent the legislature can be a catalyst for a discussion about improving systems not under the control of the state budget, it may be appropriate to convene such a group, knowing that the budgetary issues may present an obstacle to non-state funded positions.**

- c. By default, resource balancing decisions are often made by the Joint Budget Committee with inputs from various entities. Is the Judicial Branch satisfied with the current system? If not, what reforms would you suggest?

**For budgetary purposes, the Colorado legislature funds the Judicial Branch as one entity. This entity includes Courts and Probation, as well as several law related agencies, the Office of the State Public Defender, the Office of the Child's Representative, the Office of the Alternate Defense Counsel, and the Office of Judicial Performance, each of which develops, submits, and manages its own budget. A more coordinated approach, such as that provided by the Office of State Planning and Budgeting in the Executive Branch, would ease the burden currently placed on the Joint Budget Committee of ensuring the balance of resources provided to each agency. However, there is an inherent conflict in having the Chief Justice, the executive head of Courts and Probation, influence the resource level available to agencies who appear in those courts, sometimes in opposition to each other. Similarly, there is a conflict in asking an office of the Governor to oversee the Judicial Branch budget.**

**Each of the agencies within the Judicial Branch is established as a completely independent entity. Each has its own governance structure, which determines the agency's resource needs, including the number and type of people needed, and how those people should be paid. In terms of District Attorney's offices, there is further complication in that each office is funded with both state and local monies. The Branch recognizes that this is a complex system, and while identifying disparities and determining the extent to which they can and should be addressed is inappropriate for the Chief Justice.**

**One of the areas that can be addressed by Courts and Probation is ensuring coordination in court-driven policy changes that affect other agencies within the Judicial Branch. In general, the systemic impact of policy changes or innovations in case management is always a consideration. However, there have been times where coordination with other impacted agencies could have been more robust. For example, treatment courts, as a program, enjoy broad support, but could have**

**benefitted from better coordination during the planning stages to better anticipate resource needs in impacted agencies.**

3. Please provide an overview of moneys available in the Judicial Stabilization Cash Fund, including:

a. An update on any actual or planned changes in fees that are credited to the Fund;

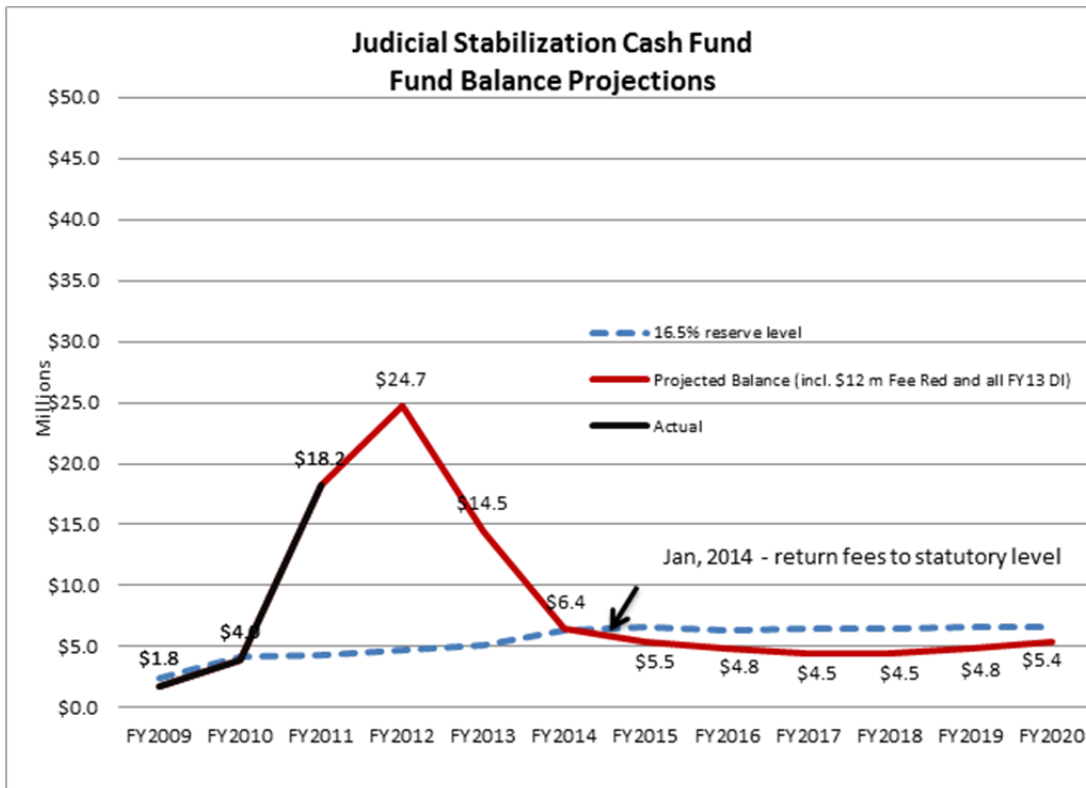
**The Chief Justice reduced fees that contribute to the Judicial Stabilization Fund effective January 2012 (half of FY2012). The intent is that the fees will be increased again in FY2014 in order to support the existing obligations from this cash fund, along with any new requests. The fee increase is reflected in the projected revenue below.**

b. A recent history of revenues and expenditures from the Fund; and

	Actual FY 2011	Actual FY 2012	Projected FY 2013	Projected FY 2014	Projected FY 2015
<i><u>Beginning Fund Balance</u></i>	<u>3,957,684</u>	<u>18,225,421</u>	<u>24,691,902</u>	<u>14,488,866</u>	<u>6,434,475</u>
Revenue	41,589,012	34,477,976	26,743,000	36,010,430	39,370,534
Fee Reduction					
Denver County	665,296	77,088	100,000	500,000	500,000
Interest	311,787	393,038	281,480	152,501	27,249
Total Revenue	42,566,095	34,948,102	27,124,480	36,662,931	39,897,784
Expenditures:					
Program Costs	28,298,358	28,481,621	37,327,515	38,301,749	40,868,822
Decision Items/Legislation				6,415,573	0
Total Expenditures	28,298,358	28,481,621	37,327,515	44,717,322	40,868,822
<b>Fund Balance</b>	<b>18,225,421</b>	<b>24,691,902</b>	<b>14,488,866</b>	<b>6,434,475</b>	<b>5,463,436</b>
% Reserve	68.7%	87.3%	50.9%	17.2%	12.2%
Reserve increase/(decrease)	14,267,737	6,466,481	(10,203,036)	(8,054,392)	(971,039)

c. Projections of fund revenues and expenditures should the Branch's FY 2013-14 request be approved.

**Assuming full funding of all cash funded decision items, it is anticipated that the Chief Justice will, in compliance with sections 24-75-402 (4) (v) and 13-32-105.5 C.R.S., reinstate the filing fees to their full statutory level by Jan 2014. Based on this, it is projected that the fund will bottom out in FY2018 at just under \$4.5 million, or a 10.9% reserve.**



4. Please explain how you determined which priorities would be requested from the General Fund and which would be requested from the Judicial Stabilization Cash Fund.

**Any new requests that are directly court related or have historically been all or partially funded via the Judicial Stabilization Cash Fund were requested from the cash fund. The requests for Administration and Probation FTE were requested from the general fund, as those sections of the long bill have not historically included cash funds from the Judicial Stabilization Fund.**

**The new requests from the cash fund include:**

- **New District Judges and Staff**
- **Procedural Fairness and Leadership Education**
- **Self-Represented Litigant Coordinators**
- **Problem-Solving Courts**
- **Courthouse Capital and Infrastructure Replacement**

**The new requests from GF include the following, all located at SCAO:**

- **Legal FTE**
- **Court-Appointed Professional Coordinator**
- **Evidence-Based Practice Implementation**

(JUD R-2) Procedural Fairness and Leadership Education

5. Last Spring the General Assembly approved a request for \$585,500 cash funds from the Judicial Stabilization Cash Fund to address critical education and training needs for judges. The request includes another \$517,500 cash funds from the Judicial Stabilization Cash Fund to provide ongoing training and technical assistance throughout the Branch concerning procedural fairness. Please explain the need for additional resources for this purpose. Is this a management issue?

**This budget request is to pay for education and training for District Administrators and Chief Probation Officers that parallels the management and leadership training programs that were developed and are being offered to Chief Judges through the FY2013 appropriation. Additionally, these funds will be put toward local practices that will be implemented statewide to reduce the growing perception that the judicial system is so complex and complicated that receiving a fair trial is next to impossible for the average individual.**

**Colorado has an excellent judiciary. The leadership education provided with this decision item folds the next group of current leaders into the effort started with the Chief Judges in FY2013. The goal is to maintain the efficiencies that have been achieved in case management, and to improve the quality of service provided to every individual who walks through the doors of a Colorado courthouse or probation office by ensuring that they feel they have had the opportunity to be heard and that they understand the legal process and what is expected of them. Research shows that implementation of these practices-collectively called procedural fairness-not only improves perceptions of justice and but also compliance with court orders. Especially in criminal and domestic relations cases, a litigant who leaves court having fully participated in the court case and who understands the court's order and the reasons why it was entered, follow through more often without returning to court, resulting in greater court efficiency.**

**This decision item addresses neither a management problem nor an effort to retrain substandard employees. Instead, it is a means of asking the district management teams-that is, each district's Chief Judge, District Administrator, and Chief Probation Officer-to teach and lead court and probation staff to extend procedural fairness at every opportunity. This training, education, and leadership development will take the Colorado courts and probation to the next level of excellence.**

(JUD R-4) Self-represented Litigant Coordinators

6. Last spring the General Assembly approved a request for \$840,676 cash funds from the Judicial Stabilization Cash Fund and 12.0 FTE to begin creating a statewide network of services to assist self-represented litigants. The request includes another \$705,489 and 10.0 FTE to expand such services in FY 2013-14. Please describe the services that judicial districts have implemented to date with the funds appropriated for FY 2012-13. In addition, please include any data or information about the impact of such services.

**In June of 2012 the Planning and Analysis Standing Committee recommended to the Chief Justice that the 12.0 FTE be allocated based on proposals submitted by the judicial districts. Generally, new FTE are allocated based on district staffing levels using current caseloads. The intent of the proposal-based approach was to encourage creative, locally-based solutions and to test a variety of service methods. In addition, the proposal process emphasized the use of public private partnerships. Through this process, the SCAO hopes to identify successful service methods which will be able to serve as a model for other districts and to leverage private resources such as partnerships with local law firms who have agreed to provide pro bono services in some locations.**

**As stated above there were benefits in requiring districts to draft proposals for the use of the FTE. However, the process took longer than a normal allocation process, resulting in a small delay in hiring the coordinators. Over the summer of 2012, 18 of the 22 judicial districts submitted applications, requesting 22.5 FTE total. In September of this year the 12 FTE were allocated across 11 districts. The proposals addressed a number of different approaches ranging from partnering with local libraries, providing online and remote services, to a more traditional, face-to-face, in person service model.**

**As of this writing, 7 of the 11 districts have hired their positions, with the remaining positions expected to be on board by the end of this calendar year. Though we do not have data to report on these services as of yet, one condition of the proposal process was that each district collect data regarding their services and submit it regularly to the SCAO. We believe that we will have information to share in the months and year to come. One of the districts that received FTE has already embarked on a public/private partnership to enhance services. The 17<sup>th</sup> District (Adams and Broomfield Counties) has started a partnership with the law firm of Brian Cave HRO and the legal department at CenturyLink Communications in order to pilot on demand pro bono legal assistance for parties seeking assistance.**

**SCAO is acting as a liaison among the judicial districts regarding their programs so that efforts are not duplicated and so that resources can be consolidated. For instance, if one district creates an online video regarding filing a county court civil case without an attorney, that video can be used by other districts throughout the state. This office also is working to keep local access to justice committees and other community stakeholders informed and involved with the evolving models.**

7. Please describe any "lessons learned" related to self-represented litigants. Should the General Assembly consider any statutory changes to protect self-represented litigants and ensure that they are treated fairly?

**Self-represented litigants represent ever-increasing numbers and challenges for the courts. Last year, 75% of parties in domestic relations cases did not have an attorney and in civil cases over half of the parties, about 53%, are self-represented. Self-represented persons constituted a cross-section of our population and socio-economic status. We have learned the following lessons:**

- 1. These cases require much more attention and focus by the entire court system—court staff and judges. Chief judges and their local management teams--district administrators, clerks of court and chief probation officers must orient all staff to providing individual service and attention to the needs of self-represented litigants.**
- 2. Court systems must focus on making access to the court much more user-friendly by creating clear online forms, training staff to explain court procedures, increase signage in the courthouse, ensure the judicial website is user-friendly, create brochures that explain court procedures clearly and simply, and provide for interpreter services (currently over 75 different languages are provided).**
- 3. Each of the 22 judicial districts must partner with existing local resources and community groups--such as libraries, churches, service groups, local bar associations and non-profits--to assist with access to the court system by unrepresented parties. An example of this cooperation occurred in Adams County, where the district administrator learned that many self-represented litigants sought help to access online forms from the public libraries, and, as a result, court personnel trained local librarians in how to access forms on our website and respond to basic questions that help self-represented litigants access the courthouse.**

**As far as statutory changes to protect the self-represented litigant's right to due process, the legislature's changes to statutes in the foreclosure and forcible entry and detainer areas have already legislated required warnings and notices meant to inform an unrepresented litigant of the potential loss of property rights. The addition of the family court facilitator in the trial courts is another example of creating capacity to assist self-represented litigants to meet the challenge of presenting a court case. At this time we cannot identify statutory changes that would increase protections for self-represented litigants; rather as an organization, we are committed to leveraging our resources to assist the litigants to access forms, prepare for court, and properly carry out court orders.**

(JUD R-6) Problem-solving Court Coordinators

8. For FY 2012-13, the General Assembly appropriated \$1,000,000 General Fund to the Department of Military and Veterans Affairs for veterans services, and \$367,197 General Fund to the Judicial Branch for treatment and services for offenders participating in veterans trauma courts. Should the General Assembly adjust this mix of funding for FY 2013-14?

**Currently there are three operational veteran trauma courts, two in the Fourth Judicial District (El Paso County) and one in the Denver District Court. The Eighteenth Judicial District (Arapahoe County) is in planning and anticipates becoming operational in the first quarter of 2013. The current programs have a capacity for 130 participants. Capacity for another 20 participants is anticipated once the court in the 18<sup>th</sup> District is operational. The table below illustrates the program capacity in each location.**

<b>Veteran Trauma Court Capacity by Location</b>		
Judicial District	Location	Program Capacity
Denver District	Denver	30 participants
4 <sup>th</sup>	Colorado Springs	100 participants (district court and county court combined)
18 <sup>th</sup>	Centennial	20 participants

**The FY 2012-13 appropriation to Courts and Probation for veteran trauma courts primarily fills the gap in services and treatment for veterans not eligible for VA benefits and additional treatment not provided by the VA. Other than \$17,000 set aside for training veteran trauma court teams, the remaining money allocated to Courts and Probation is going to treatment and services for offenders. Given the current capacity of the veteran trauma courts, the mix of funding does not need to be changed.**

(JUD R-7) Implementation of Evidence-based Practices

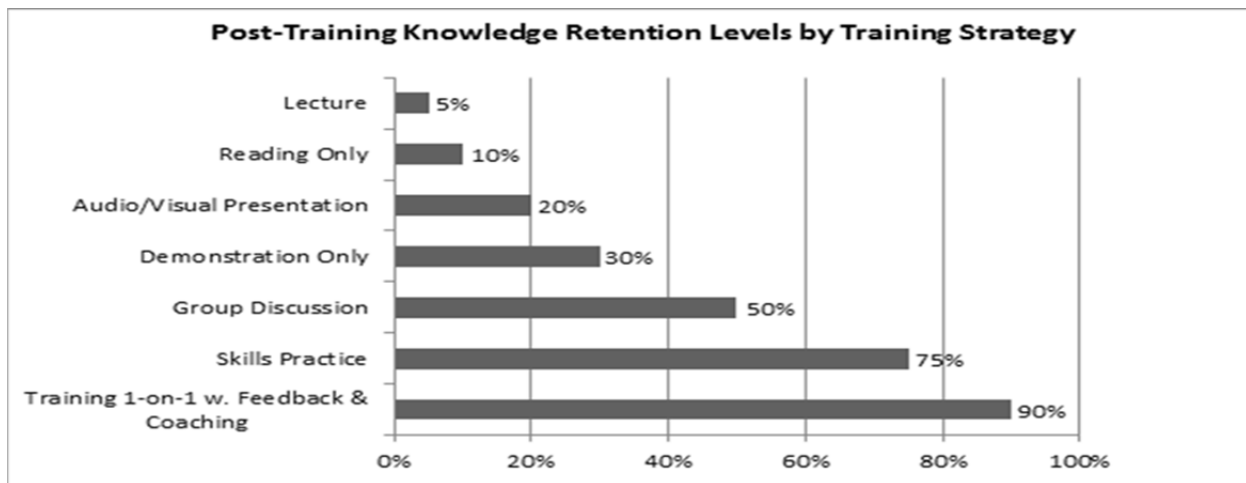
9. The request includes \$291,447 General Fund and 3.0 FTE for the Division of Probation Services to support the statewide implementation of evidence-based and promising programs and practices. Please explain the need for additional resources for this purpose.

**The Division of Probation Services provides administrative, programmatic, evaluation and training support to the 23 probation departments totaling 1,192 staff. While the number of probation staff has grown significantly, the Division of Probation Services has the same number of staff to support the departments as it did in 2007 when the probation staff totaled 946. This staff request will allow probation to use a more effective method of implementing evidence-based and best practices in the field. In the**



past, probation has used a standard model of lecture based training and then expected the probation officers to return to their jobs and implement the new skills. There was little or no training available to prepare supervisors to understand and monitor the application of new skills and to coach to higher levels of proficiency. Only recently has probation been introduced to implementation science and a more efficient, cost-saving way of doing business. “Implementation is the art and science of incorporating innovations into typical human service settings to benefit children, families, adults, and communities.” (The National Implementation Research Network, Implementation Brief, January 2009). It is often considered the missing link between research and practice. It is resource-intensive and is designed to effectively and efficiently implement well-researched programs. Without proper implementation, it is unlikely that evidence-based programming will achieve demonstrated results or be sustained over time for those results to mature.

There is a significant amount of research that indicates lecture type trainings are the least effective method of learning new skills. The graph below demonstrates the retention of information when staff training is delivered in the traditional, lecture style versus the model which we are adopting; one-on-one skill building, feedback and coaching. Skill building with coaching has been proven to increase retention and improve effects, when compared to other forms of learning. The 1.0 FTE Education Specialist will provide an additional resource for probation to move to this model of professional development. This will provide cost avoidance by properly building skills that will be sustained by the probation officer, through support of the local supervisor, avoiding the more costly repeated trainings necessary in the old model. Furthermore, a properly trained officer is more likely to affect long term behavior change, which ultimately leads to reduced recidivism. Reductions in recidivism are vital to public safety, as well as the cost avoidance realized through decreased use of costly prisons beds and tax payer dollars related to community reparations.



**In regard to the 2.0 FTE Management Analyst positions, these new staff will allow probation to more fully implement projects with fidelity to proven models. Implementation models require implementation teams to shepherd the process through the estimated two to four years that it takes to fully, and successfully, implement a sustainable project. The 2.0 FTE are vital to this process. They will lead the implementation teams from the Division of Probation Services, assist the local probation departments to establish their internal implementation teams, provide the initial training to supervisors and probation officers, coordinate on-going technical assistance, and monitor the implementation process throughout. Research has shown that programs that monitored implementation obtained outcomes that were between three and twelve times larger than programs that reported no monitoring. Colorado Probation is a national leader in the field because of its use of evidence-based practices, programs, and principles. The 2.0 FTE will allow Colorado to improve its service to the community by consistently achieving strong outcomes with offenders.**

10. Please describe the impact or outcomes that you anticipate should this request be approved.

**Colorado Probation supervises 74,649 adults and 5,471 juveniles in the community (June 20, 2012). Probation manages 66.8% of all adult offenders sentenced to community supervision or prison with a budget that is approximately 8.7% of total general fund spending on community and prison corrections. Probation has increased success rates on average for its largest population (adult regular supervision, state and private combined) by approximately 2% each year since FY06 and decreased technical violations at a similar rate. The decrease in technical violations resulting in a sentence to the Department of Corrections has gone from a high of 1,729 in 2005 to 847 in 2011. This is an annualized cost avoidance of approximately \$31,000 per offender. In 2011 the reduction in prison placements, from 2010, was 90, resulting in a one-year cost avoidance of \$2.76 million. Recidivism rates while on supervision hover between 6% and 7%. Recidivism rates one-year post-release have decreased approximately one half of 1% every year since FY06 with the lowest rate in 10 years in FY11 at 5.8%. This progress has been achieved while the number of adult probationers under supervision has increased by approximately 20,000 from 2006 to 2011.**

**In order to sustain practices that lead to improved outcomes, probation is studying and employing implementation science. The additional FTE at the Division of Probation Services will build the capacity for quality implementation of evidence-based practices as noted in the response to Question #6 above. Rather than results plateauing in the near future, we expect to be able to continue to achieve small but steady increases in percentage success rates and reductions in technical violations rates similar to what has been achieved since FY06. In the long-run, we expect**

recidivism rates to decrease as the evidence-based programs being readied for implementation focus on more long-term behavioral change rather than simply short-term compliance.

The cost of this decision item is the equivalent of the approximate annual cost of 9 adults incarcerated for one year in the Department of Corrections. Cost avoidance beyond this amount will certainly be achieved as the result of improved implementation of evidence-based practices.

#### **10:10-10:30 OTHER ISSUES**

##### Probation Services

11. The Correctional Treatment Board has submitted its offender treatment funding plan for FY 2013-14. Has the Board or the Division of Probation Services discussed the potential impact of Amendment 64 (concerning the use and regulation of marijuana) on filing practices and the need for substance abuse treatment for offenders? If not, do you plan to do so?

**The Judicial Branch has been very involved in the monitoring and tracking of Amendment 64 and provided a fiscal analysis to Legislative Council for the blue book prior to the election. The analysis resulted in a minimal fiscal impact to the Branch with the belief being that legalization of marijuana will not significantly impact the number of case filings or offenders requiring probation supervision and associated treatment. This topic is on the agenda for the Correctional Treatment Board's December 18th meeting where the impacts will be discussed for all involved agencies. It should be noted that because marijuana is still illegal under federal law, probationers (and presumably other criminal justice clients) will continue to be prohibited from marijuana use. Further, the legalization of a substance does not prohibit someone from abusing or becoming dependent on the substance. Therefore, a treatment need is likely to exist after Amendment 64 implementation.**

12. During a recent tour of a Division of Youth Corrections facility, the Committee heard that it would be helpful if client managers could be more involved in pre-sentence screening and assessment processes. Please describe the current processes and entities involved in assessing juveniles and providing information to the court prior to sentencing. Further, please indicate whether the General Assembly should consider any statutory changes to make these processes more effective and/or to improve outcomes.

**When ordered by the court, Probation works to gather as much information as possible when preparing a Pre-Sentence Investigation Report (PSIR) on a juvenile adjudicated for a delinquent offense and where commitment to DYC is an option. Pre-sentence investigation writers obtain information from various sources, including but not limited to, law enforcement, NCIC/CCIC, local departments of Human Services, school districts where the juvenile is or has been enrolled, mental health providers, and when available the Division of Youth Corrections (DYC).**

**Information obtained from these sources is used during the PSI assessment process which includes the administration of the validated risk/need/strength assessments. Documentation on prior detention and commitment sentences is available in court records and is considered during the screening and assessment process and may be reflected in the recommendations provided in the PSIR. It should be noted that Section 19-2-905 C.R.S. already mandates the juvenile PSIR shall take into consideration and build on intake assessment performed by the screening team. Additional information from the DYC may be available during other collaborative efforts between agencies, while not necessarily at the PSI stage, such as part of the collaborative management program, during SB94 and other staffing or when a revocation is pending and commitment is a possible outcome.**

**Information from detention case managers has not been used as a routine source of information for inclusion in the PSIR, but this idea should be explored further. There may be some challenges to this becoming a regular practice however the Division of Probation Services is willing to initiate a dialogue with DYC staff to explore this issue further. Once the idea has been discussed there may or may not be a need for statutory language.**

(JUD R-6) Ralph L. Carr Colorado Judicial Center

13. Please provide an update on two issues associated with the new facility:

- a. The status of the lease agreements with the various state agencies that will be moving into the facility; and

**Trammel Crow is finalizing the lease agreements and they should be in place prior to tenant move in.**

- b. The status of efforts to find tenants for the portion of the office building that will not be occupied by justice-related state agencies.

**As of today, the building is 95% leased with approximately 27,000 SF still available. Jones Lang LaSalle, the state's real estate vendor, is looking at both state agencies and private tenants to fill this remaining space.**

Criminal Appellate Case Backlog

14. [Background Information: The Department of Law has requested funding to add six Assistant Attorneys General to its Appellate Unit, four of which would be temporary positions, to reduce its backlog of criminal appeals cases awaiting the filing of an Answer Brief over the next six years, from the current level of more than 600 to a more manageable level of 60. More than 40 percent of Opening Briefs received by the Appellate Unit in FY 2011-12 were filed by the Office of the State Public Defender (OSPD), and the Appellate Unit estimates that about half of its existing case backlog consists of cases filed by the OSPD. In addition, it is our understanding that a significant backlog exists earlier in the appellate process, and more than 1,200 cases await an Opening Brief to be filed by the OSPD.]

- a. The Committee asked the Department of Law whether it anticipates any decrease in the number of criminal appellate cases given recent declines in the number of felony criminal filings. The Department responded that, "Theoretically, a decreasing number of criminal filings frees up the trial court system so fewer cases have to be plea-bargained, and more cases can go to trial. If more cases are tried, we have more direct appeals, which take more time and are more complicated than postconviction appeals." From the trial court perspective, is it likely that the reduction in felony cases will cause more of these cases to go to trial?

**Although we are unable to predict how trial rates might be affected based upon felony filings, a review of the past several years of filings and trials held in felony criminal cases statewide does not indicate that trial rates necessarily rise with decreasing filings. That being said, the data do seem to suggest that trial rates have not decreased at the same rate as filings. Felony filings decreased by 20% between FY2007 and FY2012 while the number of trials decreased by 10% in the**

same time period. Overall, the actual number of trials had decreased by 121 between FY 2001 and FY 2012. See table below:

Statewide Felony Filings and Trials Held		
Fiscal Year	Felony Filings	Felony Trials Held*
2007	44,644	1,233
2008	40,877	1,358
2009	39,854	1,185
2010	37,120	1,268
2011	36,080	1,135
2012	35,669	1,112
*indicates that at least one day of trial was held in a felony case in the fiscal year indicated		

- b. Assuming that the Department of Law's Appellate Unit is successful in reducing its case backlog as projected, what would be the estimated workload impact to the Colorado Court of Appeals? What additional resources would the Court of Appeals require, if any, to ensure that this backlog of cases does not simply shift to another part of the process?

See below, 14c.

- c. If the General Assembly's goal is to reduce the overall time required to process criminal appeals cases, and thus address the OSPD backlog as well, what additional resources would the Court of Appeals require (if any)?

**The Colorado Court of Appeals currently has no backlog of cases that are fully briefed and ready for assignment to a panel of judges. The Court's calendar is set on a monthly basis and cases are currently being placed on the court's calendar for oral argument or conference (if no oral argument is requested) 2-4 weeks after the close of briefing in a particular case.**

**In FY 2012, Criminal Appeals made up approximately 42% of the new appellate filings with the Colorado Court of Appeals. The backlog of cases in the briefing process currently with both the OSPD and the DOL appellate unit, while not at issue and therefore not ready for review by a panel of judges, already consume resources at the Colorado Court of Appeals in terms of case management. The substantial delays in the briefing process at present result in an inordinate number of motions for extensions of time that the court must review. These require staff attorney and judge resources to determine these motions. With the increase in resources to the DOL appellate unit, the court should experience some mitigation of the demand for resources in criminal appeals in the case management arena, and those resources would be able to shift to focus on case resolution.**

**On average it is estimated that each lawyer in the DOL appellate unit would produce at best 4 briefs per month; and if all 6.0 FTE in the request were allocated to DOL this would mean 24 additional cases being ready for calendaring on a monthly basis. With these cases being assigned among the seven divisions of 3 judges currently allocated to the Court of Appeals, this would result in a little more than one case per judge per month. Accordingly, the Colorado Court of Appeals does not anticipate any difficulty handling this modest increase in the number of cases at issue and will not, as a result, require additional resources.**

#### Trends in District and County Court Case Filings

15. Please discuss general trends related to the numbers and types of civil cases filed in district and county courts.
- a. Do these trends represent a paradigm shift for courts?
  - b. Should the General Assembly consider taking any action to react to these trends?

**Recent civil filing growth has not represented a paradigm shift for courts. Filing growth in district and county civil has been moderate, overall. During the same time, the courts have experienced strong growth in two areas- tax liens and foreclosures. However, these case types have a relatively minor impact on workload and therefore, the volatility has not placed undue burden on the courts.**

**The courts have not identified any necessary statutory changes to react to civil case filing trends. Courts and Probation continue to seek ways to improve the quality of the civil justice system in Colorado. In partnership with The Institute for the Advancement of the American Legal System (IAALS) at the University of Denver, the Supreme Court is currently piloting a case management program for district court civil cases in several Front Range judicial districts—1<sup>st</sup> District (Jefferson County), the Denver District Court, the 17<sup>th</sup> District (Adams County), and the 18<sup>th</sup> District (Arapahoe County). The Civil Access Pilot Project, applies generally to business actions (with a few exceptions), and went into effect on January 1, 2012 for a two-year period. At the request of the Court, IAALS will study the effect of the pilot at the end of that period.**

**One of the guiding principles behind the pilot is the idea that the litigation tools employed by parties in a case should be proportionate to the type of case and level of complexity. Not every business dispute, for example, requires exhaustive discovery in order to reach resolution. Sometimes, far-reaching discovery is used as a tactic by litigants to delay cases to force settlement or exhaust the resources of the opposing party. The intent of the pilot is to reduce the burden of civil litigation (in both cost and time) on litigants and courts, increase access to judicial dispute resolution, and protect the civil trial as a valuable institution. In order to accomplish these goals, rules of procedure were established for the pilot to ensure that all known information in a case is available as soon as possible and to reduce gamesmanship between the parties in a dispute. Among other things, the pilot rules require:**

- **More active case management by judges**
- **Fact based pleading of material issues instead of stating claims in general terms**
- **Increase required initial disclosures of all witnesses, favorable and unfavorable, and documents between parties**
- **No depositions of expert witnesses**

Implementation of An In-house E-filing System

16. The General Assembly recently appropriated \$1,660,000 cash funds from the Judicial Department Information Technology Cash Fund to replace four servers and three storage controller units in advance of the statewide rollout of the new e-filing system and the Department's relocation to the Carr Center. Please describe the impact of this hardware on the reliability and efficiency of the Department's IT infrastructure.

**With the \$1,660,000, the Judicial Department's IT division purchased and has successfully placed into production the two new mid-range iSeries servers, as well as the two new storage controller units. The results of this upgrade have proven invaluable as it has allowed the Department to achieve efficiencies and reliability in the following areas:**

1. The Department was able to consolidate two production iSeries servers and one development iSeries server into a single server.
2. The antiquated iSeries server at the Department's disaster recovery site (E-Fort) was also replaced to handle system failover in the event of a production server outage.
3. The Department also achieved its goal of eliminating three critically important risks with the early implementation of the servers and controller units. The mitigated risks include the following:
  - a. The systems were in place during critical development and quality control stages of the in-house e-filing project and well before the e-filing system went live on October 1<sup>st</sup>, 2012.
  - b. The systems were fully operational nearly a year before the Department's move to the Ralph Carr Justice Center.
  - c. The Department is now capable of handling and storing large volumes of data and documents.
4. The Department was able to successfully consolidate two NetApp controller units into a single enterprise level controller unit.
5. Since document retrieval and storage is a core function of the Department's e-filing and case management systems, the new controller unit has increased overall system performance and system reliability through the use of redundant network paths.



**The money that was received to cover the hardware expenditures was spent precisely as outlined in the Department's supplemental request in order to achieve its goal of enhancing the reliability and efficiency of its infrastructure.**

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

17. The Joint Budget Committee has recently reviewed the State Auditor's Office *Annual Report of Audit Recommendations Not Fully Implemented* (October 2012). If this report identifies any recommendations for the Department that have not yet been fully implemented and that fall within the following categories, please provide an update on the implementation status and the reason for any delay.
- a. Financial audit recommendations classified as material weaknesses or significant deficiencies;
  - b. Financial, information technology, and performance audit recommendations that have been outstanding for three or more years.

NOTE: The Judicial Branch does not have any audit recommendations that fall within the above categories.

**10:30-10:45      BREAK**  
**10:45-11:30      OFFICE OF THE STATE PUBLIC DEFENDER (OSPD)**  
**11:30-11:50      OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC)**  
**11:50-12:00      OFFICE OF THE CHILD'S REPRESENTATIVE (OCR)**

**FISCAL YEAR 2013-14**

**BUDGET HEARING**

Before  
The Joint Budget Committee  
Of The Colorado General Assembly



**APPEARING ON BEHALF OF THE AGENCY:**

**DOUGLAS K. WILSON**  
*COLORADO STATE PUBLIC DEFENDER*

**DOUGLAS D. TRACEY**  
*Chief Administrative & Operations Officer*

**Friday, December 14, 2012**

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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 2011-12, The Office received 95,698 new trial and appellate cases, closed 94,276 trial and appellate cases and carried a total of 121,739 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 growth rate since FY 2000, or compound rate of growth (CRG), for cases reflects a consistent pattern of growth with intermittent peaks and declines. Active trial case growth has stabilized at near 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 near one-and-one-half the rate of case growth and near 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 directed at the state level by the Colorado State Public Defender, Douglas K. Wilson. A 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 135,000 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.

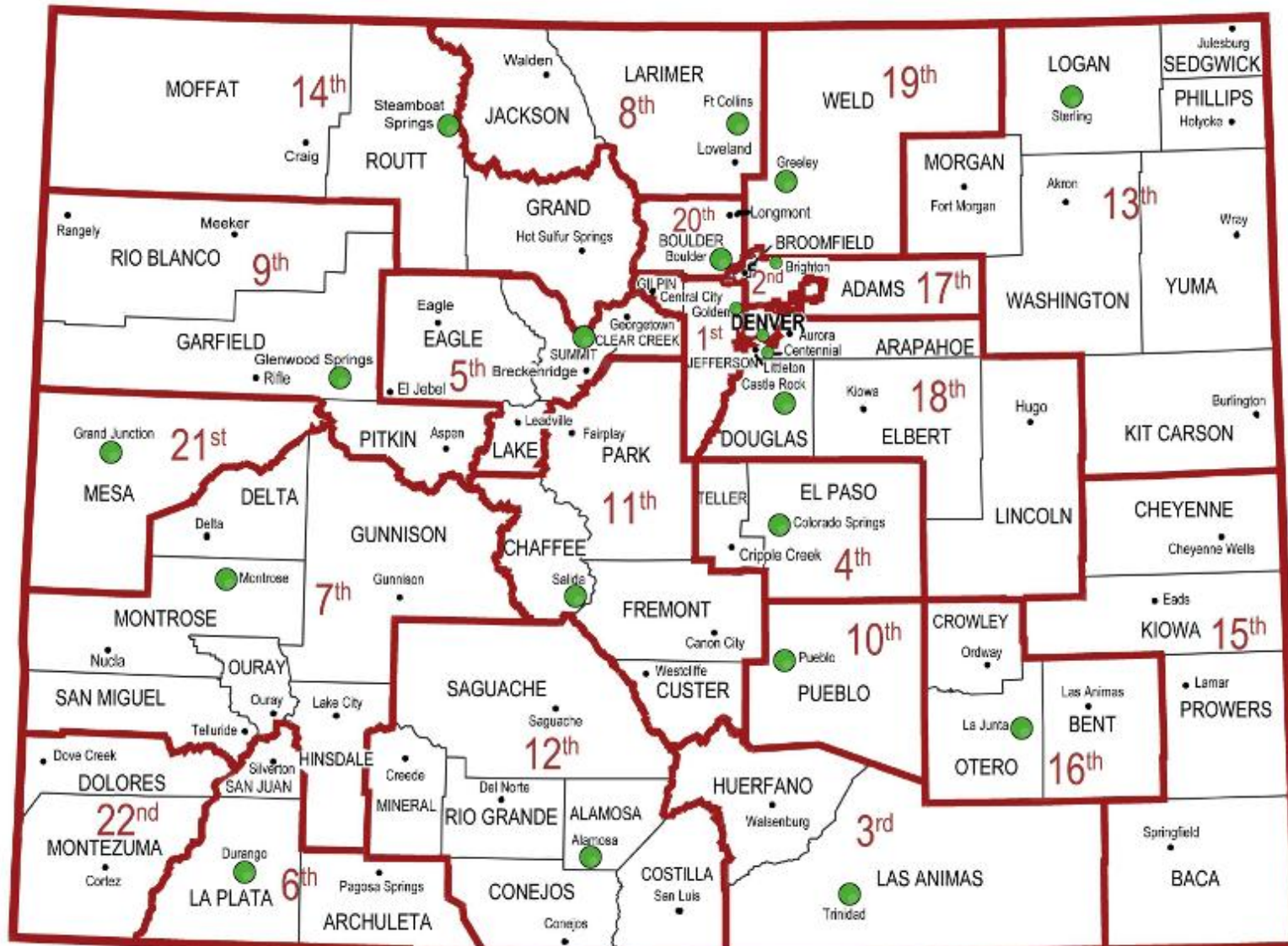
## **SUMMARY OF PROGRAM RESOURCES**

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.

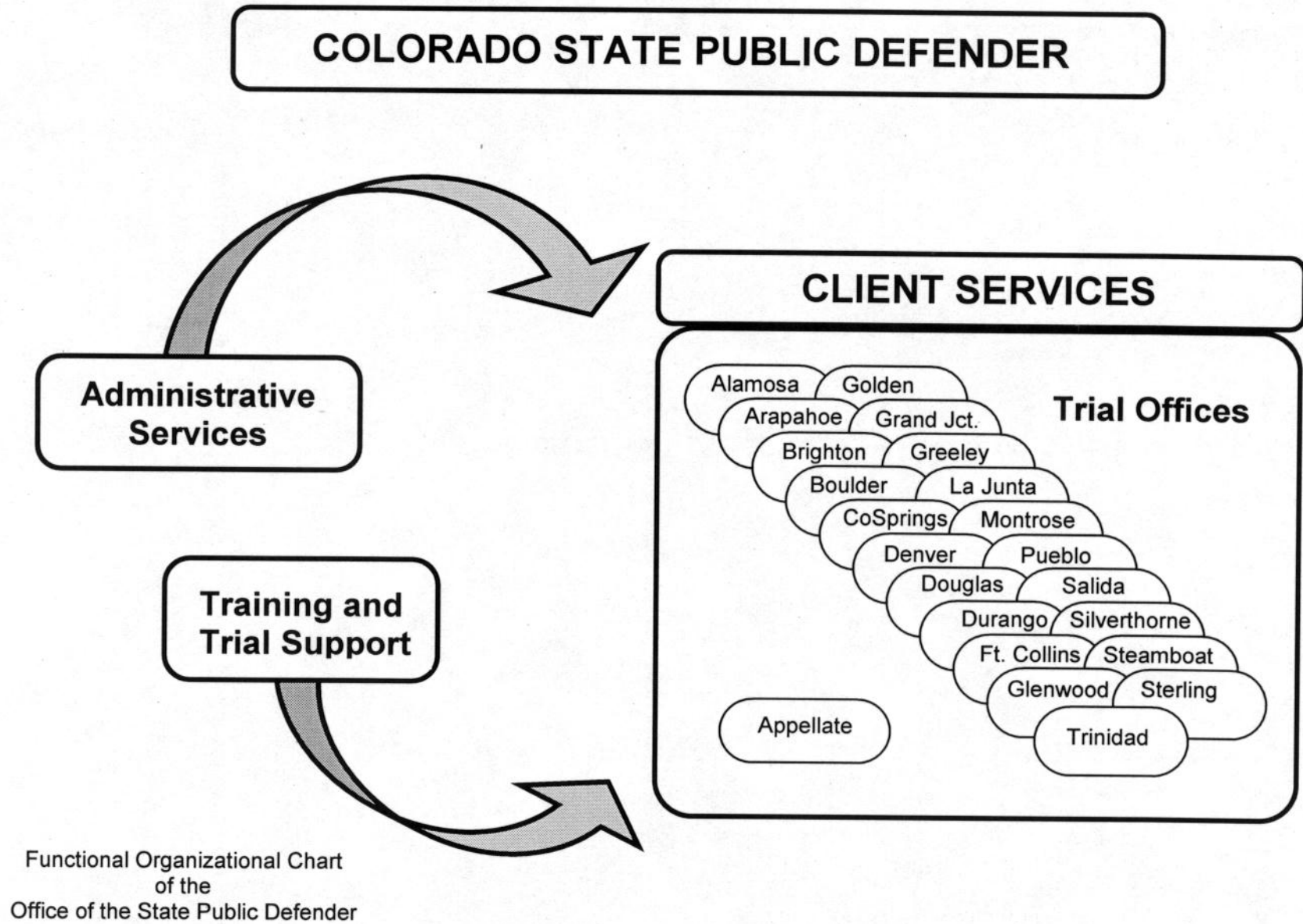


OFFICES: The following is a map of Colorado's 22 Judicial Districts. The dots on the following map represent OSPD office locations.

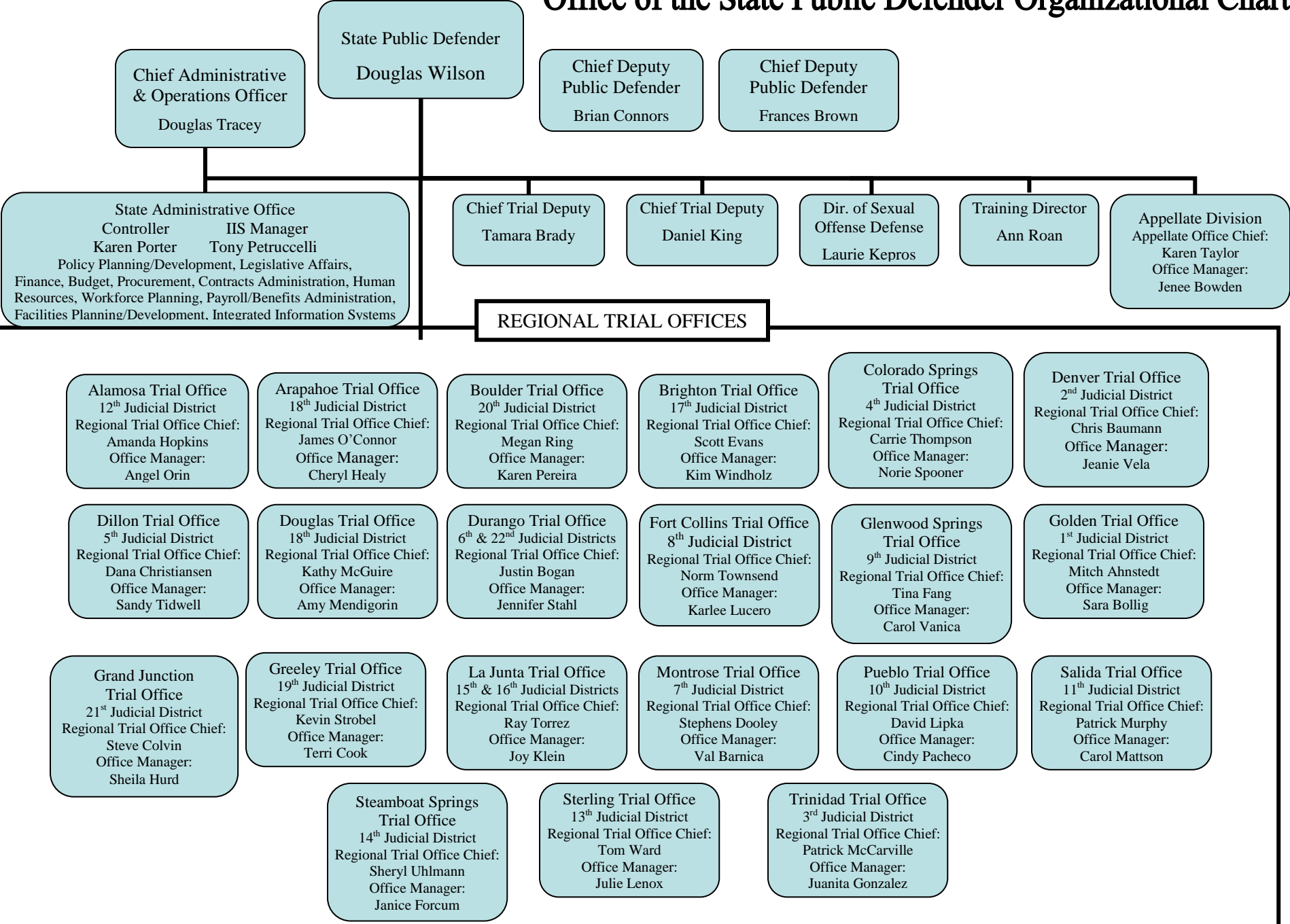
## CO Public Defender Offices



The following chart illustrates the functional organizational structure of The Office.



# 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 Conduct<sup>1</sup> 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 135,000 active appellate and trial cases that will be represented in FY 2014.
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.

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<sup>1</sup> This has been changed to the Rules of Professional Conduct.

## PERFORMANCE MEASURES

<b>OBJECTIVE 1.1: Provide reasonable and effective legal representation.</b>					
		<b>FY 10-11 (actual)</b>	<b>FY 11-12 (actual)</b>	<b>FY 12-13 (proj.)</b>	<b>FY 13-14 (proj.)</b>
<b>MEASURE 1.1A:</b> To promote efficiency and quality of services, safeguard the independence of The Office from political influence and judicial <sup>2</sup> oversight in the same manner and extent as assigned counsel, including funding, payment, staffing, etc. <sup>3/4</sup>	Target	100%	100%	100%	100%
	Actual	100%	100%		
<b>MEASURE 1.1B:</b> Defense counsel's workload is controlled to permit the rendering of quality representation. <sup>5/6/7/8</sup> (% Total staff allocated vs. required for Closed Trial Cases and Active Appellate Cases)	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%

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

<sup>3</sup> 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).

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

<sup>5</sup> *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)*

<sup>6</sup> 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).

<sup>7</sup> 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"].

<sup>8</sup> 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.

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.1C:</b> Defense counsel's ability, training, and experience match the complexity of the case. <sup>9/10</sup> <i>(% of all staff that have at least intermediate level experience)</i>	Target	70%	70%	70%	70%
	Actual	43.7%	42.4%		
<b>MEASURE 1.1D:</b> Provide effective representation in cases referred by the courts <i>(# of new trial cases received annually)</i>	Actual	94,693	95,109	97,507	102,330
<b>MEASURE 1.1E:</b> Effectively represent to disposition cases referred by the courts <i>(# cases brought to disposition annually)</i>	Actual	94,219	93,692	97,527	101,946
<b>MEASURE 1.1F:</b> Provide effective representation in cases referred by the courts <i>(Total active trial cases represented annually)</i>	Actual	122,949	120,498	125,381	131,010
<b>MEASURE 1.1G:</b> Provide effective representation in cases referred by the courts <i>(New appellate cases received)</i>	Actual	575	589	598	608
<b>MEASURE 1.1H:</b> Effectively represent to disposition cases referred by the courts <i>(Appellate cases closed)</i>	Actual	557	584	584	584
<b>MEASURE 1.1I:</b> Effectively represent to disposition cases referred by the courts <i>(Total active appellate cases represented)</i>	Actual	1,209	1,241	1,255	1,279
<b>MEASURE 1.1J:</b> Maintain established standards for reasonable caseload levels <i>(Trial Attorney ABA Recommended Active Case Ratio vs. Actual Active Case Ratio )</i>	Target	232 : 1	234 : 1	234 : 1	235 : 1
	Actual	343 : 1	318 : 1	329 : 1	343 : 1

<sup>9</sup> 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)

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

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.1K:</b> Maintain established standards for reasonable Caseload Levels ( <i>% of General Attorney Active case overload</i> )	Target	0%	0%	0%	0%
	Actual	59.8%	44.0%	48.7%	55.5%
<b>MEASURE 1.1L:</b> Percent of compliance with minimum standards for staffing requirements levels ( <i>based upon Closed Case Total Staffing target</i> )	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%
<b>MEASURE 1.1M:</b> Maintain established standards for reasonable Caseload Levels ( <i>Appellate Attorney Active Case Ratio</i> )	Target	1 : 26	1 : 28	1 : 28	1 : 28
	Actual	1 : 35	1 : 36	1 : 36	1 : 37
<b>MEASURE 1.1N:</b> Maintain established standards for reasonable Caseload Levels ( <i>% of General Appellate Active case overload</i> )	Target	0%	0%	0%	0%
	Actual	31.5%	28.3%	26.9%	31.5%
<b>MEASURE 1.1O:</b> Maintain established standards for reasonable Staff Supervision, Management, Development ( <i>Dedicated Staff Supervisor FTE to total employee Ratio</i> )	Target	10%	10%	10%	10%
	Actual	3.6%	3.5%	3.0%	3.0%

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.1P:</b> 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. <sup>11/12/13</sup> (% of financial resources available as compared to the prosecution's proportionate share)	Target	100%	100%	100%	100%
	Actual	N/A	67.5%		
<b>MEASURE 1.1Q:</b> Ratio of attorney staffing resources as compared to the prosecution's proportionate share	Target	1 : 1.6	1 : 1.6	1 : 1.5	1 : 1.5
	Actual	N/A	N/A	1 : 1.6	
<b>MEASURE 1.1R:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
<b>MEASURE 1.1S:</b> Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
<b>MEASURE 1.1T:</b> Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
<b>MEASURE 1.1U:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		

<sup>11</sup> 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)

<sup>12</sup> 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).

<sup>13</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).



		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.1V:</b> 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.		
<b>MEASURE 1.1W:</b> Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	12		
<b>MEASURE 1.1X:</b> Office program audits to ensure consistent performance of mission across the state.	Target	4	4	2	0
	Actual	4	4		
<b>MEASURE 1.1Y:</b> Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	11.6 %	9.1 %		
Investigators	Actual	9.3 %	10.8 %		
Administrative	Actual	23.6 %	23.2 %		
Total	Actual	12.3 %	11.0 %		
<b>MEASURE 1.1Z:</b> Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	34.1 %	35.1 %		
Investigators	Actual	27.3 %	38.5 %		
Administrative	Actual	52.9 %	80.0 %		
Total	Actual	37.5 %	47.9 %		
<b>MEASURE 1.1AA:</b> Percent of experienced, fully capable staff (journey level or higher)	Target	70%	70%	70%	70%
Attorneys	Actual	44%	44%		
Investigators	Actual	38%	33%		
Legal Assistants	Actual	29%	24%		
Total All Employees	Actual	44%	42%		

**Objective 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.**

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.2A:</b> To promote efficiency and quality of services, safeguard the independence of The Office from political influence and judicial <sup>14</sup> oversight in the same manner and extent as assigned counsel, including funding, payment, staffing, etc. <sup>15/16</sup>	Target	100%	100%	100%	100%
	Actual	100%	100%		
<b>MEASURE 1.2B:</b> Defense counsel’s workload is controlled to permit the rendering of quality representation. <sup>17/18/19/20</sup> (% Total staff allocated vs. required for Closed Trial Cases and Active Appellate Cases)	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%

<sup>14</sup> Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

<sup>15</sup> 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).

<sup>16</sup> *ABA Ten Principles of a Public Defense Delivery System, principle 1, American Bar Association (2002)*

<sup>17</sup> *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)*

<sup>18</sup> 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).

<sup>19</sup> 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”].

<sup>20</sup> 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.

		<b>FY 10-11 (actual)</b>	<b>FY 11-12 (actual)</b>	<b>FY 12-13 (proj.)</b>	<b>FY 13-14 (proj.)</b>
<b>MEASURE 1.2C:</b> Defense counsel’s ability, training, and experience match the complexity of the case. <sup>21/22</sup> <i>(% of all staff that have at least intermediate level experience)</i>	Target	70%	70%	70%	70%
	Actual	43.7%	42.4%		
<b>MEASURE 1.2D:</b> Maintain established standards for reasonable caseload levels <i>(Trial Attorney ABA Recommended Active Case Ratio vs. Actual Active Case Ratio )</i>	Target	232 : 1	234 : 1	234 : 1	235 : 1
	Actual	343 : 1	318 : 1	329 : 1	343 : 1
<b>MEASURE 1.2E:</b> Maintain established standards for reasonable Caseload Levels <i>(% of General Attorney Active case overload)</i>	Target	0%	0%	0%	0%
	Actual	59.8%	44.0%	48.7%	55.5%
<b>MEASURE 1.2F:</b> Percent of compliance with minimum standards for staffing requirements levels <i>(based upon Closed Case Total Staffing target)</i>	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%
<b>MEASURE 1.2G:</b> Maintain established standards for reasonable Caseload Levels <i>(Appellate Attorney Active Case Ratio)</i>	Target	1 : 26	1 : 28	1 : 28	1 : 28
	Actual	1 : 35	1 : 36	1 : 36	1 : 37
<b>MEASURE 1.2H:</b> Maintain established standards for reasonable Caseload Levels <i>(% of General Appellate Active case overload)</i>	Target	0%	0%	0%	0%
	Actual	31.5%	28.3%	26.9%	31.5%
<b>MEASURE 1.2I:</b> Maintain established standards for reasonable Staff Supervision, Management, Development <i>(Dedicated Staff Supervisor FTE to total employee Ratio)</i>	Target	10%	10%	10%	10%
	Actual	3.6%	3.5%	3.0%	3.0%

<sup>21</sup> 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)

<sup>22</sup> Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

		<b>FY 10-11 (actual)</b>	<b>FY 11-12 (actual)</b>	<b>FY 12-13 (proj.)</b>	<b>FY 13-14 (proj.)</b>
<b>MEASURE 1.2J:</b> 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. <sup>23/24/25</sup> (% of financial resources available as compared to the prosecution's proportionate share)	Target	100%	100%	100%	100%
	Actual	69.2%	67.5%		
<b>MEASURE 1.2K:</b> ratio of attorney staffing resources as compared to the prosecution's proportionate share	Target	1 : 1.6	1 : 1.6	1 : 1.5	1 : 1.5
	Actual	N/A	N/A	1 : 1.6	
<b>MEASURE 1.2L:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
<b>MEASURE 1.2M:</b> 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.		
<b>MEASURE 1.2N:</b> Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	12		

<sup>23</sup> 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)

<sup>24</sup> 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).

<sup>25</sup> ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

**Objective 1.3: Maintain a competitive work environment to be able to attract and retain qualified staff.**

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.3A:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
<b>MEASURE 1.3B:</b> Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
<b>MEASURE 1.3C:</b> Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
<b>MEASURE 1.3D:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
<b>MEASURE 1.3E:</b> Percent of compliance with market pay practices for Attorney Salaries <i>(Actuals based upon 2012 OSPD Attorney Salary Study Results. Projections add average of DPA findings from two private Compensation Studies of Colorado Market)</i>	Target	100%	100%	100%	100%
	Actual	86.7%	82.1%	78.4%	
<b>MEASURE 1.3F:</b> Percent of compliance with market pay practices for All Other Staff <i>(Actuals based upon 2012 DPA Compensation Study Results. Projections add average of DPA findings from two private Compensation Studies of Colorado Market)</i>	Target	100%	100%	100%	100%
	Actual	94.6%	90.8%	87.1%	
<b>MEASURE 1.3G:</b> Number of attorney applications received (CY)	Target	175	175	175	175
	Actual	779	389		
<b>MEASURE 1.3H:</b> Maintain established standards for reasonable Staff Supervision, Management, Development <i>(Dedicated Staff Supervisor FTE to total employee Ratio)</i>	Target	10%	10%	10%	10%
	Actual	3.6%	3.5%	3.0%	3.0%

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.3I:</b> Maintain established standards for reasonable caseload levels <i>(Trial Attorney ABA Recommended Active Case Ratio vs. Actual Active Case Ratio )</i>	Target	232 : 1	234 : 1	234 : 1	235 : 1
	Actual	343 : 1	318 : 1	329 : 1	343 : 1
<b>MEASURE 1.3J:</b> Maintain established standards for reasonable Caseload Levels <i>(% of General Attorney Active case overload)</i>	Target	0%	0%	0%	0%
	Actual	59.8%	44.0%	48.7%	55.5%
<b>MEASURE 1.3K:</b> Percent of compliance with minimum standards for staffing requirements levels <i>(based upon Closed Case Total Staffing target)</i>	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%
<b>MEASURE 1.3L:</b> Maintain established standards for reasonable Caseload Levels <i>(Appellate Attorney Active Case Ratio)</i>	Target	1 : 26	1 : 28	1 : 28	1 : 28
	Actual	1 : 35	1 : 36	1 : 36	1 : 37
<b>MEASURE 1.3M:</b> Maintain established standards for reasonable Caseload Levels <i>(% of General Appellate Active case overload)</i>	Target	0%	0%	0%	0%
	Actual	31.5%	28.3%	26.9%	31.5%
<b>MEASURE 1.3N:</b> Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	11.6 %	9.1 %		
Investigators	Actual	9.3 %	10.8 %		
Administrative	Actual	23.6 %	23.2 %		
Total	Actual	12.3 %	11.0 %		
<b>MEASURE 1.3O:</b> Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	34.1 %	35.1 %		
Investigators	Actual	27.3 %	38.5 %		
Administrative	Actual	52.9 %	80.0 %		
Total	Actual	37.5 %	47.9 %		

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 1.3P:</b> Percent of experienced, fully capable staff ( <i>journey level or higher</i> )	Target	70%	70%	70%	70%
Attorneys	Actual	44%	44%		
Investigators	Actual	38%	33%		
Administrative	Actual	29%	24%		
Total	Actual	44%	42%		

<b>Objective 2.1: Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.</b>					
		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 2.1:</b> Develop and test internet based administrative processes	Target	3	3	3	3
	Actual	7	5		

<b>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.</b>					
		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 2.2A:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
<b>MEASURE 2.2B:</b> Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
<b>MEASURE 2.3C:</b> Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
<b>MEASURE 2.2D:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
<b>MEASURE 2.2E:</b> 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 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
<b>MEASURE 3.1, 3.2A:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
<b>MEASURE 3.1, 3.2B:</b> Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
<b>MEASURE 3.1, 3.2C:</b> Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
<b>MEASURE 3.1, 3.2D:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
<b>MEASURE 3.1, 3.2E:</b> Develop and test internet based administrative processes.	Target	3	3	3	3
	Actual	7	5		
<b>MEASURE 3.1, 3.2F:</b> Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	12		
<b>MEASURE 3.1, 3.2G:</b> Office program audits to ensure consistent performance of mission across the state.	Target	4	4	2	0
	Actual	4	4		
<b>MEASURE 3.1, 3.2H:</b> Number of focused evaluations of program and administrative processes and policies	Target	2	2	2	2
	Actual	5	3		
<b>MEASURE 3.1, 3.2I:</b> Number of revisions/updates to program and administrative processes and policies	Target	2	2	2	2
	Actual	3	3		



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# **TOTAL RESOURCE REQUIREMENTS**

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## TOTAL RESOURCE IMPACT

### REQUIREMENT TO ACHIEVE 100% STAFFING

As the long-term growth trends that developed from 2000 through 2012 continue, it is expected that The Office's indigent criminal defense caseload will be near 131 thousand active cases by the year 2014. In order to meet 100 percent of the minimum caseload standards for representation of FY 2013-14<sup>26</sup> closed case levels and to ensure the Public Defender is effectively serving its clients, the Public Defender would need to acquire (above its FY 2013-14 base request of 658.6 FTE) an additional 168.5 FTE. This includes 53.0 trial office and appellate attorneys plus necessary support staff at annualized cost of about 11.1 million dollars. The total estimated cost to fully fund the Office is 82.9 million dollars, including \$11.1 million dollars (13.4 percent of the total) to acquire 100 percent of minimum staffing requirements.

The 100% staffing requirements described above are provided in more detail below. Total staffing needs, including current staffing levels, consist of:

- 470.1 Attorney FTE
- 179.1 Investigator FTE
- 138.8 Legal Assistant FTE
- 39.0 State Administration/Direction FTE

#### Total Staffing Needed for FY14 Including Current / Request Year Staff Allocations

<u>Staffing Needs</u>	<u>Total Resource Rqt</u>	<u>FY 13 Staff Allocation</u>	<u>Net Need FY14 Base</u>	<u>FY 14 Request</u>	<u>Net Need FY14</u>
Total Attorney Need As of June 30, 2012	470.1	416.0	54.1	1.1	53.0
Total Investigators Required	179.1	112.3	66.8	0.5	66.3
Total Legal Assistant Need	138.8	93.2	45.7	0.4	45.3
Central Office Support Staff Req.	39.0	34.9	4.1	0.2	3.9
<b>Grand Total</b>	<b>827.0</b>	<b>656.4</b>	<b>170.6</b>	<b>2.2</b>	<b>168.5</b>
<b>FY 2014 Total Request</b>	<b>\$71,802,170</b>			<b>658.6</b>	<b>827.1</b>
				<b>% FTE Shortfall</b>	<b>20.4%</b>
<b>Additional Amt for 100% Staffing</b>	<b>\$11,107,309</b>	(FY15 Fully Annualized Amount)			
<b>Total FY14 Need to Meet 100% Staffing</b>	<b>\$82,909,479</b>				

<sup>26</sup> See page 57 of annual budget request, Caseload Standards, and page 79 Comparable National and State Caseload and Staffing Standards.

The following table details the net increase required above FY 2013-14 requested resource levels to achieve full staffing in accord with established caseload and staffing standards.

**Current Total Resource Requirement for FY 2013-14  
To Meet 100% of Minimum Case Staffing Standards**

<b>Funding for 100% Staffing Requirements</b>		No. of Mos.	<b>FY 2013-14 Full Year Annualized Funding</b>			
	<b>Total FTE</b>	<b>Long Bill FTE</b>	<b>Per Unit Amt</b>	<b>FY14 Jun-Dec</b>	<b>FY14 Jan-May</b>	<b>Total</b>
Staffing						
Attorneys	53.0	53.0	[4685,5116]	1,898,036	1,355,740	3,253,776
Investigators/Paralegals/Mitigation	66.3	66.3	3,143	1,458,666	1,041,905	2,500,571
Legal Assitants	45.3	45.3	1,960	621,516	443,940	1,065,456
Central Administrative Support	3.9	3.9	5,091	138,984	99,275	238,259
Total Staffing / Subtotal Gross Salary	168.5	168.5		4,117,203	2,940,859	7,058,062
PERA @ 7.65% (Jun 2012), 10.15% (Jul '12 to May '13)				417,896	298,497	716,393
FICA @ 1.45 %		<b>FTE</b>		59,699	42,642	102,341
Total Staffing Request		<b>168.5</b>		4,594,798	3,281,998	<b>7,876,796</b>
			<b>Rate</b>			
HLD @ FY14 ave \$7,138.15 pfte rate (per August 2012 DPA rates)	Positions	<b>169</b>	7,138			<b>1,206,347</b>
STD @ .19%				7,823	5,588	<b>13,411</b>
AED @ 3.4, 3.8, 4.2 %				156,454	123,516	<b>279,970</b>
SAED @ 3.0, 3.5, 4.0 %		<b>FTE</b>		144,102	117,634	<b>261,736</b>
Subtotal Personal Services		<b>168.5</b>				<b>9,638,260</b>
Operating			<b>Rates</b>			
Operating pp \$500 Genl Op, \$450 Tele.	FTE	168.5	950			<b>160,075</b>
Travel [(Est Costs/FTE Usage) times (1+proj case)] times Req FTE	FTE	168.5	834			<b>140,479</b>
Attorney Registration Fees	Positions	53.0	180			<b>9,540</b>
Capital Outlay \$4,703 pp per OSPB Budget Instructions	Positions	169.0	4,703			-
Rent pfte ave cost per sq foot	Positions	169.0	6,914			<b>1,168,495</b>
Subtotal Operating						<b>1,469,049</b>
	<b>Total FTE</b>	<b>Long Bill FTE</b>			<b>Total FTE</b>	
<b>Total Decision Item Amount</b>	<b>168.5</b>	<b>168.5</b>			<b>168.5</b>	<b>11,107,309</b>

The table above provides the annualized calculations of salary and operating expenses, using current common policy metrics, to achieve 100% of staffing. As noted, this amount would be **in addition to** the Office's fully funded FY 2013-14 Budget Request of 658.6 FTE and \$71.8 million. If funded as detailed herein, 100% funding would provide for 827.1 FTE and \$82.9 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 requires \$5.8 million as detailed in the table below.

**Total Amount to Achieve Attorney Pay Parity with the FY 2012 Market**

<b>Attorney Parity Request</b>	
\$ 4,869,506	Salaries
\$ 494,254	PERA
\$ 70,608	FICA
\$ 9,252	STD
\$ 175,303	AED
\$ 158,259	SAED
<b>\$ 5,777,182</b>	<b>Total Request</b>

This increase will address pay inconsistencies in two ways:

- It will 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, but who are frozen at lower skill and experience, entry-level attorney benchmark grades. These attorneys are the lowest paid attorneys in the agency, having achieved the same level of expertise and responsibility as those already correctly classified at the grade to which they will be promoted.
- It will provide salary survey increases to all correctly classified attorneys to meet the market average salary associated with their benchmark position level.

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# **BUDGET REQUEST SUMMARY**

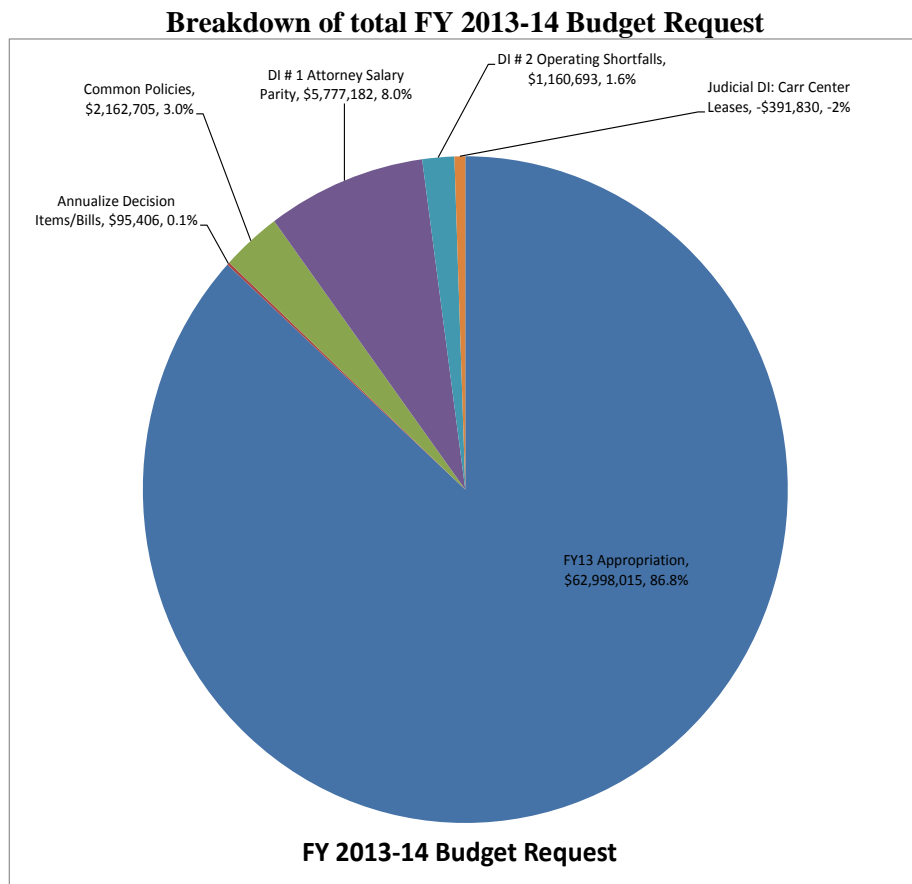


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## FY 2013-14 BUDGET REQUEST

The FY 2013-14 Budget Request for the Office of the State Public Defender is \$71,802,170 and 658.6 FTE. This represents a 13.4 percent reduction from the full budget requirement needed to meet MINIMUM staffing standards at pay practices that are comparable to that provided to government attorneys and support staff across the state. The components of the Budget Request are as follows, as depicted in the accompanying chart:

- FY 2012-13 Appropriation of \$62,998,015 and 656.4 FTE;
- \$95,406 (net) to annualize FY 2012-13 Decision Items;
- \$2,162,705 in Executive Branch common policy adjustments, including short-term disability rate change; health, life & dental rates; AED & SAED rate changes; leased vehicle costs; and, 1.5% across-the-board salary survey increase & 1.6% across-the-board merit pay increase;
- \$5,777,182 for Decision Item # 1: Attorney Pay Parity;
- \$1,160,693 for Decision Item # 2: Operating Shortfalls; and
- A reduction of \$391,830 for the Judicial Branch’s consolidation of leased space costs for the Carr Judicial Center.



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# HEARING AGENDA

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## **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; and our overall mission and goals, including a summary of our Budget Goals for the 2013-14 Fiscal Year.*

- **Discuss the most significant budget priorities for the upcoming year, providing context for the Joint Budget Committee’s more specific hearing questions outlined in this Agenda.**
- **Address important topics not covered by the Committee’s questions.**
- **Discuss long-term budgetary issues of The OSPD.**
- **Discuss proposals for legislation that may affect The OSPD’s budget, possibly to include the following:**
  - **Judicial Department Request for District Judges**
  - **Death Penalty Repeal**
  - ***Rothgery*-related reform**
  - **Discovery Reform**
  - **Other significant criminal statute reforms**
- **Discuss other issues relevant to The OSPD’s financial position and efficient use of resources.**

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**COMMITTEE  
HEARING QUESTIONS**

**Office of the State Public Defender**  
10:45 – 11:30 AM



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## QUESTIONS COMMON TO ALL DEPARTMENTS

1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"

**The common policy practice of the State of Colorado (The State) has changed in recent years to calculate POTS (HLD, STD, AED & SAED) funding based upon prior year staffing levels. This practice results in a recurring, inadequate level of POTS funding that compounds each year.**

**When POTS resource levels are calculated based upon attrition levels for the prior year (Year 1), the Office of the State Public Defender (The OSPD, The Office) must cut staffing levels in the following year (Year 2) to operate within appropriated POTS resource levels for that year. To do so, The Office must extend the vacancy of departed staff in Year 2 to accrue salary and benefits savings. In doing so, The Office further reduces its actual staffing levels in Year 2. This further reduced Year 2 staffing level, which includes both Year 1 base vacancy levels and Year 2 extended vacancy efforts, is then used as an artificially reduced base resource level to assess POTS resource requirements in the next budget year (Year 3). The same practice of extending vacancies and further reducing staffing levels to accrue savings must then be repeated in Year 3, and each year thereafter. This becomes a recurring cycle of increasingly diminishing base staffing levels and base POTS funding levels as vacancies must be extended further each year to operate within lower appropriated resource levels, and as base usage levels are re-based upon a further reduced, artificial level of actual FTE usage.**

**In the current year, in addition to high attrition, The Office has pushed out the hiring of new FTE in many cases to January and even into next fiscal year in order to cover the funding gap from POTS, compounded by a base personal services gap. As a result, the POTS budget for FY 2014-15, using FY 2012-13 as the gauge will be under-funded not due to normal attrition savings, but due to rising rates of attrition and due to contingencies The Office has had to undertake to operate within under-funded personal services.**

**Continually reducing actual staffing levels to operate within inadequately funded resources compounds existing staffing deficits and further challenges The Office's ability to adequately and responsibly represent Colorado's poor.**

(Common Policy) Salary Survey and Merit Pay, and (OSPD R-1) Attorney Pay Parity

2. Please provide a recent history of OSPD salary increases that have been approved and funded by the General Assembly.

**OSPD staff has not received pay increases during the last four years. The following table shows the last three salary increases for all OSPD employees that were approved by the General Assembly:**

<b>Fiscal Year</b>	<b>Anniversary</b>	<b>Salary Survey</b>
FY 2006-07	None	\$ 843,028
FY 2007-08	\$ 403,490	\$ 934,562
FY 2008-09	\$ 477,544	\$ 1,342,685

**The above common policy increases did not include funds needed to address salary parity for attorney pay classifications.**

**Salary increases funded by the General Assembly for The OSPD have been limited to statewide increases that were based upon common policy levels for non-attorney classifications. These increases were derived from annual compensation studies performed by the Department of Personnel and Administration (DPA), which specifically excluded attorneys as a classification. As a result, attorney pay has not been adequately addressed to ensure that pay is aligned with the market, as has been achieved for all other specific professional and technical classes of state employees.**

**Since attorneys are not included as a classification in the State's annual compensation studies, The OSPD has periodically contracted with Fox Lawson & Associates (FLA), a nationally recognized, independent compensation research and consulting firm, to specifically study attorney pay practices in PUBLIC entities throughout Colorado.**

**The findings of the studies performed by FLA have demonstrated that the common policy increases provided to other classifications of state employees have not been adequate to ensure that attorney pay is aligned with that of other public attorneys in Colorado. Even as common policy increases have been provided to The OSPD for all staff, each study has shown that attorney pay has increasingly fallen behind the pay practices of other PUBLIC entities throughout Colorado, including district attorney offices (DAs), the Office of the Attorney General (The AG), and city and county attorney offices.**

**In 2005, FLA study results indicated that OSPD attorney salaries were 3.2 percent below Colorado's public attorney employment market for FY 2004-05, including any common policy increases received through FY 2004-05.**

**In 2006, FLA performed a new study of Colorado public entity attorney pay, which indicated that OSPD attorney wages were then 5 to 6 percent below that of other public sector attorneys in Colorado for FY 2005-06, including any common policy salary increases received through FY 2005-06.**

**In November 2006, The OSPD requested \$761,242 within its FY 2006-07 budget submission to address the 2006 base pay-level gap. The Office received additional salary resources as part of statewide common policy to address 2006-07 planned market pay adjustments for all staff. However, the request to fill the 2006 base attorney pay gap was not approved. As a result, attorney salaries maintained the same 5 to 6 percent base pay deficit in FY 2006-07, including the common policy increases received through FY 2006-07. Additionally, since the FY 2006-07 common policy increases were based upon specific increases planned for all other professional classifications, excluding attorney classifications, any gap between other professional class pay adjustment rates in the market and that of the specific attorney class pay adjustment rates in the market during FY 2006-07 was not met; and that gap in pay adjustments further compounded the previously existing 5 to 6 percent 2006 base attorney pay gap.**

**In 2010, FLA performed another study of public attorney pay practices in Colorado, which indicated that the deficit in OSPD attorney wages had grown to 9.5 percent below public attorney market pay for FY 2009-10, including all common policy salary increases through FY 2009-10.**

**In 2012, FLA performed its most recent study of public sector attorney salaries in Colorado, which indicated that the consistent underfunding of OSPD attorney pay has resulted in OSPD attorneys earning 17.9 percent less than that of other public attorneys in the state during FY 2011-12, including all common policy salary increases through FY 2011-12.**

**Both the 2010 and the 2012 FLA studies were done in conjunction with the Department of Law, using similar benchmarks, and surveying pay practices for Colorado's DAs, The AG, and city and county attorney offices throughout the state. Private sector attorney pay is NOT used in these pay analyses, their recommendations, or The OSPD resource requests. Recommendations of these studies also included adjustments to The OSPD's pay structure to account for economic differences and pay disparities across all 22 judicial districts, from the most urban to the most rural. Both the FY 2012-13 and the FY 2013-14 OSPD budget requests for attorney pay parity incorporated these economic adjustments.**

**In its FY 2012-13 budget request, The OSPD requested \$907,715 annually for three years to fill the gap in FY 2009-10 base attorney pay. This request was not approved, and as a result, the gap in OSPD attorney pay has grown from a budding 3.2 percent in FY 2004-05 to a daunting 17.9 percent in FY 2011-12 —**

**the base attorney pay gap has further increased by 14.7 percent of market pay over 7 years.**

**In its FY 2013-14 budget submission, The OSPD has requested full funding in one year to completely achieve attorney pay parity competitive with pay practices of Colorado's public sector attorney employment market. The continual growth in The OSPD base attorney pay gap and the significant level that it has now reached both support the need for such immediate resolution. An incremental approach to solving this problem over a number of years will only further increase the existing base pay gap as the economy continues to improve and as the market continues to make increasing levels of annual pay adjustments above The OSPD's requested levels.**

**The request for full funding of attorney pay parity is The OSPD's top budget priority for the FY 2013-14 budget cycle.**

3. The OSPD, in cooperation with the Department of Law, recently contracted with an independent compensation research and consulting firm to assess market compensation practices for attorneys in comparable positions in Colorado public sector attorney organizations. Please describe the results of this study, including a comparison of market salaries for specific "benchmark" attorney job classifications with those of attorneys employed by the OSPD.

### **Attorney Pay Parity Request**

**The OSPD is requesting \$5,777,183 in addition to the government-wide Common Policy Total Compensation Request of the Executive Branch in order to fully fund attorney salaries at the FY 2011-12 market rate for PUBLIC attorney pay in Colorado.**

**In coordination with the Department of Law (The DOL), the OSPD contracted with an independent compensation research and consulting firm, Fox Lawson & Associates (FLA), to conduct a FY 2011-12 public attorney salary study. The study surveyed attorney salary ranges and actual salaries paid at 23 Colorado public sector attorney organizations at the state, city and county, and federal government levels.**

**The OSPD and The DOL cooperated on the same study in 2010 with the same consultant. At that time, the FLA survey results concluded that The OSPD's overall attorney salaries were 9.5 percent below the average salaries of the Colorado public attorney employment market. In 2012, the FLA survey results concluded that The OSPD's attorney compensation gap with the overall market has expanded to 17.9 percent below average market paid salaries for FY 2011-12.**

**The summarized results of the study, including The OSPD's overall average actual base salaries and salary range minimums, midpoints and maximums in relation to the overall public attorney market in Colorado are shown in the following table. The percentage differences represent all attorney benchmarks combined, in terms of The OSPD. A positive figure means that The OSPD is above the market by that amount, and a negative figure means that The OSPD is below the market by that amount.**

**The Office's Attorney Salary Variances from the FLA's Market Analysis**

Salary Comparison	Overall Market Average
Actual Salaries	-17.9% *
Salary Range Minimums	-19.0%
Salary Range Midpoints	-22.5%
Salary Range Maximums	-25.2%

The following table shows a comparison of The Office's actual salaries for each benchmark attorney position as compared to the same positions in the overall market. The pay disparity by benchmark varies from 7.8 percent below market for public defender staff attorneys at the non-supervisory, intermediate-level to as much as 30.7 percent for Managing Attorneys, the equivalent position of elected district attorneys.

**Attorney Salary Variances by Career Level**

Bench No.	Benchmark Title	Public Defender Avg. Actual	Overall Market Avg Actual	% Diff.
1	Deputy PD Managing Attorney/Office Head	\$108,561	\$141,911	-30.7%
2	Deputy PD Supervising Attorney	\$97,266	\$120,413	-23.8%
3	Deputy PD Senior Attorney	\$92,265	\$100,974	-9.4%
4	Deputy PD Intermediate Staff Attorney	\$69,082	\$74,476	-7.8%
5	Deputy PD Entry-level Staff Attorney	\$54,442	\$59,473	-9.2%
	<b>Average</b>			<b>-17.9%</b>

**Impact of Pay Disparity**

The outcome of this salary gap is showing itself already in several ways, but generally speaking, it is reflected in challenging recruitment, retention and expertise trends occurring among The Office's attorneys. Continued attrition of experienced, fully qualified and independently capable attorneys is having a detrimental impact on the overall level of skill and experience maintained by The Office's attorneys. This diminishes the overall competence of the agency to deliver its mission and has a direct impact on The Office's ability to effectively represent Colorado's poor in a court of law.

The Office has lost a critical level of experienced and fully capable attorneys who are crucial in efforts to carry the most severe cases, to mentor and train beginning attorneys, and to take on additional workload as new attorneys continue to develop to an independent level of expertise. The proportion of beginning-level attorneys (Entry-Level Position Class) has increased from 38 percent in FY 2004-05 to 56 percent in FY 2011-12, and the proportion of

journey-level and career-level attorneys (Intermediate, Senior, Supervisory and Managing Position Classes combined) has shrunk from 62 percent to 44 percent during that same time period. The Office’s standards are approximately 30 percent for beginning level to 70 percent for experienced level attorneys. This loss of capable staff and dominance of a growing majority class of inexperienced staff directly diminishes the competence of The Office to effectively serve its clients.

The following table provides the percent of staff for each occupational group that has reached the journey level or higher, and therefore, are considered to be fully capable, independent experts. It is this group of staff that is tasked with handling the most difficult cases, as well as with mentoring, developing and supervising younger, inexperienced staff until they are fully capable. Since 2005, the percent of fully capable attorneys dropped from 62 percent to 44 percent, a reduction in relative expertise of 28 percent of the experienced attorney population. This is a reflection of the increasing inability to maintain experienced staff and to assert that the adequate representation of our clients is being provided.

**Ratio of Entry Level, Journey Level and Career Staff 2005 to 2012**

<b>Employees by Occupation &amp; Experience Level by Fiscal Year</b>											
Occupation	Experience Level	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	Cum. % Change	CRG
Legal Secretaries	BEG	58%	59%	40%	51%	57%	58%	71%	76%	31%	4%
	JRNY+CAREER	42%	41%	60%	49%	43%	42%	29%	24%	-43%	-8%
Inv/Para/SW	BEG	36%	34%	29%	44%	47%	52%	62%	67%	85%	9%
	JRNY+CAREER	64%	66%	71%	56%	53%	48%	38%	33%	-48%	-9%
Attorneys	BEG	38%	38%	46%	53%	55%	58%	56%	56%	46%	6%
	JRNY+CAREER	62%	62%	54%	47%	45%	42%	44%	44%	-28%	-5%
Professional Services	BEG	0%	0%	0%	4%	4%	3%	10%	10%	968%	40%
	JRNY+CAREER	100%	100%	100%	96%	96%	97%	90%	90%	-10%	-1%
<b>% of all staff at Beg.</b>		<b>37.7%</b>	<b>37.9%</b>	<b>40.0%</b>	<b>48.1%</b>	<b>50.9%</b>	<b>54.1%</b>	<b>56.3%</b>	<b>57.6%</b>	<b>53%</b>	<b>6%</b>
<b>% of all staff at Jrny &amp; Above</b>		<b>62.3%</b>	<b>62.1%</b>	<b>60.0%</b>	<b>51.9%</b>	<b>49.1%</b>	<b>45.9%</b>	<b>43.7%</b>	<b>42.4%</b>	<b>-32%</b>	<b>-5%</b>

In total, The Office has lost about 20 percent of its experienced, capable staff in all job functions since 2005.

Additionally, an increasing number of attorneys are leaving The Office each year with an increasing number of average years of experience (“AYOS”). With this trend comes a diminished capacity of The Office to serve its clients effectively AND a loss of a great resource investment made by the State to develop these experienced and capable attorneys.

The following table provides the number of attorneys leaving The OSPD each year; their combined total years of experience lost; and the increasing average years of experienced lost per attorney.



Fiscal Year	Number of Attorneys Departing	Total Years of Experience	AYOS
FY08-09	27	129	4.8
FY09-10	30	173	5.8
FY10-11	44	250	5.7
FY11-12	37	237	6.4
FY12-13*	26	172	6.6

*\*Indicates the loss the Office has experienced in just the first four months of Fiscal Year 2012-2013*

**It is clear that this trend is increasing as employees seek other means to earn a living after an extended period of both career stagnation and pay freezes. This loss of experience is detrimental to the ability of The Office to effectively serve its clients. Furthermore, this represents the loss of an incredible investment of resources made by The State. This lost investment will need to be reinvested in again and again at great cost until that lost level of experience can be regained.**

**The cost to regain the several lost years of experience and expertise for the many employees departing in just one year is equivalent to the investment in salaries and other costs that will need to be reinvested in inexperienced replacements to develop them to the experience and expertise level of their predecessors. It is estimated that it will cost more than 21 million dollars to develop 37 inexperienced attorney replacements over an equal period of near 7 years through the investment of salaries, benefits, management, supervision, administration, training and mentoring. This cost is near four times higher than the current request for salary dollars, just to replace ONE years' worth of experience lost during 2012.**

4. Please discuss whether the recent compensation study considers employee retirement benefits. Specifically, do the attorneys employed by the various organizations that were surveyed as part of the study participate in the Public Employees' Retirement Association (PERA) or receive comparable retirement benefits?

**Of the entities that participated in the latest FLA survey, the following are affiliated with PERA:**

- Colorado Attorney General's Office
- City of Boulder
- City of Colorado Springs
- Boulder County
- District Attorney Offices\*

The FLA survey only looks at salaries and attributes of compensation, including actual salaries paid, pay ranges and salary progression for similar benchmarks. Total compensation, the term used by The State, is not addressed as part of the FLA survey. The State as a whole, via The State Personnel Manager's Annual Compensation Survey does look at all aspects of compensation including wages, basic life insurance benefits and health, life and dental benefits in making recommendations to the Governor for compensation areas in addition to salaries. The Governor in turn makes specific common policy recommendations on behalf of the Executive Branch as part of the annual budget process to address both wages and benefits independent of one another.

The joint OSPD/AG attorney salary study and independent requests are necessary supplements to the Common Policy request, because attorney classifications and salary practices are specifically excluded from The State Personnel Manager's Annual Compensation Survey's salaries findings and recommendations. Benefits do not vary across classifications in the State, nor in the market within organizations; therefore, benefits are not specifically and separately surveyed for attorneys. It is assumed that the Governor's findings and recommendations are as sufficient for attorneys as they are for all other classes of State employees. The OSPD bases its request for such Common Policy items on the Governor's recommendations.

*\*Note that all district attorneys are affiliated with PERA because they are, like the Attorney General, to be a part of the Executive Branch; and, State General Fund under Title 20 CRS supports 80 percent of the \$130,000 minimum annual salary of elected district attorneys plus the associated PERA.*

5. Last year, the OSPD requested an increase of \$2,863,900 General Fund over three fiscal years to bring its attorneys' salaries in line with market pay practices. Please explain why you are now requesting \$5,777,182 for this purpose, and you are not proposing a phased approach.

**While The OSPD's FY 2012-13 request of \$907,715 was proposed the first of three such installments totaling \$2,863,900, the most recent FLA attorney compensation survey results depict an exponentially growing compensation gap that requires immediate attention. In the 2012 FLA study, the overall gap between OSPD attorney salaries and those of its public sector counterparts grew from 9.5 percent in 2010 (using FY 2009-10 salary data) to 17.9 percent in 2012 (using FY 2011-12 salary data). This represents an 88.4 percent growth in the salary compensation gap over two years.**

**The attorney salary gap is now so large that The OSPD recognizes the urgency to address this problem in a single fiscal year. The base attorney pay gap has grown from a budding 3.2 percent in FY 2004-05 to a daunting 17.9 percent in FY 2011-12, including all common policy salary increases received from 2005 through 2012. Each additional year that this base pay gap is not resolved compounds the existing gap and makes resolution further unattainable. If The OSPD were funded incrementally for this request instead of the requested one-year resolution, two additional years of market pay adjustment will pass before OSPD attorneys reach the identified 2011-12 base pay rates. During that time, the economy will continue to improve as it has been doing, and market pay increases will continue to expand, thereby leaving OSPD attorney pay further behind the market.**

6. If the General Assembly approves this request, will it eliminate the gap between OSPD attorney salaries and market pay practices?

**The OSPD attorney wage gap as it exists through FY 2011-12 will be eliminated should the full amount requested be funded in FY 2013-14. Additionally, the Governor's FY 2013-14 common policy COLA increase will partially offset any further movement in market pay practices that will occur during FY 2012-13 and FY 2013-14. It is likely that additional pay adjustment in the public attorney employment market will occur this year (FY 2012-13) and in FY 2013-14, which is not included in the FLA study data. Such additional pay movement for the two years will likely exceed the Governor's 1.5 percent common policy request for a FY 2013-14 cost of living adjustment for all state employees. Since the FLA study of public attorney compensation provides data as of FY 2011-12 pay, this budget request will not fully cover the total additional movement that will occur during the current and next fiscal years. However, projections by FLA of market adjustments expected this year are competitively aligned with the Governor's request level for next year. Therefore, at most, it is expected that OSPD attorney pay will lag behind the market by one year as a result of funding this request.**

(OSPD R-2) Operating Shortfalls

7. The request includes \$1,160,693 to address funding shortfalls in various operational appropriations. Please describe the need for this request.

The need for these funds has accumulated over several years. Annual increases in caseload, workload and inflation, as well as changes to criminal justice law and process, and the evolution of the way the business of criminal justice is carried out have all combined to increase both the demand for and the cost of the most basic operations needs of The OSPD. As a result, OSPD resource expenses have consistently out-paced the growth of its appropriations.

To address this growing requirement, The OSPD requested and was funded \$234,719 in supplemental funding for Mandated Costs over the prior three fiscal years. During this same period, The OSPD experienced \$2,422,000 in budget reductions across both personnel and operating appropriations. The table below shows the history of funding shortfalls requiring transfers to the operating lines in support of the rising cost of doing business.

<b>OPERATING SHORTFALLS</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<i>Operating Expenses</i>	\$0	\$0	-\$225,000	-\$175,441	-\$175,441	-\$27,490	-\$91,765
<i>Automation</i>	-\$414,029	-\$1,218,000	-\$450,000	-\$10,939	-\$522,152	-\$566,880	-\$865,687
<i>Mandated Costs</i>	\$0	-\$49,587	\$0	-\$342,305	-\$431,705	-\$636,283	-\$850,604
<i>Contract Services</i>	-\$36,987	-\$47,731	-\$63,466	-\$31,395	-\$31,395	-\$31,395	-\$31,395
<b>TOTAL</b>	<b>\$451,016</b>	<b>\$1,315,318</b>	<b>\$738,466</b>	<b>\$560,080</b>	<b>\$1,160,693</b>	<b>\$1,262,048</b>	<b>\$1,839,451</b>

This request is intended to true-up the appropriated funding levels to the actual expenditure requirement levels for the expense areas defined above.

The following summaries provide additional context for the growing demands and evolving requirements of doing business.

Information Technology Requirements

The OSPD was funded \$486,746 for its Automation Plan line item in support of 395.9 FTE in 2006-07 vs. \$894,768 in support of 656.4 FTE in 2012-13. The growth of OSPD FTE is driven by growth in caseload, workload, statutory changes, changes in criminal justice process and changes in severity of cases. Furthermore, the cost of these goods is impacted directly by compounding annual inflation which has grown cumulatively by 14.4% since FY 2006-07. All of these growth trends drive increases in our technology resource needs.

This growth has required the following improvements to technology in support of OSPD mission operations:

- Of 23 phone systems supporting 23 offices, 3 were replaced and 9 were upgraded and expanded to meet the increased user demands;
- 17 data circuits were upgraded in performance from low bandwidth capacity ATM technology to higher bandwidth capacity Ethernet technology to meet the growing demands of electronic data transmission;
- 10 phone lines were added and 3 were upgraded to higher performance levels in larger offices to meet growing caseload and staffing demands (These costs are funded in the Operating Expense Appropriation (OE));
- 26 pieces of office document production equipment were added (multi-function scanner/copiers/fax/printers);
- Software licenses were increased by 837 to meet changing business needs and increases in staff;
- 199 PCs/laptops were added;
- 13 pieces of miscellaneous presentation, analysis and recording equipment were added (cameras, projectors, recorders, etc.);
- 60 cellular phones were added;
- Server capacity expanded from 44 lower capacity servers to 33 higher capacity servers; and
- 18 pieces of network equipment were added (routers, switches, racks, etc.).

As caseload, workload and criminal justice processes have changed, so have the demands of volume, quantity and type of data transmission requirements placed on these critical pieces of equipment. As one example, a move toward electronic discovery by district attorneys (DAs, DA) has increased our operating costs (in addition to Mandated Cost payments made directly to DAs for the electronic data), requiring The OSPD to now print the actual documents previously provided by the DAs in hard copy. In FY07, we averaged 286,000 copies per month using 33 of the large copiers and 80 network printers. In FY12, we averaged 645,000 copies per month using a current inventory of 69 high capacity, multi-use copier/printer/scanner/fax machines. We have more than doubled our output and reduced the number of pieces of equipment. The cost to purchase additional multi-function machines is paid out of the IT budget. The “maintenance” and operating cost for these items is paid out of the Operating Expense appropriation, based upon the number of copies made and the number of prints. In FY07, this cost was approx. \$60,000; in FY12, it was \$99,000.

We have received one-time funding for capital equipment with staffing increases to cover PCs and software. This funding was received without the necessary recurring maintenance and lifecycle replacement funds. We have met these growing business needs as other funding has allowed.

### Operating Expense Requirements

In FY 2006-07, we were funded \$837,764 for Operating Expenses (OE) in support of 395.9 FTE, carrying 113,419 combined active Trial Office and Appellate cases vs. \$1,331,367 in support of 656.4 FTE carrying 126,636 combined active Trial Office and Appellate cases in 2012-13. Total staffing has increased by 65.8% to meet an existing staffing deficit and new statutory mandates during that period. Additionally, total workload growth supporting this caseload increased by 18.5% during this period (comparing total staffing requirements for both years). The growth of our caseload and workload, as impacted by both number and severity of caseload and changes in criminal justice process, drives our FTE growth as well as the OE expenses that help the FTE fulfill their roles in our mission delivery. It is NOT simply FTE growth that drives OE expenses. Additionally, these expenses are compounded by 14.4% in cumulative inflationary growth that has occurred since FY 2006-07. Meanwhile, initial funding levels established by common policy for basic operating expenses remain at \$500/FTE since long before this period.

### Mandated Costs and Contract Services Requirements

OSPD has no control – beyond diligent accounting oversight controls — over these costs.

Mandated Costs are driven solely by what The OSPD is charged. While The OSPD challenges particularly egregious charges, in general, The OSPD must pay what DAs and other agencies bill it for these expenses. These items — experts, interpreters, transcripts, witness travel and discovery — are constitutional requirements in the defense of a client.

Contract Services are also driven by clients who exercise their right to aggrieve the services provided by counsel, and The OSPD must pay for the legal costs to defend its attorneys and its practice as these cases arise.

Rates Charged by Prosecuting Attorneys for Duplicating Discoverable Materials

8. [Background Information: Colorado Supreme Court Rule 16 requires the prosecuting attorney to make available to the defense certain material and information which is within his or her control and to provide duplicates upon request. The rule requires that the "cost of duplicating" any discoverable materials shall be paid by the party receiving the material, and shall be based on the "actual cost of copying" the materials.]
- a. Please provide a recent history of total OSPD payments to District Attorney's offices and to the Department of Law for discoverable materials.

**The following table provides the total costs paid to each district attorney office and The DOL by The OSPD annually from 2007 through 2012. Total OSPD discovery payments to these offices have increased to more than double the 2007 level from \$761,495 to \$1,623,452, an increase of 113 percent over the 2007 level.**

DISTRICT	OFFICE	2007	2008	2009	2010	2011	2012
1st	GOLDEN	\$90,573	\$118,491	\$125,781	\$130,659	\$152,910	\$152,848
2nd	DENVER	\$48,829	\$64,499	\$76,358	\$75,508	\$378,145	\$415,120
3rd	TRINIDAD	\$6,063	\$6,881	\$7,322	\$7,939	\$10,159	\$10,821
4th	COL SPGS	\$114,901	\$118,821	\$145,458	\$163,750	\$171,799	\$171,068
5th	SILVERTHORNE	\$11,518	\$11,166	\$9,740	\$10,820	\$9,541	\$15,807
6th & 22nd	DURANGO	\$17,254	\$20,078	\$26,216	\$22,507	\$23,297	\$28,728
7th	MONTROSE	\$10,624	\$12,279	\$15,403	\$18,106	\$19,232	\$18,480
8th	FT COLLINS	\$52,382	\$57,373	\$69,831	\$102,061	\$103,603	\$96,621
9th	GLNWD SPGS	\$19,911	\$17,190	\$9,938	\$13,643	\$21,582	\$22,386
10th	PUEBLO	\$34,490	\$36,026	\$44,844	\$49,238	\$49,620	\$72,783
11th	SALIDA	\$16,199	\$22,398	\$29,485	\$39,460	\$44,492	\$45,639
12th	ALAMOSA	\$8,386	\$8,207	\$9,355	\$10,604	\$14,649	\$17,241
13th	STERLING	\$14,332	\$16,493	\$21,262	\$23,931	\$23,202	\$22,589
14th	STB SPGS	\$10,537	\$13,956	\$14,200	\$13,016	\$13,590	\$14,673
15th & 16th	LA JUNTA	\$2,597	\$3,735	\$3,784	\$4,519	\$5,216	\$5,744
17th	BRIGHTON	\$90,790	\$101,894	\$117,030	\$138,781	\$183,010	\$190,159
18th	ARAPAHOE	\$127,910	\$148,442	\$151,202	\$171,026	\$191,670	\$168,559
19th	GREELEY	\$3,758	\$4,945	\$6,118	\$7,342	\$3,411	\$2,509
20th	BOULDER	\$36,313	\$37,231	\$41,854	\$58,913	\$53,874	\$51,715
21st	GRD JNCTN	\$13,978	\$14,989	\$18,383	\$14,115	\$5,642	\$10,375
	DEPT OF LAW	\$997	\$864	\$420	\$510	\$1,835	\$11,140
	OTHER **	\$29,154	\$50,154	\$25,321	\$49,520	\$34,479	\$78,447
	TOTAL	\$761,495	\$886,112	\$969,306	\$1,125,966	\$1,514,957	\$1,623,452
	% Change		16.36%	9.39%	16.16%	34.55%	7.16%

\*\* Other includes discovery received direct from law enforcement rather than through DA's discovery, and court records.



The following table provides a comparison of the 2007 OSPD discovery payments made to DAs and The DOL and the number of pages of discovery received as compared to that of 2012.

DISTRICT	OFFICE	2007		2012		% Change	
		# Pages	Total Paid	# Pages	Total Paid	# Pages	Paid
1st	GOLDEN	n/a	\$90,573	429,919	\$152,848	n/a	69%
2nd	DENVER	412,546	\$48,829	572,268	\$415,120	39%	750%
3rd	TRINIDAD	19,204	\$6,063	30,020	\$10,821	56%	78%
4th	COL SPGS	n/a	\$114,901	621,055	\$171,068	n/a	49%
5th	SILVERTHORNE	36,570	\$11,518	50,927	\$15,807	39%	37%
6th & 22nd	DURANGO	63,109	\$17,254	136,738	\$28,728	117%	66%
7th	MONTROSE	29,234	\$10,624	37,028	\$18,480	27%	74%
8th	FT COLLINS	n/a	\$52,382	288,831	\$96,621	n/a	84%
9th	GLNWD SPGS	61,540	\$19,911	91,205	\$22,386	48%	12%
10th	PUEBLO	111,288	\$34,490	191,366	\$72,783	72%	111%
11th	SALIDA	44,765	\$16,199	81,042	\$45,639	81%	182%
12th	ALAMOSA	33,540	\$8,386	46,344	\$17,241	38%	106%
13th	STERLING	49,751	\$14,332	69,006	\$22,589	39%	58%
14th	STB SPGS	23,254	\$10,537	32,819	\$14,673	41%	39%
15th & 16th	LA JUNTA	n/a	\$2,597	55,291	\$5,744	n/a	121%
17th	BRIGHTON	391,100	\$90,790	365,201	\$190,159	-7%	109%
18th	ARAPAHOE	373,091	\$127,910	639,667	\$168,559	71%	32%
19th	GREELEY	n/a	\$3,758	260,772	\$2,509	n/a	-33%
20th	BOULDER	92,584	\$36,313	154,440	\$51,715	67%	42%
21st	GRD JNCTN	138,348	\$13,978	241,311	\$10,375	74%	-26%
	DEPT OF LAW		\$997		\$11,140		1018%
	OTHER **		\$29,154		\$78,447		169%
	<b>TOTAL</b>	<b>n/a</b>	<b>\$761,495</b>	<b>4,395,249</b>	<b>\$1,623,452</b>	<b>54%</b>	<b>113%</b>
						(Avg)	

\*\* Other includes discovery received direct from law enforcement rather than through DA's discovery, and court records.

Based upon the data in the above table, it is apparent that the cost increases charged to The OSPD by DAs and The DOL are not justified.

- The number of pages has increased by only 54 percent.
- Cumulative inflation has increased by only 14.4 percent.
- Four of the 22 DA offices have switched to electronic discovery transmission, thereby reducing the costs for production by them, shifting them to The OSPD.
- Meanwhile, the total expenses charged to The OSPD by these offices have increased by 113 percent.

There is a clear disconnect in these numbers when seen together.

In addition to the increase of discovery costs paid to the DAs and The DOL, costs to print these documents have been shifted to The OSPD as a result of the move to electronic discovery transmission in some DA offices. Specifically, DA offices in Districts 6, 9, 11 and 21 have recently converted to electronic discovery transmission.

The following table shows the increase in OSPD in-house printing and copying costs for all OSPD offices, as compared to that of the OSPD offices in Districts that have moved to electronic transmission of discovery.

Districts	FY07	FY12	% inc
6th, 9th, 11th, 21st	\$7,283	\$24,782	240%
All Other	\$134,351	\$206,238	54%

- There has been a 54 percent increase in OSPD in-house printing costs overall for all OSPD offices from 2007 to 2012, including both the electronic transmission and non-electronic district offices of The OSPD.
  - OSPD offices in districts that have moved to electronic discovery have experienced a 240 percent increase in OSPD in-house production costs.
  - These costs are in addition to the cost increases provided in previous tables outlining direct reimbursements to DAs and The DOL by The OSPD for discovery.
- b. Please provide data that indicates the range and variation in rates charged by District Attorneys' offices and the Department of Law for discoverable materials.

**Discovery rates vary from district to district ranging from .20/pg. to .50/pg. for paper copies.**

**In addition, rates for electronic discovery are billed as follows:**

- by page, ranging from .10/pg. to .50/pg., or
- by case, ranging from \$8 to \$36 per case, or
- by media source, ranging from \$5 to \$26 per item, or
- by hour ranging from \$20/hr. to \$24/hr.

The tables on the following page compare these rates by district, including The DOL, for 2007 and 2012.

FY07 DISTRICT	OFFICE	AMT/ PAGE	ELEC PAGE	ELECT PER CASE			MEDIA TYPES				SEARCH (per req)	
				Cty	Juv	Felony	AUDIO	VIDEO	CD	DVD		
1	GOLDEN	\$0.25							\$5	\$12	\$15	
2	DENVER	\$0.10 *								\$15		
3	TRINIDAD-LasAnimas	\$0.25							\$5		\$5	prep fees
3	TRINIDAD-Walsenburg	\$0.25							\$5	\$9	\$15	
4	COLORADO SPRINGS	\$0.25			\$15	\$15			\$5	\$15	\$15	
5	SILVERTHORNE	\$0.25							\$5	\$25		
6	DURANGO	\$0.25							\$5	\$15	\$5	
7	MONTROSE	\$0.35								\$2.50		
8	FORT COLLINS	\$0.25		\$10	\$15	\$22			\$10	\$15	\$12	\$17
9	GLENWOOD SPRINGS	\$0.25							\$10	\$15	\$15	
10	PUEBLO	\$0.25							\$6.50	\$10	\$5	\$1
11	SALIDA - Canon	\$0.25							\$6	\$10	\$8	\$1
11	SALIDA - Salida	\$0.25							\$6	\$10		\$1
12	ALAMOSA	\$0.25										
13	STERLING	\$0.25 *							\$5	\$5	\$5	\$10
14	STEAMBOAT SPS - Granc	\$0.25							\$15	\$15	\$15	\$1
14	STEAMBOAT SPGS	\$0.25							\$15	\$25	\$15	
15	LA JUNTA	\$0.25							\$3.50	\$5.50	\$5.50	
17	BRIGHTON	\$0.15 *							\$5	\$10	\$15	\$15
17	BROOMFIELD	\$0.25							\$6	\$12	\$15-D/\$8-CTY	
18	ARAPAHOE	\$0.20		\$15	\$15	\$15			\$13	\$26		1.42 - 1.82
19	GREELEY	\$0.25 *							\$5	\$10	\$10	\$10
20	BOULDER	\$0.10 *							\$10			
21	GRAND JUNCTION	\$0.15 **								\$8	\$10	
22	DURANGO	\$0.25							\$5	\$5		
	DEPT OF LAW	\$0.10										
	TOTAL		*									
			**									

\* We copy  
\*\* Contract out to private company

FY12 DISTRICT	OFFICE	AMT/ PAGE	ELEC/ PAGE	ELECT PER TYPE/CASE					OTHER MEDIA			SEARCH (per req)		
				Cty	Juv	Felony	High Vol	Suppl	cd/audio/video	dvd	911			
1	GOLDEN	\$0.35	\$0.35											
2	DENVER	\$0.50									no charge			
3	TRINIDAD	\$0.25								\$15	\$18	\$20		
4	COLORADO SPRINGS	\$0.25		\$8	\$10	\$16	\$50	.10/pg+\$2		\$5	\$5	\$5	\$1	
5	SILVERTHORNE	\$0.25								\$5 (except Clear Creek is \$25)		\$6-\$60		
6	DURANGO	\$0.25	\$0.10							\$5	\$15			
7	MONTROSE	\$0.40 ***								\$1, \$2.50	\$1			
8	FORT COLLINS	\$0.25		\$18	\$29	\$36		\$0		\$12	\$17			
9	GLENWOOD SPRINGS	\$0.25		\$20 per hour and .27/cd or .42/dvd										
10	PUEBLO	\$0.25								\$5	\$7.50		\$1	
11	SALIDA	\$0.50	\$0.50							\$5				
12	ALAMOSA	\$0.25								\$5	\$10		\$1	
13	STERLING	\$0.25								\$5	\$5			
14	STEAMBOAT SPGS	\$0.25								\$15	\$15			
15	LA JUNTA	\$0.25								\$5	\$10			
16	LA JUNTA	\$0.00 *												
17	BRIGHTON	\$0.28		\$15	\$15	\$15	\$15	\$1		\$15	\$15			
17	BROOMFIELD	\$0.28		\$15	\$15	\$15	\$15	\$1		\$15	\$15			
18	ARAPAHOE	\$0.20		\$15	\$15	\$15	\$50	\$0		\$10, \$13, \$26	\$15		1.42 - 1.82	
19	GREELEY	\$0.25 *		no charge yet we provide cds							\$5-\$10	\$10		
20	BOULDER	\$0.25		\$15	\$15	\$15	\$50	\$15		\$15				
21	GRAND JUNCTION	\$0.12 **		No Charge							\$6 per 15 min increments (city of GJT)			
22	DURANGO	\$0.25								\$5				
	DEPT OF LAW	\$0.25	\$0.25							\$10				
	COURTS	.05-.75												
			*											
			**											
			***											

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- c. Please describe any efforts the OSPD has made to resolve disagreements concerning procedures and fees associated with duplicating discoverable materials.

The OSPD has had difficulties collaborating with DA offices as early as the late 1990's surrounding the issue of discovery charges. The following is an approximate 10-year timeline of more recent fiscal, legislative and policy activities.

#### **Financial Controls**

The OSPD initially began to question district attorney discovery charges, as some DA offices increased rates significantly without providing any type of actual cost basis for such increases and did so with little or no forewarning of the increases.

In one case, the issue took over a year to resolve and then only resolved through mediation with the Attorney General's Office. As more DA offices announced rate increases to discovery charges, The OSPD took the issue to the Joint Budget Committee (JBC) for a possible budgetary or legislative solution.

#### **Process and Procedure**

When attempts by The OSPD to apply accountability and controls to the discovery charges issue failed, the Legislature, the Colorado District Attorneys Council (The CDAC) and the Judicial Department became involved via OSPD requests for assistance to the JBC.

The OSPD offered multiple solutions for the JBC to consider, including a budgetary movement of mandated costs to either the Executive Branch (Public Safety), The CDAC or for The Courts to review and supervise discovery charges. Alternatively, The OSPD also suggested that indigent clients be exempt from discovery charges. None of these proposals were pursued by the JBC.

Instead, the JBC asked the State Court Administrator's Office (The SCAO) to review the matter. The SCAO did so in a budget footnote report, acknowledging many issues surrounding discovery charges. However, the SCAO concluded that it had no authority over Executive Branch rates and policies. The SCAO proposed a legislative solution, but also indicated it would also pursue either a Chief Justice Directive or some changes to the Colorado Rules of Criminal Procedure, Rule 16.

The JBC held a hearing with The CDAC and some DAs to discuss the issue of discovery charges. The participants indicated: 1) The OSPD often duplicates discovery requests (this was occurring in only 2 of 21 Trial Offices in rare instances); 2) The OSPD was truly only allowed discovery when such discoverable materials were exculpatory; and, 3) The OSPD in general requests too much discovery.

With the cooperation of The OSPD and The CDAC (represented by then Executive Director, Ted Tow), The SCAO drafted a proposal to revise Rule 16 for consideration by the Supreme Court Rules of Criminal Procedure Committee. Later, when the new CDAC Executive Director, Tom Raynes, took over The CDAC, he stated that no such agreement had been finalized.

The Supreme Court Rules Committee did take up the matter of changes to Rule 16, meeting several times, but ultimately determined that the issues with discovery were complex and needed to be resolved by the General Assembly.

**Payment upon Request**

The OSPD dropped its general protests to DA discovery rate changes after the activities described above failed to provide a resolution to the issue. The OSPD is not in a position currently to challenge the serious issue of State General Fund cost controls as they apply to individual DA office rates.

The following table provides some historical context to discovery costs when compared against caseload growth and workload / FTE requirements in The OSPD's Trial Offices.

<b>Fiscal Years</b>	<b>Closed Cases</b>	<b>Workload / FTE Requirements</b>	<b>Discovery Expenses (GF)</b>
FY 2006-07	88,047	323.9	\$761,495
FY 2011-12	93,692	387.7	\$1,623,452
Cumulative Change	6.4%	19.7%	113.2%
Compound Rate Of Growth	1.3%	3.7%	16.3%

- d. What actions should the Joint Budget Committee and/or the General Assembly consider taking to develop and implement a workable solution to resolve these disagreements?

**Discovery materials are the foundation of the case brought against a defendant and must be provided to the Defense by the Prosecution. This is a constitutional requirement.**

**The costs that the Prosecution incurs to produce these documents are a necessary part of its case against the defendant. Discovery that is not provided or that is provided incomplete to the Defense by the Prosecution leads to mistrials and appeals at greater cost and delay to all parties to the criminal justice process: the Prosecution, the Defense, the Judiciary, Law Enforcement, witnesses, victims, the defendant, families and communities.**

**The OSPD has no control over fees charged for discovery, nor the nature of or the quantity of the discoverable materials that exist in a case, as provided to The OSPD by DAs, The DOL and other entities.**

**There is a natural and a necessary adversarial relationship between the Defense and the Prosecution. Additionally, The OSPD is a part of the Judicial Branch of State government, while the DAs and The DOL are both parts of the Executive Branch of State government. It is an inherent conflict of interest to have Defense/Judicial Branch operations and resources made vulnerable to competing resource demands placed upon it by unfunded, unsubstantiated and uncontrollable mandates created at the whim of Prosecution/Executive Branch operating decisions. To do so impinges upon the constitutional separation of powers and the checks and balances ingrained in our tri-partite democratic system of government (Executive Branch, Legislative Branch, Judicial Branch) as well as that of the micro-model of this structure established in our Justice System (Impartial Judiciary, Defense, Prosecution). It is similarly an inherent and unnecessary conflict to have the resources and operations of the Prosecution/Executive Branch made vulnerable by the likely inability or resistance of the Defense/Judicial Branch to reimburse for services it must provide as part of its operations. This finding is consistent with the Judicial Department's representation that it would be potentially unconstitutional for the Judiciary to set policy related to the level of reimbursement for Executive Branch actual operating costs (for production of discovery).**

**The best solution for managing these costs and for protecting against these conflicts is to transfer all such state reimbursements for DA and DOL expenses to a central Executive Branch Department appropriation. Such an appropriation should include the following reimbursements currently made by The State to DAs and The DOL, which are currently dispersed across five State entities' appropriations. These State reimbursements to DAs totaled**

**\$7,565,389, specifically supporting Executive Branch Prosecution/Law Enforcement costs in FY 2012, as follows:**

- **State funding of Elected DA salaries, currently funded out of the DOL appropriation (\$2,676,960 in FY 2014 Request);**
- **Reimbursements to DAs for work in prison, as currently funded out of the Department of Corrections appropriation (\$366,880 in FY 2014 Request);**
- **Discovery production costs for OSPD cases, as currently funded out of The OSPD appropriation (\$1,737,168 of the total 1,808,044 in FY 2014 Request goes to the DAs and The DOL);**
- **Mandated costs reimbursements to DAs, as currently funded out of the Judicial Department appropriation (\$2,332,381 in FY 2014 Request); and**
- **Discovery production costs for Alternate Defense Counsel (ADC) cases are funded out of the ADC appropriation (\$452,000 in FY 2014 Request).**

**Since the DAs and The DOL are both Executive Branch entities, and since one of these reimbursements to the DAs is currently located within The DOL budget, it would seem that the easiest, most reasonable, logical and natural solution is to consolidate these appropriations and spending authority within The DOL appropriation.**

**This solution will have the following combined benefits:**

- **It will resolve current conflicts of interests created by the unchecked and uncontrollable vulnerabilities of the competing resource needs of parties performing opposite roles in a necessarily adversarial process (the Defense and the Prosecution);**
- **It will uphold the constitutional protections inherent in our democratic system of governing by ensuring against undue influence of separate branches of government (Judiciary/Executive); and**
- **It will consolidate resources of entities with similar purposes, interests and branch of government (upholding and enforcing the laws of the State as performed by the Prosecution/Law Enforcement entities of the Executive Branch).**

## Criminal Appellate Case Backlog

9. [Background Information: The Department of Law has requested funding to add six Assistant Attorneys General to its Appellate Unit, four of which would be temporary positions, to reduce its backlog of criminal appeals cases awaiting the filing of an Answer Brief over the next six years, from the current level of more than 600 to a more manageable level of 60. More than 40 percent of Opening Briefs received by the Appellate Unit in FY 2011-12 were filed by the OSPD, and the Appellate Unit estimates that about half of its existing case backlog consists of cases filed by the OSPD.]
- a. Assuming that the Department of Law's Appellate Unit is successful in reducing its case backlog as projected, what would be the estimated workload impact to the OSPD? What additional resources would the OSPD require, if any, to ensure that this backlog of cases does not simply shift to the OSPD?

**The DOL's annual budget request seeks to effectively resolve a backlog of 618 total appellate cases that are pending Answer Brief to be filed by the Office of the Attorney General (AG). The AG will increase its appellate attorney staff in 2014, enabling it to resolve 162 backlog cases in each of the first 3 years, plus 124 in the fourth year, and 8 in the fifth year. This request by The DOL assumes that AG attorneys can each effectively handle near 39 cases through Answer Brief and other resolution on an annual basis, and will result in each attorney carrying a backlog of 2 cases per year.**

**According to The DOL, it is estimated that The OSPD's Appellate Division represents about 50% of those cases currently on The AG's backlog. Based upon that assessment, The OSPD estimates that during the first 3 years after The AG's staffing increase The OSPD will see about 81 cases expedited through the Answer Brief phase of the appellate process, plus 62 in the 4<sup>th</sup> year, and 4 in the 5<sup>th</sup> year. This expedited workload will eventually build to a level that will cause The OSPD to further delay its active caseload and existing backlog of cases that are pending filing of Opening Brief by The OSPD in order to address these 618 more immediate appellate case activities.**

**Based upon existing OSPD workload standards, it is estimated that post-Answer Brief case activity represents 25 percent of the equivalent workload of case activity performed by OSPD attorneys through the Opening Brief filing phase of a case, or 20 percent of total active case workload. As such, it is estimated that these additional 81 post-Answer Brief cases will result in the growth of the current OSPD backlog by an additional 20 cases (25 percent of 81 cases) each year after the new AG staff have become acclimated to their new positions.**

**It is expected that developing the new AG attorneys will require some time in the first year, and that this process of absorbing the AG backlog will not**



have an immediate cumulative impact upon OSPD backlog, but will rather accumulate over time during the first couple of years. Therefore, it will likely be early 2015 before OSPD backlog is impacted by this change in the processing of appellate cases. Prior to that period, the impact of these expedited cases will grow incrementally, having relatively minor total impact to the overall OSPD appellate workload. Toward the end of the second year (FY 2014-15), it is expected that The OSPD will need to dedicate the equivalent resources of 1 additional appellate attorney FTE (annualized) to avoid a compounding increase in the backlog of its cases awaiting Opening Brief. Assuming this impact is realized, The OSPD will submit a request to the JBC describing the developing impact as part of its FY 2015-16 budget submission in November 2014.

- b. It is our understanding that a significant backlog exists earlier in the appellate process, and more than 1,200 cases await an Opening Brief to be filed by the OSPD. If the General Assembly's goal is to reduce the overall time required to process criminal appeals cases, and thus to address both of these backlogs, what additional resources would the OSPD require?

### **OSPD Appellate Caseload**

The OSPD will carry 2,103 active appellate cases and proceedings in FY 2012-13, including 1,255 cases pending opening brief and 848 cases and proceedings that will remain active in the post-opening brief phase this year. 598 new cases that are expected to be received this year are included in the 1,255 cases pending Opening Brief, as well as 657 cases that are part of current backlog from previous years. 584 cases and proceedings of the total 2,103 active cases and proceedings are expected to reach disposition this year; these include some portion of both the 1,255 cases pending Opening Brief and the 848 post-Opening Brief cases and proceedings. At the end of the current year, after those 584 cases are disposed, 1,519 active cases and proceedings will remain and will carry over to the following year; and 608 new cases are expected to be received -- the new active case total next year will be 2,127. On average, next year, OSPD Appellate Division staff attorneys will each carry a caseload of approximately 74.4 active cases and proceedings.

### **OSPD Appellate Backlog Resolution**

The 1,255 cases pending Opening Brief are what is defined as The OSPD appellate case backlog. It is true that The OSPD currently carries a significant backlog of appellate cases awaiting Opening Brief; however, due to the nature of the appellate process, timeline and workload, it is not possible to resolve both existing and new backlog cases within a one-year period.

*The Appellate Process Lifespan.* Based upon existing OSPD workload estimates and historic caseload data, it is estimated that 80% of the workload associated with the OSPD active caseload is completed up front in the pre-Answer Brief phase of a case, including: building of the record; reviewing the lower court case; client and family interaction; researching issues in a case; drafting and filing the OSPD Opening Brief, etc. FY 2007 through FY 2009 is the most recent 3-year period of OSPD appellate caseload in which most cases will have run the full lifecycle of the appellate

process, from the date that the Notice of Appeal is filed to the date the Mandate is issued by The Court.

- During that period, it has taken on average 4.5 months from the date of the filing of a Notice of Appeal, the date the OSPD is assigned the case, until the filing of the Record on Appeal with the Clerk of the Court of Appeals. The compiling of the record and its submission to the Court of Appeals are performed jointly by the Court Reporter(s) and the Clerk of Appeals in the District Court where the case originated.
- After the Record is complete and filed by the Court of Appeals with the Clerk of the Court of Appeals, it takes an average of 11.6 months for the OSPD to file its Opening Brief.
- After filing of the OSPD Opening Brief, it has taken an average of 5.4 months from the date of Opening Brief to the date the Answer Brief is filed by The AG in OSPD cases.
- Reply briefs, the OSPD's response to the AG's Answer Brief, have been filed by The OSPD in about 60 percent of cases after Answer Brief, and this has occurred within 1.7 months after Answer Brief filing on average.
- Oral arguments by The OSPD have been set within 3.4 months after Reply Brief filing on average, but only in 11 percent of cases where The OSPD filed a Reply Brief.

In total, the time it has taken for all of these stages to be completed is 26.7 months, not including the final ruling by The Court. Accounting for the relative frequency of Reply Briefs and Oral Arguments, it is estimated that the average case has taken 22.9 months to complete the most intensive portion of OSPD work on a case, not including Court Ruling time. Accounting for Court ruling, on average, Mandates have been issued by The Court about 16.2 months after the filing of the OSPD Opening Brief. Accounting for the total time up to Opening Brief filing and the Mandate issuance time after, the average case has remained an active part of OSPD workload for 32.3 months. The net time for Court Mandate to be issued after Answer Brief and/or Reply Brief and/or Oral Argument is estimated at 9.4 months on average (=32.3 months total – 22.9 months up to Oral Argument).

*Impact of Changes to Law and Process.* As outlined herein, the normal lifespan of appellate case workload and the time requirements of each party (Court Reporters, Clerks of the Court, The OSPD, The AG, Judges) to complete their roles at each phase of a case make it very difficult to expedite one party's share of the workload without significant impact to that of the others' at each subsequent phase of the case. Other changes also impact this intricate process and timeline.

The OSPD has seen the time required to file an Opening Brief after the filing of the Records on Appeal increase from 5.7 months on average from 2001 through 2005 to the current average of 11.6 months, about double the time. This change occurred as a result of changes to Colorado law that increased the number and severity of the overall active OSPD appellate caseload; decreased the proportionate share of other, more swiftly disposed cases; and expedited the appellate process overall. A few changes that have contributed to these outcomes include the following:

- An earlier statute providing a right to appeal criminal sentences changed in 1999 to add language to limit sentencing appeals following guilty pleas. In 2001 and 2002, the Court of Appeals began issuing published opinions dismissing appeals pursuant to the change in the statute. This change had the effect of shrinking the number of sentencing appeals that, historically, were cases that had shorter records and could be briefed relatively quickly.
- From the early 2000s, there has been a reduction in the number of mandatory parole appeals as a share of the greater OSPD appellate caseload. Similarly, this reduced the number of these relatively less complicated appeals, which tended to involve fewer issues and shorter records.
- An increasing influx of lifetime sex offense appeals beginning in 2006 added significant workload as trials became longer in lower court cases, records became lengthier, and issues were more numerous and more complicated. This occurred as the eventual impact of the 1998 enacted sex offense law.
- Additional Appellate Judge panels were added at the middle-end of the last decade, which expedited the timelines for the filing of Reply Briefs and Oral argument dates, and other post-Opening Brief workload activities of the OSPD active caseload. This contributed to the growing timeline and backlog of both OSPD Opening Briefs and

AG Answer Briefs, as both OSPD and AG workload was shifted to these more immediate demands.

While The OSPD saw about a 100 percent increase in its timeframe to file an Opening Brief, the timeframe for The AG to file an Answer Brief in OSPD cases similarly increased by 52 percent, from 3.5 months to 5.4 months. OSPD Reply Brief filing time after Answer Brief also increased, by 63 percent during the same period.

Meanwhile, although less complex appeals were increasingly replaced by more complex appeals, Oral Arguments were more immediately set by The Court, thereby expediting the workload of The OSPD. It is assumed that this decrease in time set for Oral Arguments occurred as a result of the allocation of additional appellate judges. The acceleration of these Court demands, as caseload has continued to grow, cases becoming more complex, records lengthier, and backlogs larger, has made swift resolution of backlog issues unfeasible.

*Assessing OSPD Backlog Staffing Needs.* The OSPD is not immediately able to accurately assess what resources it would take to resolve its total current backlog. In order to achieve this, several requirements need to be addressed:

- The current timeline and remaining estimated workload of 657 existing backlog cases pending Opening Brief need to be specifically established and equitably distributed among current staff.
- The current timeline and remaining estimated workload of 848 existing cases that are active post-Opening Brief need to be specifically established and equitably distributed among current staff.
- 598 new cases that will be received this year and that will be additionally pending Opening Brief will need to be reviewed, and have both timeline and workload requirements estimated.
- Some portion of the 598 new cases will need to be equitably distributed to current staff, not to exceed the maximum workload capabilities.
- Excess caseload, those new cases that could not be distributed within current staff capabilities will need to be distributed to additional staff.
- In order to achieve this, reliable, contemporary appellate workload standards need to be established for the OSPD. Existing OSPD

appellate workload standards are many years old, and have not been reviewed and reassessed to reflect current law, complexity and workload demands of the Colorado appellate process.

- Remaining case timelines and workload requirements for the post-Opening Brief phases of all cases will need to be assessed for all parties (The OSPD, The AG, Clerk of the Court, Court Reporters, Judges).
- Hypothetically speaking, if it were remotely possible to completely resolve this backlog of 1,255 new and existing OSPD cases pending Opening Brief, it would significantly increase the backlog of The AG's cases awaiting Answer Brief by an equal amount of cases, adding 1,255 new backlog cases awaiting Answer Brief by The AG. It would presumably require another increase in AG attorney resources for The AG to resolve this added backlog.
- Additionally, this influx of many Requests for Records on Appeal that would need to be more quickly produced, as well as that of Opening Briefs, Answer Briefs, Reply Briefs and Oral Arguments, would all require additional Judges, support staff, and clerk support for The Court, and a significant increase in immediate Court Reporter time and expense. The combined resource impact to all parties would be significant.

### **OSPD Appellate Caseload Staffing Requirements**

Recent estimates by The OSPD have reflected that its Appellate Division is understaffed for its projected FY 2013-14 caseload of 1,279 cases pending Opening Brief. Based upon new information, it is not clear if recent estimates of appellate staffing requirements would also accommodate the projected 848 cases that will remain active at the post-Opening Brief phase, which account for 20 percent of the total active case workload.

Recent estimates of staffing requirements have been based upon existing workload measurements that have not been reviewed and updated in many years, unlike OSPD Trial Office case weighting standards, which have been updated three times since 1997 through intense time studies. As a result, The OSPD does not consider recent assessments of resource need to be currently reliable.

The OSPD is currently reviewing existing appellate standards in other U.S. jurisdictions in conjunction with an ongoing project to implement a new appellate case management system. As a result of recent data findings that

**occurred during the development of this new system, and as a result of both the relative caseload goals presented by The AG in its appellate staffing request this year and by preliminary Appellate workload standards gathered from other U.S. jurisdictions, The OSPD is not confident that its existing projections for appellate staffing are accurate to fully capture its entire active case workload. Out of date standards and the inaccuracy of legacy data systems housing appellate case information have contributed to these considerations.**

**The OSPD expects that the implementation of its new appellate case management system, combined with ongoing research and development of contemporary appellate workload standards over the next year will enable it to more accurately address the question of its total appellate resource needs after the new appellate case management system has been implemented for a full year at the end of December 2013.**

**Based upon this improved data and the addition of newly developed appellate workload standards, The OSPD expects it will address any appellate staffing needs in its November 2014 budget submission for implementation during the FY 2015-16 Request Year. Should accurate information and up-to-date standards be made available in a timelier manner, and should workload pressures require more immediate action, The OSPD will submit a supplemental budget request for resources in FY 2013-14 and/or FY 2014-15.**

**JUDICIAL BRANCH  
FY 2013-14 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Friday, December 14, 2012  
9:00 am – Noon**

**JUDICIAL DEPARTMENT**

**11:30-11:50      OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC)**

**INTRODUCTIONS AND OPENING COMMENTS**

1. [Background Information: Colorado Supreme Court Rule 16 requires the prosecuting attorney to make available to the defense certain material and information which is within his or her control and to provide duplicates upon request. The rule requires that the "cost of duplicating" any discoverable materials shall be paid by the party receiving the material, and shall be based on the "actual cost of copying" the materials.]
  - a. Please provide a recent history of total OADC payments to District Attorney's offices and to the Department of Law for discoverable materials.

**The chart on the next page breaks out discovery costs by fiscal year that have been paid to the District Attorney Office's in each judicial district including the Attorney General.**



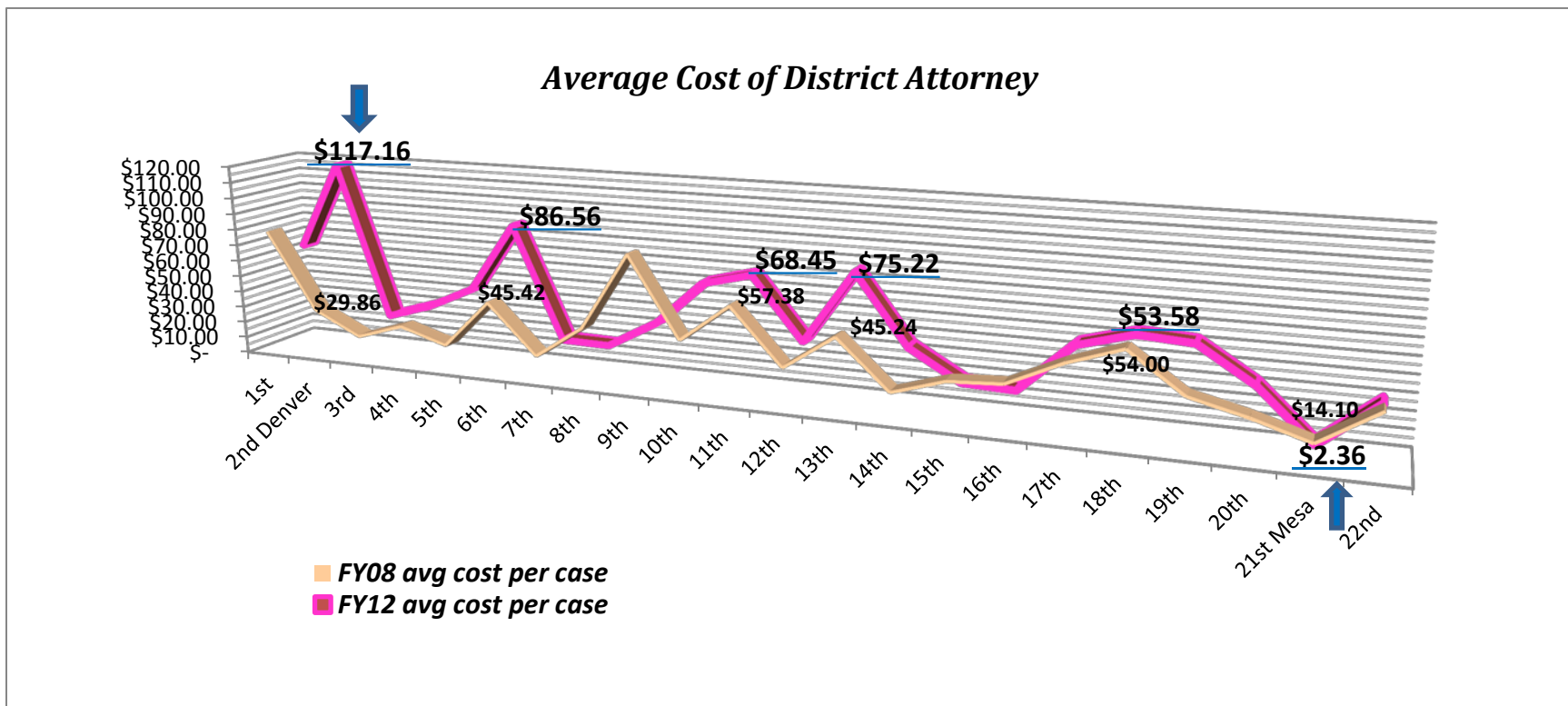
Jud District	Counties in District	FY07-08	FY08-09	FY09-10	FY10-11	FY11-12
1st	Gilpin/Jefferson	\$52,973	\$49,083	\$49,419	\$45,315	\$45,635
2nd	Denver	\$34,639	\$39,354	\$36,861	\$108,765	\$109,429
3rd	Huerfano/Las Animas	\$2,022	\$5,289	\$2,084	\$2,148	\$3,593
4th	El Paso/Teller	\$38,204	\$39,708	\$42,614	\$33,930	\$44,563
5th	Clear Creek/Eagle/Lake/Summit	\$1,827	\$3,667	\$2,528	\$2,938	\$4,057
6th	Archuleta/La Plata/San Juan	\$5,496	\$6,377	\$1,776	\$4,808	\$11,253
7th	Delta/Gunnison/Hinsdale/ Montrose/Ouray	\$3,045	\$5,111	\$6,160	\$3,406	\$3,783
8th	Jackson/Larimer	\$13,543	\$33,328	\$37,190	\$30,037	\$8,521
9th	Garfield/Pitkin/Rio Blanco/Glenwood	\$7,913	\$3,553	\$3,702	\$2,358	\$4,284
10th	Pueblo	\$17,125	\$19,619	\$26,562	\$21,771	\$32,569
11th	Chaffee/Custer/Fremont/Park	\$11,821	\$19,488	\$21,384	\$14,328	\$19,781
12th	Alamosa/Conejos/Costilla/Mineral/ Rio Grande/Saguache	\$4,036	\$2,713	\$4,620	\$4,416	\$6,173
13th	Kit Carson/Logan/Morgan/ Phillips/Sedgwick/Washington/Yuma	\$11,445	\$14,324	\$15,319	\$15,123	\$21,513
14th	Grand/Moffat/Routt	\$2,253	\$4,171	\$4,105	\$2,125	\$3,402
15th	Baca/Cheyenne/Kiowa/Prowers	\$1,478	\$1,319	\$1,808	\$1,971	\$1,866
16th	Bent/Crowley/Otero	\$3,254	\$9,757	\$4,301	\$3,994	\$2,744
17th	Adams/Broomfield	\$31,063	\$31,561	\$32,732	\$36,710	\$33,654
18th	Arapahoe/Douglas/Elbert/Lincoln	\$42,501	\$38,342	\$39,225	\$57,824	\$50,254
19th	Weld	\$18,839	\$27,162	\$26,589	\$33,612	\$33,235
20th	Boulder	\$7,430	\$8,793	\$16,798	\$11,222	\$13,553
21st	Mesa	\$6,924	\$8,548	\$11,403	\$4,134	\$1,183
22nd	Dolores/Montezuma	\$2,112	\$2,040	\$2,040	\$3,479	\$2,744
	Department of Law		\$449	\$859	\$1,213	\$7,204
	<b>Total Paid In each Fiscal Year to District Attorney Office's &amp; Department of Law</b>	<b>\$319,943</b>	<b>\$373,756</b>	<b>\$390,079</b>	<b>\$445,627</b>	<b>\$464,994</b>

b. Please provide data that indicates the range and variation in rates charged by District Attorneys' offices and the Department of Law for discoverable materials.

**The chart on the next page breaks out costs charged for discovery by each District Attorney Office's and the Department of Law.**

Jud District	Cost per page	Audio	Video	CD	DVD	911 tapes	Relocation Fee	Photo per page	OTHER
1	\$0.35	N/C	N/C	N/C	N/C			\$5	*No charge unless lost/misplaced then charge is \$15 per disc/\$5.00 per sheet
2	\$0.50	\$15	\$15	\$15	\$18	\$20	\$20	\$1	
3	\$0.25	\$5		\$5	\$5			\$1	Dispatch log and Recording 78.00
4	\$0.25	\$5	\$5	\$16	\$5			\$5	Initial Discovery CD \$16, High Volume Case \$50, Juvenile \$10, County \$8, Supp \$2 +.10 pg.
5	\$0.25	\$5	\$25	\$5	\$5			\$1 color	Cost for postage on copies .50 for 1st oz. +
6	\$0.10	\$5	\$15	\$5	\$15			\$15	High Volume \$50
7	\$0.40	\$1	\$2	\$1	\$1			\$1	No Scanning capability
8	\$0.25 B/W, \$1 Color			\$12	\$17				Base charge Class F1=\$200; F2 to F3=\$65; F4 to F6= \$40; Juv \$25; Misdemeanor \$15,
9	N/A	\$6	\$6	\$6 +0.27	\$6. +0.42			\$6	County up to \$6, District up to \$20, Staff time up to \$20 per hour. No paper discovery
10	\$0.50	\$7	\$10	\$5	\$8			\$10 plus cost	Additional Charges added for Prep of discovery: Faxed discovery \$.75 page, Scanned \$15 + over 300 pages \$50.00; Polaroid \$1.00 per copy + \$5.00 prep, DA-\$10 prep+ \$1 pp.
11	\$0.50			\$5	\$5			\$0.50	
12	\$0.50	\$3	\$5	\$5	\$10			\$0.55	
13	\$0.35	\$8	\$8	\$8	\$8				
14	\$0.25	\$15	\$25	\$15	\$15			\$0.50	
15	\$0.25	\$3.50	\$5.50	\$5	\$10				
16	\$0.25			\$15	\$15				
17	\$0.15	\$6	\$12	\$8 Cnty / \$15 other	\$15			\$15	\$1 per CD, \$15 per Cd for major cases, Microfilm .40 cents per page
18	\$.20 b/w, \$1 color	\$13	\$26	\$10	\$15				Initial discovery \$15 + \$1.42 additional, high volume initial \$50 + \$1.42
19	\$2 + \$.25	\$5	\$10	\$10	\$10				
20	\$0.25	\$5	\$15	\$15	\$15			\$15	If scanned pages exceed 1000, \$50
21	No charge								Discovery is electronic- is no charge. Implemented on-line system late 2010. Is a minimal fee for Video copies
22	\$0.25	\$5	\$5	\$5	\$5			\$5	
DOL	\$0.25	\$1		\$1/\$10					Additional sets \$10 per disc

The following chart provides the average cost of discovery per case appointment charged by District Attorney Office's for Fiscal Year 2008, compared to 2012, indicating a significant increase in costs in some jurisdictions, and a significant decrease in others. Of particular note is the jump in the 2<sup>nd</sup> Judicial District from \$29.86 per case to \$117.16 per case in 4 years, as compared to a significant decrease in the 21<sup>st</sup> judicial district, from \$14.10 per case to \$2.36 per case. Interestingly, the 2<sup>nd</sup> Judicial District continues to provide paper discovery, while the 21<sup>st</sup> Judicial District provides discovery in a cloud-based electronic format, with a minimal charge for media (DVD's/CD's).



- c. Please describe any efforts the OADC has made to resolve disagreements concerning procedures and fees associated with duplicating discoverable materials.

The OADC has a contract computer expert who specializes in organizing and distributing electronic discovery in complex cases. This includes producing electronic discovery from paper discovery. In this process several thousand pages of paper discovery (costing anywhere from fifteen cents per page to fifty cents per page to reproduce), becomes one or two compact disks, costing very little to reproduce. The OADC has contacted individual District Attorney's Offices concerning charges in COCCA (Colorado Organized Crime Control Act) cases and other large multi co-defendant cases and made arrangements for the OADC's document processor to receive one copy of the discovery, and reproduce it for all of the OADC contractors assigned to individual defendants, at a significantly reduced rate. In one example it would have cost approximately \$30,000 for all of the co-defendants, but OADC worked out the above arrangement with the local district attorney, and the total cost was approximately \$6,000.

- d. What actions should the Joint Budget Committee and/or the General Assembly consider taking to develop and implement a workable solution to resolve these disagreements?

The Joint Budget Committee and/or the General Assembly should reward innovation that makes the production of discovery in criminal cases less expensive, i.e. encourage paperless systems. There should be a disincentive for producing discovery in paper format. A suggestion for accomplishing this is to set a standardized rate for producing discovery. The rate suggested by the OADC is the rate OADC pays to its independent contractor who processes discovery for OADC in multi-defendant and large volume cases. The following table outlines these rates:

B/W or Color document - scanned Image	\$ 0.10/image
CDs/DVDs containing documentary discovery	\$ 5.00/disk
CDs	\$ 3.00
DVDs	\$ 5.00
Audio Tapes	\$ 5.00/tape converted to CD
VHS Tapes	\$15.00/VHS converted to DVD

**JUDICIAL BRANCH  
FY 2013-14 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Friday, December 14, 2012  
9:00 am – Noon**

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**11:50-12:00      OFFICE OF THE CHILD'S REPRESENTATIVE (OCR)**

**INTRODUCTIONS AND OPENING COMMENTS**

**QUESTIONS COMMON TO ALL DEPARTMENTS**

- 1. The JBC occasionally hears complaints that base personal services reductions to capture vacancy savings result in more vacancy savings as managers reduce staff to absorb the reduction and then still experience turnover. Some departments refer to this as the "death spiral." Has your department experienced this problem? How does your department attempt to minimize and avoid the "death spiral?"*

The OCR's base personal services line consists of its Denver administrative office (7.4 FTE) and its El Paso County Guardian *ad litem* (GAL) Office in Colorado Springs, which provides direct legal representation to children in the 4<sup>th</sup> Judicial District (19.5 FTE). Base personal services reductions have had a significant impact on the agency. While the OCR has not actively reduced staff to absorb reductions, it has been forced to institute longer periods of vacancy to absorb personal service reductions. This has resulted in lower FTE counts than budgeted, higher caseloads than ideal, and reliance on independent contract attorneys to accept appointments that could instead be handled by a fully-staffed El Paso County GAL Office. Because of base services reductions, the OCR has also had to hire new employees at salaries that are lower than those of other staff with the same experience in the same office and that are below the market rate.

As a specific example, the OCR El Paso County GAL office experienced turnover of four employees in fiscal year 2012. Three employees left state employment, and one employee retired. Each leave payout required that the position remain vacant until the cost could be absorbed with existing resources. This meant that existing employees had to absorb an increased workload during the period of vacancy. Because of the office's caseload caps for its attorneys, this also impacted the office's capacity to pick up cases during the vacancy period. Additionally, the retirement occurring in the El Paso County GAL Office in June 2012 resulted in the need to transfer funds to cover the leave payout for this employee.

Another result of the base personal services reduction is that the OCR has had to base hiring salaries on decreased available funding, which has resulted in salaries lower than those previously allocated for the positions and lower than comparable market salaries. This in turn has created pay disparities within the GAL office and has negatively impacted the OCR's ability to retain experienced attorneys. The OCR plans to prioritize the use of any merit pay increases to reduce existing discrepancies in salaries and begin the process of moving existing salaries closer to comparable government salary ranges.

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

NOTE: The Judicial Branch does not have any audit recommendations that fall within the above categories.

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