

Office of the State Public Defender FY 2024-25 Comeback Request

March 12, 2024

Department:	Office of the State Public Defender
Title:	R#1-Attorney FTE

	FY25 Request	JBC Action	Comeback Request	Difference Between FY25 Request and Comeback Request
Total	\$14,688,344	\$0	\$10,794,142	(\$3,894,202)
FTE	128.0	0.0	91.4	(36.6)
GF	\$14,688,344	\$0	\$10,794,142	(\$3,894,202)
CF	\$0	\$0	\$0	\$0
RF	\$0	\$0	\$0	\$0
FF	\$0	\$0	\$0	\$0

Summary of Initial Request:

The Office of the Public Defender (OSPD) initially requested \$14,688,344 General Fund and 128.0 FTE to address staffing requirements necessary to comply with the OSPD's enabling statute, federal and state constitutions, the Colorado Rules of Professional Conduct, and the American Bar Association Standards.

Committee Action:

During JBC staff figure setting presentation, the Committee delayed a vote and asked OSPD to comeback.

OSPD Comeback:

Based on the concerns raised by the Committee about the fiscal condition of the state and the need to consider other agencies' requests, the OSPD submits this revised request for attorney Full-Time Equivalents (FTE). For R#1: Attorney FTE, the OSPD requests a total of \$10,794,142 General Fund and 91.4 FTE, consisting of 50 attorney FTE and 41.4 FTE support staff including investigators, paralegals, administrative assistants, and centralized staff. This is a 26% reduction of OSPD's initial request.

The OSPD has not requested attorney FTE in four years. The need for increased attorney staffing is based on changes in criminal trial-level practice and relies in part on updates to data from OSPD's 2017 Colorado-specific workload study. Notably, OSPD's portion of the Judicial Department's overall budget has dropped. In FY18, OSPD funding constituted 17.5% of the Judicial Department's budget; it is now at 15.4%. If the Committee approves OSPD's revised request, the OSPD will still be below FY18 comparative funding, at 16.5% percent of the total.

The revised request targets the two most critical drivers of need: the explosion of discovery and the proliferation of courtrooms. This revised request for 50 attorney FTE and support staff helps meet critical staffing needs while recognizing statewide fiscal concerns.

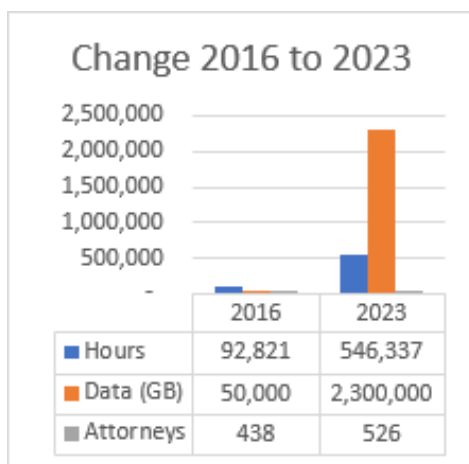
Workload Data Drive OSPD’s Requests: In assessing FTE needs, the OSPD relies upon case weighting derived from objective, Colorado-specific workload studies. The workload associated with the type of case drives the need for attorneys, not the number of cases alone.

- Although OSPD handles approximately 70% of criminal cases state-wide, OSPD handles 80% of felony cases which require more work and more attorneys.
- For example, since 2017, the OSPD has seen a 68% increase in Felony 1 murder cases it handles - the charge which carries the highest workload.

Discovery: The scope, amount, and complexity of discovery across all case types is the biggest driver of OSPD’s increased staffing needs. OSPD applied the increase in discovery data to its 2017 workload study to capture the number of additional hours of attorney work. Since 2016, the amount of data the OSPD is receiving and storing in its cases has increased a staggering 4500%.

The astronomical increase is driven by ongoing changes to law enforcement’s investigation in criminal cases and the move to digital discovery processes. Prosecutors give the defense hundreds of hours of jail phone calls, terabytes of computer data, multiple police officer body-worn camera footage, and digital information from high-tech investigative tools. Police agencies and prosecutors’ offices have expanded their reliance on well-funded specialized units that investigate complex crimes involving allegations of human trafficking, wire fraud, fentanyl distribution, and so-called “street gangs,” resulting in large case files with complex factual allegations. All of this contributes to an exponential increase in OSPD workload.

4500% increase in case-related data



In applying the information about the increase in data, OSPD controlled for duplicate materials, increased size of images, offices that transitioned to digital material, and the contribution of paralegal support. The remaining amount of data was then applied to two areas of 2017 time-tracked data, Case Preparation and Client Interactions, both of which involve discovery review. The calculation indicated the attorney hours necessary to account for just these two tasks across cases increased from 92,821 in 2017 to 546,337.

In FY 2022-23, the General Assembly provided the OSPD with 104 paralegal FTE to help address the increased workload resulting from the growth in discovery. OSPD’s paralegal program is popular and successful, helping trial attorneys collect, organize, and manage discovery in their most serious cases. While OSPD paralegals are critical in preparing discovery for review, and at times reviewing and summarizing it for the defense team, in many cases the attorneys still must do their own independent review of discovery.

Proliferation of Courtrooms: Another factor significantly affecting public defender workload is the increased number of courtrooms, special courts, and magistrates the Judicial Branch has handling criminal and juvenile cases. The OSPD staffs approximately sixty-five non-traditional dockets, including specialty courts and competency courts in addition to the many hundreds of traditional dockets.

Since 2016, the Judicial Branch has expanded the number of criminal courtrooms, partly by increasing the number of magistrates by 39%. For new judge positions, which are allocated by the legislature, the OSPD is awarded new positions to staff these additional courtrooms through the fiscal note process. For new magistrate positions, the OSPD must rely on the budget process to ensure it can cover these new courtrooms.

Judges & Magistrates				
	FY16 Actuals	FY22 Actuals	Increase	variance
Judges	271	284.7	13.7	5%
Magistrates	60.1	83.3	23.2	39%
Total	331.1	368.02	36.92	11%
Senate Bill 19-043 15 judges added. OSPD received 12 attorneys				

The increase in criminal dockets has a direct and adverse impact on the workload of public defenders. Because lawyers cannot be present in multiple locations simultaneously, these dockets require additional attorneys to staff them. Although the office may have a similar number of cases as before, the attorney's time is increasingly consumed by court appearances, travel time, and waiting, as they must attend multiple dockets each week. Many of these dockets extend OSPD's involvement in cases beyond adjudication or increase the number of appearances required, thereby generating additional work. In addition to the consequence for attorney time, in practical terms when there are multiple dockets taking place simultaneously, the office must dispatch attorneys to all of them. OSPD needs sufficient staffing to meet this demand.

Non-Attorney staffing ratios:

Members of the Committee asked questions at figure-setting about the staffing ratios OSPD relies upon for the 40.1 FTE support staff portion of its R#1. The OSPD has relied upon these support staff ratios since FY 1984-85 in its budget requests. Investigators, administrative staff, and paralegals are important time and cost savers, as they take on work that does not need to be accomplished by attorneys, who come at a higher FTE cost.

The National Legal Aid and Defender Association first recommended non-attorney to attorney staffing ratios for public defender offices in 1976.¹ These standards were reaffirmed in a 2020 report by the National Association for Public Defense. OSPD's longstanding ratios currently meet some of the national standards, are well behind others, and do not exceed any of the recommended ratios.

Non-Attorney Staff	Recommended Ratio	OSPD Staffing
Investigator	1 to 3	1 to 3
Social Worker	1 to 3	1 to 23 (<i>see OSPD R2</i>)
Paralegal	1 to 4	1 to 6
Administrative Assistant	1 to 4	1 to 4

¹ The National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States (1976) address the essential nature of professional business staff. Guideline 4.1, Task Allocation in the Trial Function: Specialists and Supporting Services "....social workers, investigators, paralegal and paraprofessional staff as well as clerical/secretarial staff should be employed to assist attorney in performing tasks not requiring attorney credentials or experience and for tasks where supporting staff possess specialized skills. Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator...." <https://www.nlada.org/defender-standards/guidelines-legal-defense-systems>

Department:	Office of the State Public Defender
Title:	R#2-Social Worker & Client Advocates

	FY25 Request	JBC Action	Comeback Request	Difference Between FY25 Request and Comeback Request
Total	\$2,945,761	\$0	\$1,791,823	(\$1,153,938)
FTE	27.6	0.0	16.7	(10.9)
GF	\$2,945,761	\$0	\$1,791,823	(\$1,153,938)
CF	\$0	\$0	\$0	\$0
RF	\$0	\$0	\$0	\$0
FF	\$0	\$0	\$0	\$0

Summary of Initial Request:

The Office of the Public Defender (OSPD) initially requested \$2,945,761 General Fund and 27.6 FTE to provide clients with mitigation and community support services.

Committee Action:

During JBC staff figure setting presentation, the Committee delayed a vote and asked OSPD to comeback.

OSPD Comeback:

Based on concerns raised by the Committee about the fiscal condition of the state and the need to consider other agencies' requests, the OSPD is submitting this revised request for Social Worker and Client Advocate FTE. For R#2, OSPD requests a total of \$1,791,823 General Fund and 16.7 FTE, 11 social worker FTE and 5 Client Advocates. The OSPD needs the 11 social worker FTE to address existing gaps in the OSPD's ability to provide forensic mitigation work. Rural offices and communities will be able to access this resource in a way that is currently not available.

In this revised request, the OSPD cut 20 of the 25 Client Advocate FTE positions originally requested, an almost 40% cost decrease for R#2. During figure setting, the Committee expressed concern that the Client Advocate positions would overlap with Bridge Liaisons. While the OSPD sees Client Advocates as different in critical ways, the reduction to five Client Advocates will give the OSPD and the Joint Budget Committee an opportunity to better assess whether there is overlap. Partners for Justice (PFJ) will help manage the five positions, providing training and program development, and opening Colorado's diversity recruiting opportunities to provide focused support to clients not served by the Bridges program.

Social Worker FTE:

Currently, the 23 social workers make up just 2% of the OSPD's workforce. Consequently, OSPD social workers can only provide services to a small number of clients, often concentrated in the metropolitan areas and only on the most serious cases, when other clients would benefit from quality mitigation. The proposed increase will enable the OSPD to expand the social workers' capacity to help more communities and clients.

Social worker FTE are a cost-effective approach to managing public defender workload and have a broader

cost-saving impact on the criminal justice system. They decrease demand on attorneys' time by taking over the investigation and presentation of complex mitigation. Because the social worker specializes in behavioral health, the information they provide to attorneys and courts improves effectiveness and efficiency. Defense-based forensic social work programs help reduce jail and prison sentences², thereby saving the state money.³

Social worker intervention earlier in a person's involvement in the criminal justice system reduces recidivism⁴. Social workers help clients gain insight into the relationships and behaviors that contributed to the criminal charges, helping influence positive future behavior. Further, by addressing gaps in resources social workers help clients obtain stability in their communities, one of the most powerful tools to avoid future criminality.

Social workers provide courts with relevant information to assist in equitable sentencing and provide mitigating information to the prosecution to help resolve cases and avoid the work involved with trial for all parties.

Client Advocate FTE:

Client advocates target poverty as a contributor to criminal justice system involvement by helping clients engage in programs and resources intended to address the circumstances that contributed to criminal justice involvement. The OSPD has engaged Partners for Justice (PFJ) to provide initial program direction for 5.0 FTE positions if this decision item is funded.

Like social workers, client advocates are a cost-effective approach that take work away from public defense attorney and contributes to reduction in incarceration and recidivism. Because client advocates do not need a master's degree, they are a less expensive workforce than licensed social workers and attorneys. Currently, because of the small size of OSPD's social work team, attorneys are often responsible for tasks like arranging housing for clients, identifying substances abuse treatment options, managing the complex insurance options, and otherwise identifying social support and treatment resources. Client advocates will take over this work.

PFJ provides a cost-effective and community safe model. PFJ client advocates specialize in coordinating access to jobs, housing, and mental health services as well as helping clients obtain state and federal benefits. They also engage in bail advocacy, eviction prevention, averting employment termination, obtaining identification or driver's license reinstatement, helping clients to follow court requirements, connecting with employment or education resources, and identifying counsel for civil, family, and immigration matters. A study of this model showed an estimated \$165 million in cost savings with no increased risk to public safety.⁵ PFJ has helped twenty-six other public defender systems set up client advocate programs by providing recruitment, training, service delivery, capacity building, and data gathering systems.

² Harris, H M. (2020). Building holistic defense: The design and evaluation of a social work centric model of public defense. *Criminal Justice Policy Review* 31 (6): 800-832.

³ Anderson, J; Buenaventura, M; & Heaton, P. (2019). The Effects of Holistic Defense on Criminal Justice Outcomes. *All Faculty Scholarship*. https://scholarship.law.upenn.edu/faculty_scholarship/2024; Prendergast, A (2023, November 8). *The Hard Cell: The Turmoil Inside Colorado's Understaffed Prisons*, Westword, <https://www.westword.com/news/turmoil-inside-colorado-understaffed-prisons-18157923>; Matei, A; Hussemann, J; & Siegel, J. (2020). Assessing a Social Worker Model of Public Defense. *Urban Institute*.

⁴ Buchanan, S. & Orme, J. (2019) Impact of Social Work Practice in Public Defense, *Journal of Social Service Research*, 45(3), 336-347, DOI: 10.1080/01488376.2018.1480559

⁵ Anderson, J M., Buenaventura, M., & Heaton, P. (2019). Holistic representation: An innovative approach to defending poor clients can reduce incarceration and save taxpayer dollars— without harm to public safety. RAND Corporation. https://www.rand.org/pubs/research_briefs/RB10050.html.

Department:	Office of the State Public Defender
Title:	BA#5 Training

	FY24 Supplemental/BA Request	JBC Action	Comeback Request	Difference Between FY25 Request and Comeback Request
Total	\$260,493	\$0	\$260,493	\$0
FTE	0.0	0.0	0.0	0.0
GF	\$260,493	\$0	\$260,493	\$0
CF	\$0	\$0	\$0	\$0
RF	\$0	\$0	\$0	\$0
FF	\$0	\$0	\$0	\$0

Summary of Initial Request:

The Office of the Public Defender (OSPD) requests \$260,493 General Fund for attorney and support staff training, including continuing legal education programs and other defense-related services.

Committee Action:

During JBC staff figure setting presentation, the Committee delayed a vote and asked OSPD to comeback.

OSPD Comeback:

The OSPD requests funding of its BA#5 Training request of \$260,493 General Fund.

The OSPD's excellent training assists the agency in providing high quality legal representation to its clients. Well-trained public defenders are more effective and efficient, bringing an overall cost benefit to the criminal legal system. However, several factors have contributed to an increase in training costs, including complexity in criminal law practice, changes in the workforce, inflation, and the need to obtain training specifically related to diversity, equity, and inclusion.

The Office of Attorney Regulation Counsel requires that all attorneys complete 45 continuing legal education hours every three years, seven of which must be devoted to professional responsibility. These seven hours must include at least two credit hours in equity, diversity, and inclusivity, and at least five credit hours in the areas of legal ethics or legal professionalism. In lieu of paying for external training, the OSPD offers its own CLE courses as a cost-effective approach to meet this obligation.

The cost of training has increased. While the OSPD has in-house expertise it relies on for most trainings, a criminal law practice involves increasingly complicated forensic and technical knowledge which means OSPD must either bring in experts to train defenders or send staff to outside trainings offered by legal experts, social scientists, and forensic specialists. OSPD continues to implement cost-saving measures including applying for scholarships and requiring "teach back" where only a small number of public defenders attend conferences and are expected to come back and train others on the knowledge gained.

Rapid inflation and rising costs since FY 2017-18 contribute to OSPD's need for additional training funding as lodging, food, and transportation costs are sometimes necessary. Further, workforce expectations and business culture have changed, requiring the OSPD to adapt to retain its staff. In the past, OSPD has expected employees to share lodging accommodations

and forego mileage and per diem reimbursements to keep costs down. This is no longer acceptable in all circumstances. Further, the OSPD cannot expect employees to continually absorb and subsidize work-related costs.

Historically, the OSPD has funded training costs through its operating line item. In FY 2023-24, OSPD submitted a decision item requesting \$350,000 in additional funds to address escalating training costs within the operating line item. The request was denied and instead a line-item budget transfer of \$350,000 was made from the OSPD operating line and put into a new training line item, a budget neutral change.

Although the OSPD projects an 80% increase in training costs this year when compared to FY 2017-18, the projected per person increase is only 33%.

	FY18	FY24-proj	% inc	FY25-proj
Training Expenses	\$326,281	\$586,327	80%	\$610,493
Total FTE	811	1098	35%	1103
Amount/FTE	\$402	\$534	33%	\$553
Mileage rate	0.49	0.60	22%	
Per Diem rate	\$51	\$76	49%	
Lodging avg	\$150	\$200	33%	
Training Line Item		\$350,000		\$350,000
Supplemental Request		\$236,327		\$260,493