

**JUDICIAL BRANCH
FY 2019-20 JOINT BUDGET COMMITTEE HEARING AGENDA**

**Tuesday, December 18, 2018
1:30 pm – 5:00 pm**

1:30-2:45 COURTS AND PROBATION (JUD)

Main Presenters:

- Chief Justice Nathan B. Coats
- Chris Ryan, State Court Administrator

1:30-1:50 INTRODUCTIONS AND OPENING COMMENTS.

1:50-2:45 QUESTIONS.

2:45-3:15 OFFICE OF THE STATE PUBLIC DEFENDER (OSPD)

Main Presenter:

- Megan A. Ring, Colorado State Public Defender

Supporting Presenters:

- Karen Taylor, First Assistant Public Defender
- Maureen Cain, Director of Legislative Policy and Organizational Communication
- Karen Porter, Chief Financial Officer

3:15-3:30 BREAK

3:30-3:45 OFFICE OF THE ALTERNATE DEFENSE COUNSEL (OADC)

Main Presenters:

- Lindy Frolich, Director
- Mary Sharon Wells, Commission Member

Supporting Presenters:

- Darren Cantor, Deputy Director
- Daniel Nunez, Controller/Budget Manager

3:45-3:55 JOINT PRESENTATION BY THE OFFICE OF THE CHILD’S REPRESENTATIVE (OCR) AND THE OFFICE OF THE RESPONDENT PARENTS’ COUNSEL (ORPC)

Main Presenters:

- Chris Henderson, Executive Director, OCR
- Melissa Thompson, Executive Director, ORPC

Topic: Who’s in the courtroom for Dependency and Neglect (D&N) proceedings?

3:55-4:05 OFFICE OF THE CHILD’S REPRESENTATIVE (OCR)

Main Presenters:

- Chris Henderson, Executive Director
- Ashley Chase, Staff Attorney and Legislative Liaison

4:05-4:15 OFFICE OF RESPONDENT PARENTS’ COUNSEL (ORPC)

Main Presenters:

- Melissa Thompson, Executive Director
- Linda Edwards, Chief Financial Officer

4:15-4:30 OFFICE OF CHILD PROTECTION OMBUDSMAN (OCPO)

Main Presenter:

- Stephanie Villafuerte, Child Protection Ombudsman

4:30-4:45 INDEPENDENT ETHICS COMMISSION (IEC)

Main Presenters:

- April Jones, Chair, Independent Ethics Commission
- Matt Smith, Commissioner, Independent Ethics Commission

Supporting Presenters:

- Dino Ioannides, Executive Director, Independent Ethics Commission

4:45-5:00 OFFICE OF THE PUBLIC GUARDIAN (OPG)

Main Presenter:

- Shari Caton, Chair of the Office of Public Guardianship Commission

Supporting Presenters:

- Dr. Deb Bennett-Woods, Vice-Chair of the Office of Public Guardianship
- Marco Chayet, Commissioner of the Office of Public Guardianship
- Kelsey Lesco, Commissioner of the Office of Public Guardianship
- Karen Kelley, Commissioner of the Office of Public Guardianship

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1:50-2:45 QUESTIONS.

JUD Question 1. (Question about request R1, asking for increased District court judges and supporting staff.) If this is approved, what will be the statewide staffing percentage for district court judges? What would it cost to go to 100% staffing statewide?

If the Department’s request for 15 new District Court Judges is approved, the statewide staffing percentage for district court judges will increase from 77.5% to 82.3%.

To reach full staffing (100%) the Department would need 70 additional district court judges and 210 support staff for those judges.

District	Current Judges	Last new Judge	Caseload growth*	Felony caseload growth*	Current Staffing percentage	Request
1 st (Jefferson and Gilpin)	13	2009	4%	41%	77.50%	1 Judge
2 nd (Denver)	23	2012	16%	40%	69.80%	4 Judges
4 th (El Paso and Teller)	22	2010	12%	48%	72.20%	2 Judges
8 th (Larimer and Jackson)	8	2010	16%	64%	77.30%	1 Judge
10 th (Pueblo)	7	2009	18%	48%	71.20%	1 Judge
13 th (Northeast Colorado)	4	1963	7%	39%	72.90%	1 Judge
17 th (Adams and Broomfield)	15	2010	12%	38%	76.80%	1 Judge
18 th (Arapahoe, Douglas, Elbert and Lincoln)	23	2015	7%	37%	79.90%	1 Judge
19 th (Weld)	9	2010	13%	40%	73.40%	2 Judges
21 st (Mesa)	5	2008	7%	69%	75.40%	1 Judge

**caseload growth represents the increase in filings for the previous five years*

JUD Question 2. (Question about request R1, asking for increased District court judges and supporting staff.) How does utilization of senior judges fit into this? Can senior judges fill the staffing gaps?

The Senior Judge Program is intended to address targeted, short term judge coverage not long-term coverage caused by persistent understaffing. The Senior Judge Program assigns retired judges to:

- hear cases in which trial court judges have recused for reasons set forth by §13-1-122, C.R.S., Colorado Rules of Civil Procedure (C.R.C.P.) 97 or the Colorado Code of Judicial Conduct;
- ensure that the trial court's docket is not interrupted to the detriment of the litigants due to the illness or unexpected absence of a judge, judicial vacancy, judicial training and education, or an overscheduled docket;
- perform case screenings and handle alternate dispute resolution settlement conferences for the Office of Dispute Resolution (ODR); and
- handle overscheduled dockets, write opinions and operate the pre-argument settlement program for the Court of Appeals.

Currently, the Senior Judge Program is funded for 43 retired judges on contract and is unable to meet all the current requests for coverage. Since 2014, the number of requests for coverage has increased by 28% with no accompanying increase in resources. The increase in coverage requests are linked to the increase in workload that is driving the Judicial Department's request for new district court judges.

A senior judge contract is not the equivalent of a full-time judge. Contracts are typically for a total of 60 days in a calendar year. Approximately three and a half senior judge contracts would be needed to cover the work of one district court judge. Utilizing retired judges under the Senior Judge Program in place of the Judicial Department's request for new judges would require the Senior Judge Program to double in size—approximately 45 additional new contracts.

Increasing the size of the Senior Judge Program would not adequately address the Judicial Department's need for additional judges. First, there are not enough eligible retired judges to address the district courts' workload needs statewide. Participation in the Senior Judge Program by retired judges is entirely voluntary, and there is simply not enough participation to expand the program in any significant way. Second, using a rotating series of temporary retired judges long term to address caseload needs will make it difficult to manage cases consistently and efficiently in a fair and impartial manner. There are not enough support staff (i.e. court judicial assistants) to cover a significant expansion of the Senior Judge Program. Adequate support staff for senior judges is not a challenge when a senior judge is covering a day or two due to illness or training—they simply utilize the staff for the judge who is unavailable. Using senior judges to cover long-term assignments presents new staffing challenges. Finally, it

is not clear if there is enough courtroom space around the state to accommodate such a significant increase in the program.

JUD Question 3. (Question about request JUD R2, asking for more probation staff.) Why has the use of private probation gone down?

The decline in the private probation population is attributable to several factors at the local level.

- 1) Diminished Local Capacity- There are several mid-size judicial districts that have experienced closures of their local private probation provider over the last few years. In these situations, the districts must absorb the population back into state supervision. The 21st Judicial District (Mesa County) for example, recently had to absorb 350 cases back to state probation due to the unexpected closure of their provider. Due to the limited referral base for eligible low risk probationers along with the structure of the funding model for private probation (\$50 per month/probationer) there is no incentive to have operations in small or mid-size judicial districts.
- 2) Declining Confidence in Providers – Several probation offices and some courts have reported declining confidence in the quality of supervision of their local private probation provider. In these cases, state oversight of private supervision has illuminated compliance issues with contract requirements and issues with basic supervision practices.
- 3) Availability of Alternate Technology – Some larger districts have found that technology solutions are effective alternates to private probation supervision. Several districts are using an automated telephone reporting (ATR) system designed for lower risk offenders. While slightly more resource-demanding on state FTE than private probation, this technology is a promising option for lower risk probationers.

JUD Question 4. (Question about request JUD R6, IT Infrastructure.) Will this go to the JTC for review?

Yes. The Decision Item was submitted to the JTC on November 1st

JUD Question 5. (Question about request JUD R4, Additional Audio Visual Staff and administrative support.) How is AV equipment used in the courts? How has the use of AV equipment increased? What is driving the increased use of AV? Do people expect things to be on a screen? Are there alternatives to doing this with state employees?

Prior to about 2010, courtroom AV systems primarily consisted of analog equipment that amplified and recorded spoken words and these systems had little or no ability to conduct court business remotely. Court-related documents were either distributed as hardcopy or often displayed on a single screen shared by everyone in the courtroom. The ability to display digital content on state-provided

equipment existed only in a small number of select courtrooms across the state. If a courtroom did not have the capability, counsel was required to provide the equipment. Additionally, fulfillment of ADA and language interpretation requirements though technology was challenging.

After 2010, public expectations have grown exponentially as the age of personal internet access and communications has changed how society interacts with technology. As the judicial department has moved to a paperless business model, so too has the legal profession. Courtroom participants expect the ability to conduct business remotely thru both telephone and video conference scenarios. All participants expect the ability to display digital evidentiary content such as body-cam footage, PowerPoint presentations, social media communications, digital video, and an endless list of old and new forms of digital documentation. Law enforcement and county governments expect courtroom remote arraignments systems to reduce manpower and travel costs related to the transportation of prisoners. Efforts to improve language interpretation services while simultaneously reducing costs has led to the need for technological solutions in the courtroom in the face of increasing demand. All these needs require an ever-increasing dependency on advanced courtroom technology and a support staff to keep it operational.

AV service contracts provided by the private sector generally run 4-5% of the initial installed value of the system with a sliding scale dependent on the age of the system until year 8 at which point most vendors will not extend. With approximately 450 systems across the state, a yearly service contract would be roughly \$650k - \$875k. Such contracts lack the response times required for critical court business.

Due to an extreme labor shortage in the AV/IT construction industry, the Judicial Department has had difficulty finding vendors who can respond to service calls in a timely manner as well as the budgetary resources to pay them. Hourly rates for AV technicians in Colorado range from \$90-\$150 an hour depending on the skills required for the task plus travel time. Utilizing contract service technicians also requires tremendous oversight from purchasing, administration, security compliance, and Engineering. The lost value in administrative burden often exceeds the cost of contract services for all but the largest projects.

JUD Question 6. (Question about request JUD, R7 Centralized Legal Research Team.) How much of the work this team does will be on death penalty cases? What happens to this team if the death penalty goes away?

The need for a Centralized Legal Research Team to assist trial courts is not significantly impacted if the death penalty is abolished. The primary purpose of the Centralized Team is to increase the Court's capacity to assist trial courts in all case types where local court resources are insufficient to meet judicial officer needs. Cases that would have been death penalty cases will still occur, will likely be complex and high profile, and will still require additional legal assistance. Death

penalty cases are only one example of the high impact-type case that tends to overburden resources in many districts. High profile criminal cases, class actions, and other procedurally and/or factually complicated or voluminous cases are also prime candidates for prolonged assistance. In fact, one of the early “test cases” for this type of expanded service was a very complex taxation/special district dispute that included multiple parties and intervenors. Research staff assisted a district court judge over a 10-month period, including file review, conducting extensive research, drafting pleadings, and attending court proceedings.

Additionally, a centralized group of on-demand attorneys will create hiring efficiencies. Over time the team will gain specialized experience in these difficult case types, allowing them to provide better and more efficient service.

In addition to the high impact and high-profile cases, many trial courts judges need regular and frequent legal research assistance for more routine or discrete issues. This is especially true in rural districts.

JUD Question 7. (Question about request JUD R10 Courthouse Capital.) What does the state pay for and what do counties pay for at courthouses? This \$2.6 million GF request is for the line item “Courthouse Furnishing and Infrastructure Maintenance,” what does that line pay for? Provide a project list for this year. How much has been spent on furnishings in recent years, provide a table. What line items and programs in the Long Bill assist counties with their court costs?

Per statute, counties have the responsibility of providing and maintaining adequate courtrooms and other court facilities. The Courthouse Capital appropriation is used to provide furnishings for those county projects involving remodeling and renovations of existing courthouses and furnishings in newly constructed county courthouses. It is also used for the purchase of AV equipment. Here is the project list for the past three fiscal years:

FY20 Project List:

District	Location	Project	Architect	Audio Visual	Furnishing	Technology	Total
01TC	Jefferson Cty Combined Court	Continue audio/visual upgrades for District and County courtrooms at the Jefferson Combined Court.	\$0	\$138,000	\$0	\$1,200	\$139,200
04TC	El Paso County Combined Court	Continue AV upgrades in courtrooms, inclusive of a custom AV cabinet.	\$0	\$225,000	\$0	\$0	\$225,000
04TC	El Paso County Combined Court	Remove static and powered mobile shelving from the records Dept. Needs to be removed in order to renovate the area to courtrooms, meeting rooms and workspace.	\$0	\$0	\$35,000	\$0	\$35,000
04TC	El Paso County Combined Court	County remodel of records, mediation, front counter, self help center, family court facilitators, information desk, case processing and finance.	\$0	\$0	\$542,500	\$25,000	\$567,500
06TC	San Juan Cty Combined Court	Upgrade the AV systems in Silverton. Both courtrooms are very antiquated and unreliable.	\$0	\$68,000	\$0	\$0	\$68,000
07TC	Delta County Combined Court	Current area of individual offices to me opened up to create small hearing room and judge chambers.	\$650	\$45,500	\$55,350	\$22,100	\$123,600
07TC	Ouray County Combined Court	Complete courthouse remodel, structural upgrades and court space changes and additions	\$2,100	\$56,000	\$129,350	\$20,000	\$207,450
08PB	Loveland Probation Office	Addition and remodel of court and probation offices within the Loveland Police and Courts building.	\$600	\$9,000	\$165,650	\$42,798	\$218,048
08TC	Larimer County Combined Court	Removal of mobile filing storage to allow workstations to be reconfigured/moved to the previous file location. Larimer County will then construct a new conference room in the clerk of court office which will need to be furnished.	\$0	\$0	\$52,700	\$1,500	\$54,200
09TC	Pitkin County Combined Court	Courthouse remodel scheduled to finish end of 2019.	\$1,200	\$217,000	\$359,600	\$50,000	\$627,800
12TC	Mineral County Combined Court	Mineral Courthouse Remodel/Expansion	\$1,200	\$63,000	\$104,700	\$22,000	\$190,900
14TC	Routt County Combined Court	Video evidence presentation equipment replacement in all 3 courtrooms in Routt County	\$0	\$68,000	\$0	\$0	\$68,000
16TC	Otero County Combined Court	Replace A/V system in Divs. A & B	\$0	\$28,000	\$0	\$0	\$28,000
17TC	Broomfield Cty Combined Court	Replace aging AV systems in four courtrooms.	\$0	\$66,000	\$0	\$0	\$66,000
Total:			\$5,750	\$983,500	\$1,444,850	\$184,598	\$2,618,698

FY19 Project List:

District	Location	Project	Architect	Audio Visual	Furnishing	Technology	Total
02PA	Denver	Replace and redesign clerical/reception area on 5 & 6 to allow for better customer service and improve the functionality.		\$35,550			\$35,550
02TC	Denver	Finish one shelled courtroom (5E) for District Court.		\$90,381	\$48,500	\$16,705	\$155,586
05TC	Summitt	Replace the theater seating in Courtrooms 1 & 2 with oak bench seating from CCI.		\$300	\$24,000		\$24,300
11TC	Fremont	Current space has been used as storage to be finished as a courtroom on the second floor.		\$45,000	\$33,500	\$35,430	\$113,930
12TC	Alamosa	New construction of courthouse facility.		\$474,464	\$712,100	\$367,900	\$1,554,464
Total:				\$645,695	\$818,100	\$420,035	\$1,883,830

FY18 Project List:

District	Location	Project	Architect	Audio Visual	Furnishing	Technology	Total
01TC	Jefferson	Sound systems for courtrooms, ADA hearing impaired headsets, and digital recording.		\$138,000			\$138,000
02PB	Denver	New phone system for adult and juvenile Probation.				\$250,000	\$250,000
04TC	El Paso	Sound systems for courtrooms.		\$225,000			\$225,000
04TC	El Paso	Addition of five new offices and one courtroom.			\$71,000		\$71,000
04TC	El Paso	Addition of five new offices and one courtroom.		\$25,000			\$25,000
04TC	El Paso	Addition of five new offices and one courtroom.				\$60,000	\$60,000
04TC	El Paso	Redesign layout of front counter in Clerk's Office.			\$63,750		\$63,750
04PB	El Paso	Reconfigure reception work area.			\$17,700		\$17,700
04PB	El Paso	New intercom/speaker system for two lobby/reception windows.		\$5,000			\$5,000
04PB	El Paso	Addition of eight new offices and one conference room.			\$49,200		\$49,200
04PB	El Paso	Addition of eight new offices and one conference room.		\$8,000			\$8,000
05TC	Clear Creek	Upgrade AV systems.		\$79,000			\$79,000
05TC	Summit	Upgrade AV systems.		\$69,000			\$69,000
07TC	Delta	Upgrade phone/network system.				\$147,000	\$147,000
07TC	Delta	Upgrade sound system in county courtroom.		\$23,000			\$23,000
07TC	Montrose	Upgrade phone/network system.				\$22,000	\$22,000
07TC	Montrose	Two mobile AV units.		\$26,000			\$26,000
07TC	Pitken	New phone system.				\$67,000	\$67,000
09TC	Garfield	New phone system.				\$80,000	\$80,000
09TC	Rio Blanco	Remodel Rangley courthouse.			\$70,000		\$70,000
09TC	Rio Blanco	Remodel Rangley courthouse.		\$10,000			\$10,000
09TC	Rio Blanco	Remodel Rangley courthouse.				\$28,000	\$28,000
11TC	Fremont	Sound systems for courtrooms.		\$46,000			\$46,000
13TC	Phillips	New phone system.				\$28,000	\$28,000
13TC	Kit Carson	New phone system.				\$44,000	\$44,000
13PB	Phillips	Addition of one new office.			\$3,500		\$3,500
16TC	Crowley	New phone system.				\$35,000	\$35,000
16TC	Bent	New phone system.				\$38,000	\$38,000
18TC	Douglas	Clerk's Office remodel - expand front counter and add 11 offices and conference room.			\$181,650		\$181,650
18TC	Douglas	Clerk's Office remodel - expand front counter and add 11 offices and conference room.				\$10,000	\$10,000
		TOTAL FURNISHINGS & INFRASTRUCTURE		\$654,000	\$456,800	\$809,000	\$1,919,800

There are three Long Bill Line appropriations that aid counties for court related operations. These include:

Long Bill Line Item	FY19 Appropriation
Courthouse Furnishings & Infrastructure Maintenance	\$2,618,698
Underfunded Courthouse Facilities Grant Program	\$3,600,000
Courthouse Security	\$2,730,314

JUD Question 8. (Unnumbered Salary Survey Request). This request provides a 2 percent salary increase for jobs that are 10 percent or more below the market. What would it cost to bring these jobs fully up to market? Are salaries for judicial employees the same across the state, are there cost of living adjustments for expensive areas?

It would cost approximately \$5.8 million to move the salary ranges and corresponding employees in the six identified job classes to market rate. Those six positions are: Court Judicial Assistants, Support Services, Account Clerk, Human Resources Assistant, Executive Staff Assistant and Staff Assistant.

The Department does not have any differentials for cost of living within our compensation plan, however each district has the flexibility to offer hiring wages they feel necessary for their area based on the compensation policies. There are some districts that do offer wages above the minimum of the range because of location (i.e. resort areas). However, there is no official COLA for certain areas of the state.

JUD Question 9. Describe efforts to date to implement the Mental Health Criminal Diversion Grant Program and the Behavioral Health Court Liaison Program (S.B. 18-249 and S.B. 18-251)

Senate Bill 18-251, which created the “Bridges Program,” was enacted to connect Colorado’s criminal justice and mental health systems. The legislation directs the placement of Court Liaisons in each of Colorado’s 22 judicial districts, who will facilitate communication and collaboration between the two systems. Bridges Program Court Liaisons will work to: promote positive outcomes for participants; keep judges, district attorneys, and defense attorneys informed about available mental health and related services; and connect individuals to appropriate services. The legislation, intended to be fully implemented by October 1, 2018, has been partially implemented with full implementation expected by March 1, 2019, reflecting a six-month implementation phase. The milestones accomplished so far are outlined below. The Bridges Program has been embraced by stakeholders throughout the State, and the Department does not anticipate any significant problems in implementation efforts moving forward. The expanded timeline for implementation is necessary due to the statewide scope of the project.

<u>Milestones</u>	<u>Date Accomplished</u>
Statewide Coordinator Hired at SCAO	August
Request for Proposals (RFP) Issued	August
Stakeholder Meetings Held Statewide	August – December
Program Introduced Locally to Judicial Districts Statewide	August – December
Implementation Plan Created	September
RFP Closed & Proposals Received (for all but one district)	September

Proposals Reviewed & Interviews Held in all but one Judicial District Statewide	September/October
SCAO Legal Review of Waiver of Privilege/Protective Order Statutes and Applicability to SB 18-251; Subsequent Modification and/or Development of Court Orders and Referral Procedures	September – December
RFP Reissued (for three districts)	October
Vendors Selected & Contracts Negotiated (for 18 districts)	October – November
Contracts Issued (for 18 districts)	December
First Court Liaisons Hired in the 1 st Judicial District	December
New Court Liaison Statewide Orientation (anticipated that all but 2-3 Court Liaisons will be hired by this date)	February 19 & 20, 2019

JUD Question 10. The following four judicial districts will be implementing pilot programs pursuant to S.B. 18-249 to divert individuals with mental health conditions out of the criminal justice system and into community treatment programs:

- 6th (Durango and surrounding counties)
- ~~10th (Pueblo)~~ (replaced by the 8th, Larimer, because the 10th DA opted out)
- 16th (Crowley, Lamar, and surrounding counties)
- 20th (Boulder)

When will these pilot programs begin operating? Have any other judicial districts expressed interest in establishing programs?

Authorizing legislation for the Mental Health Criminal Justice Diversion Grant Program, SB-18-249, provides for pilot program implementation consistent with the principles and proposed model adopted by the Colorado Commission on Criminal and Juvenile Justice (CCJJ) and with legislative intent on or before January 1, 2019. It is apparent that not all pilots are likely to be fully implemented by January 1, 2019, primarily related to the following:

- the absence of provider proposals for mental health and psychiatric services, resulting in delay and the need for further outreach to potential providers; and

- time frames for personnel hiring.

In three of four pilot sites, no mental health or psychiatric services providers responded to the request for proposals. In response, SCAO and district stakeholders are meeting with potential providers to understand and address concerns regarding the provision of services to get provider contracts in place as soon as possible. Chief among the concerns reported to date are provider inability to meet the expedited time frames sought for conducting mental health assessments and initiating mental health or psychiatric services, the lack of compensation for no-show appointments among a population with a high no-show rate, and the difficulty accessing inmates for mental health assessment due to inmate unavailability in custody.

Some pilot sites will be unable to ***complete the hiring of staff by January 1.*** Pilot sites that are hiring program staff have started the hiring process and selected staff will start as soon as possible.

<u>Milestones</u>	<u>Date Accomplished</u>
Statewide Coordinator Hired at SCAO	September
Selection of Pilot Site Locations – 6 th , 8 th , 16 th , & 20 th Districts	September-October
Stakeholder Meetings Held at District Level	September – December
Site Visits and Meetings with Statewide Coordinator	September-December
Request for Proposals (RFP) Issued	October
RFP Closed & Proposals Received (for only 1 district)	November-December
Follow up Meetings with Sites & Providers to Secure Providers for 3 Districts	December
District Site Plans Submitted	November
Funding Committee Allocation Meeting	December
Site Program Staff Hiring Started	December

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

Please see the responses above.

- 2 Does the Department have any **HIGH PRIORITY OUTSTANDING** recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the **HIGH PRIORITY OUTSTANDING** recommendations? Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

None. From July 1, 2012, through June 30, 2017, the Judicial Branch (Judicial) agreed or partially agreed to implement 49 audit recommendations. One recommendation was from a financial audit and 48 were from performance audits and /or information technology performance audits. Based on the OSA's follow-up audit process and information reported by Judicial, as of June 30, 2018, it has no outstanding audit recommendations.

- 3 If the Department receives federal funds of any type, please respond to the following:
 - a. Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?
 - b. Does the Department have a contingency plan if federal funds are eliminated?
 - c. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

a/b. Statewide Systems Improvement Program (SSIP): This program was technically considered a cooperative agreement and not a grant. The SSIP funding for Office of Juvenile Justice and Delinquency Prevention (OJJDP) will not be renewed after 2018-2019; however, it is not due to the federal budget it was a policy decision by OJJDP to reallocate funds to Family Treatment Drug Courts. Funding was not guaranteed beyond 2018-2019; however, we did expect to have the opportunity to apply for year 2 and year 3 of implementation funding. We no longer have those options and are seeking funding to keep the program operational beyond September 2019. Match: 25% cash or in-kind.
Court Improvement Program: Grant funding through the Children Bureau is part of this budget cycle and funding was reauthorized through 2021. Match: 25% cash or in-kind.

Access and Visitation Grant (AV): Office of Dispute Resolution receives this grant from Administration of Children and Families and we have no reason to believe this program will be impacted by budget. Match: 25% cash or in-kind.

Juvenile Drug Court Fidelity Improvement Project under OJJDP (Office of Juvenile Justice Delinquency Prevention): This award is through 2021 and there are no anticipated changes at this time. Match is 25% in kind. There is no contingency plan should funds be eliminated.

SCAO 2018 Statewide Drug Court Grant Program Under BJA (Bureau of Justice Assistance): This award is through 2022 and there are no anticipated changes at this time. Match is 25% in kind and dollar match. There is no contingency plan should funds be eliminated.

C - No federal sanctions are anticipated in 2019 or 2020

- 4 **Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?**

The only Judicial Department entity spending funds on a public awareness campaigns is the Office of Judicial Performance Evaluation. This is their response:

The Office of Judicial Performance Evaluation (OJPE) was established in the Judicial Department by the legislature through C.R.S. 13-5.5-103 (2017). One of the duties assigned to the OJPE is to "Conduct public education efforts concerning the judicial performance evaluation process and the recommendation made by the state and district commission 13-5.5-103(3)(d). As part of these duties the OJPE does spend money on public awareness campaigns and activities. We use a combination of earned and paid media with the goals, of driving citizens to the OJPE website (www.ojpe.org) to access judicial performance evaluations as well

as providing other educational information on merit selection, performance evaluations, and retention elections. Earned media comes primarily from press releases resulting in published articles on the availability of judicial performance evaluations and/or the results of the evaluations.

The Voter Information Guide, commonly referred to as the “Blue Book” is another contributor to our earned media along with Twitter and Facebook sites. To amplify our messaging, we also used paid media contracting with the Colorado Broadcasters Association and their “Non-Commercial Supporting Announcements Program (NCSA). In collaboration with the Colorado Broadcasters we create television and radio announcement in English and Spanish. The messages are 15 and 30 sec spots for television and 15, 30, and 60 second spots on radio. Member stations throughout the state air the messaging. We track airtime through a report provided by the CBA identifying which message and time the messages were aired. OJPE also worked with the CBA to develop a social media campaign with separate weekly messages for twitter and Facebook building voter’s awareness of judicial evaluations and judicial retention election. The messages are “retweeted,” “reposted” and “shared” by member stations amplifying the messaging to social media followers of the member stations. OJPE directly monitors the impact of social media activities on our twitter and Facebook sites. OJPE also monitors our website analytics during these campaigns to measure effectiveness. We have collected website analytics for the last four elections cycles, so we have a baseline from which to monitor the impact of various levels of advertising over time. The 2018 public awareness campaign was a recording breaking year for OJPE. From the August start of the public awareness campaign through its November conclusion we saw direct links, in fact referrals to our website associated with the social media posts and increased traffic because of television and radio campaigns being on the air. In the first seven days of November there were over one million pageviews on the OJPE website which can be directly correlated to paid and earned media. The total expenses for the contract with the CBA was \$50,000.00 with an additional \$228.00 to purchase stock photos used in the television message.

OJPE’s public awareness campaign also includes direct citizen engagement through our “Know Your Judge Vote Your Judge” activities. OJPE staff schedule times in libraries and on college campuses to host a table and engage citizens in conversation about their awareness of judicial selection, judicial evaluations, and retention elections. To entice participation OJPE bookmarks and brochures are handed out at the events (we also distribute the brochures through self-help centers in local courthouses). We find the direct contact with citizens is an effective way to gauge citizens understanding of the court system, how judges are selected and retained. Ultimately, these events serve to direct voters to the OJPE website and voter resources. Total expenses for these activities are \$2,951.56.

Total expenses for the 2018 OJPE public awareness campaign - \$53,179.56

- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

Judicial Vacancy Rate 10/30/2018	
Program	Vacancy Rate
Appellate	1.54%
Probation	3.46%
SCAO	12.57%
Trial Courts	4.40%
Overall Judicial	4.56%

Turnover Rates			
Program	Termed	Active	Turnover Rate
Courts (Trial & Appella	196	2,032	9.60%
Probation	96	1,216	7.90%
SCAO	23	250	9.20%

Turnover Rate - Job Class		
Classification	# of Seperated Employees	Turnover Rate
Court Judicial Assistant	115	12.30%
Support Services	15	10.60%

The Judicial Department's Pay for Performance (Merit Pay as the Executive Branch's equivalent) increases provide a mechanism to move employees up the salary band and provide room for salary growth that corresponds to increasing skill levels and performance throughout the year. The limited funding and in many cases lack of pay for performance increases creates ever increasing compression issues at the lower ends of the salary range bands. The Judicial Department has been able to offset this issue slightly by providing approved realignment increases to employee base salaries. This has been a long standing, standard practice for the Department.

It is critical that the Judicial Department continue this practice to offset further compression issues which occur when new employees are brought in at or near the rate of pay of others in the same classification with longer lengths of service. For many years the Executive Branch has taken a different approach. The Executive Branch's practice moves salary ranges the determined percentage amount, and only those incumbents below the new range minimums are moved within the range. All other incumbents stay at their current rate of pay. This has resulted in compression problems for many Executive Departments. The Judicial Department has attempted to avoid this issue by providing the realignment increase to all incumbents when a salary range is realigned.

While the Department is unable to speak to the impact of this approach on the Executive Branch's turnover and vacancy rates, it is our assessment that Judicial practice of providing the incumbent increase has assisted the Judicial Department in reducing the impact on retention of staff.

- 6 Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

The only rules promulgated by the Department are by the Supreme Court regulating the practice of Law. The Department is exempted from the provisions of Section 24-4-103 (2.5) C.R.S. or Section 24-4-103(4.5).

7. What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

Changes in the distribution of new court case filings are the main cost driver for the Department. Specifically, the substantial increase in new felony criminal case filings (approximately 44% over the last five years) have increased workload and the need for additional resources. To the best of our knowledge, the Judicial Department is not experiencing significant price inflation compared to the general CPI.

8. How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

Courts:

As mentioned above, increases in the district court caseload, and the felony criminal caseload in particular, have caused a considerable impact on the workload

in District Courts across Colorado. The top priorities in the Judicial Department's budget request reflect the impact of the increased felony caseload. General population growth in Colorado appears consistent with the types of caseload impacts experienced by the Judicial Department.

Probation:

Throughout the last several years, Colorado has advanced its criminal justice system through legislation and policy changes designed to avoid cost growth while balancing smart crime control measures. As Colorado's criminal justice system evolves under these changes, the composition of probation's population has also shifted, reflecting those changes. Of general consideration is the fact that system wide efforts have been initiated to divert and reduce low-risk offenders from deep placement in high cost areas of the criminal justice system. Collectively, legislation, programs, and policies have reduced the number of low-risk adults and juveniles that enter and are exposed to traditional community and institutional supervision settings.

Specifically, House Bill 10-1338 was enacted with the intention of widening the net for probation eligibility which authorizes the court to use probation as a sentencing option for persons with two or more prior felony convictions. This was to avoid unnecessary prison growth and increase opportunities for rehabilitation in the community. Over the course of time, implementation of this law had its intended effect. Specifically, the Colorado probation population has measured growth in its population where offenders have more robust criminal history patterns to include multiple previous felony convictions.

The Judicial Department, the Executive Branch, and the General Assembly have focused systemic efforts to shift the system from criminalizing and incarcerating those suffering from mental health and substance abuse issues and instead treat them in the community where more services and support are available. These system efforts are underway to further address this complex community and behavioral health issue. While this transition has been in place, probation districts have witnessed that offenders with more complex risks and needs are being placed on probation which necessitates more intensive approaches to behavior change and supervision. The Division of Probation Services has also begun to observe this trend through novel approaches to its data analysis.

These two shifts in the offender population, along with other factors in local level capacity, have also resulted in a corresponding shift in the demand for state rather than private probation supervision. Over the 5-year period from FY2013 to FY2017, the proportion of state probationers has shifted from 76.1% (FY 2013) to 82.5% (FY2018).

Globally speaking, as Colorado's criminal justice system evolves, so has probation's population. Currently, probation is serving a population that, while not increasing in size, is increasing in complexity. Probationers are presenting with

more robust criminal histories, more complex risk/need profiles, more histories of community supervision failure, more acute mental health issues, and more behavioral or rehabilitation issues. The complexity of that population requires increased demand on the density and quality of staff services from the probation districts and offices throughout Colorado.

9. **Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department's interactions with the public.**

In spring 2019, the Department will begin piloting its new Pro Se E-Filing system in two court locations with the intent of implementing statewide. The Pro Se E-Filing system will allow the public to electronically file, on their own behalf, domestic cases. The Department plans to expand to other cases classes according to the readiness of the local courts. The Department also plans to integrate its Colorado Legal Help Center website with the Pro Se E-Filing system, also known as Colorado Court E-Filing (CCE). Additionally, the Department is strategizing on either developing or purchasing an online dispute resolution system for public use.

The Department is planning to implement its Online Probate Conservator's Reporting system, which is an application that allows Conservators to submit to the Court financial details of the estate(s) of which they are appointed to. The structure of the application follows the format of JDF Court Form 885. The system allows for prior report data to be transferred in to the next report in a case, and also allows for the amending of prior reports submitted. The calculations of account balances are automatic, which alleviates the need for the Protected Proceeding Monitors to cross-check math upon report submission. The application also allows for account transactions to be uploaded via CSV file to allow for bulk entry.



OFFICE OF THE STATE PUBLIC DEFENDER
FY 2019-20 JOINT BUDGET COMMITTEE HEARING

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER

Tuesday, December 18, 2018

QUESTIONS FOR THE OSPD

OSPD-1. Provide a recent history of OSPD staffing, including estimates of understaffing or overstaffing. Is the OSPD currently under or over staffed? How many additional FTE did you receive this year?

The OSPD is currently understaffed, as the charts below show. Along with the continued increase in felony filings, the OSPD is seeing an increase in its attorney attrition rate. Taken together, the increased felony filings and increased attrition has created a critical staffing issue where the OSPD is losing attorneys with the experience and skills necessary to provide effective representation in felony cases. Most OSPD attorneys start right out of law school and we invest a great deal of time and resources in their training. Yet, without the funding to compensate them fairly as they become experienced felony-level attorneys, they leave for better paying opportunities.

The OSPD currently employs 525 attorneys, 474 of whom are trial attorneys. In FY 2013-14, we received FTE pursuant to the Rothgery legislation and our trial offices were staffed at 96%. Since that time, however, our staffing percentages have decreased dramatically, dropping to 80% in FY 2017-18. This year, the OSPD received 34 additional attorney FTE, which was projected to improve staffing levels to 85%, but our most recent projections show staffing will drop to 83% in FY 2018-19 and drop further to 81% staffing in FY 2019-20.

OSPD Staffing and Closed Caseload Summary								
	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
	Actual	Actual	Actual	Actual	Actual	Actual	Approp. (Est.)	Request (Est.)
Total Closed Cases	97,872	110,044	124,416	129,764	136,321	141,511	145,909	150,461
Trial Attorney Appropriation	381	400	430	438	438	439	474	474
Trial Attorney Need for Full Staffing Based on Caseload/Workload Model	407	416	473	497	525	549	568	585
Trial Attorney Deficit	(25)	(16)	(43)	(59)	(87)	(109)	(94)	(111)
% of Trial Attorney Need Met	94%	96%	91%	88%	83%	80%	83%	81%

Of the 93 FTE the OSPD received over the past five years, 59 of the positions were pursuant to fiscal notes tied to bills and 34 were to address the workload increase related to the felony filings.

Trial Attorney Staffing, FY13 - FY19	
SB 13-1210 - Rothgery	46.0
SB 13-1160 - Criminal Theft	(2.0)
HB 14-1266 - Value Based Offenses	(1.0)
HB 14-1050 - Judges Bill - 18th District	1.0
HB 14-1032 - Juvenile Defense	12.0
HB 15-1034 - Judges Bill - 12th District	1.0
HB 15-1043 - Felony DUI	2.3
Total received from legislation	59.3
OSPD - Workload Increase	
Total received from Decision Items	34.1
Total	93.4

The OSPD, in coordination with the Department of Law, contracted with an independent compensation firm, Gallagher Human Resources and Consulting Practice, to conduct a 2018 salary study of public attorneys. The study surveyed attorney salary ranges and actual salaries paid at Colorado public sector attorney organizations at the local, city and county, state, and federal government levels. The OSPD has previously conducted such joint surveys; the latest was in 2015 and, at that time, OSPD attorney pay was 3.2% below the public attorney market.

The 2018 survey findings showed that, overall, the Public Defender’s average salaries have not kept pace with the market and the OSPD is not in a competitive position. Over the past three years, average OSPD attorney salaries have dropped an additional 10% below the market. Public Defenders are now paid on average 13.1% below what the market currently pays public attorneys in corresponding positions. In the entry level Public Defender classification, both the average salary and range minimum are well below the market at 20.9% and 16.7% respectively.

The last pay parity the legislature provided the OSPD to address below-market attorney salaries was in July 2013. Our attrition rate dropped to 8.5% that year and leveled out for the next couple of years, to an average of just under 12%. In FY 2016-17, however, the attrition rate rose to 14% and grew to 18% in FY2017-18. In that year, the office lost 87 attorneys with an average of 5.6 years of service. Approximately 85% (74) of those attorneys had received a significant investment of training from the OSPD and had the skills and experience required to handle felony cases.

The chart below shows that, in FY2016-17, the FTE need to handle the OSPD felony workload was staffed at 82%. This past year, the office was only staffed at 66%, far below the goal of 85%, which puts additional stress on staff and further contributes to the attrition rate.

OSPD FELONY STAFFING				
	FY 16-17	FY 17-18	FY 18-19	FY 19-20
	Actual	Actual	Proj.	Proj.
Total Closed Felony Cases	59,012	63,285	65,588	67,985
Felony FTE Need Based on Caseload/Workload Model	333	356	369	381
# Trial Atty with 3+ yrs	272	238	245	
% Staffed for felony cases	82%	67%	66%	

OSPD-2. Have there been any changes of the law that have changed misdemeanors to felonies or otherwise increased felonies? Has that driven any of the OSPD’s increase in felony caseload?

The increase in felony filings from 2012 to 2016 has been analyzed by the Colorado Commission on Criminal and Juvenile Justice. That data indicates the most significant increase in felony filings is for drug possession crimes. The numbers from the Judicial Branch indicate that an increased filing trend in drug possession cases is continuing into 2017 and 2018. Notably, however, the law has not increased any drug misdemeanors to drug felonies.

Felony assaults filings have increased. House Bill 16-1080 did address the crime of assault by strangulation and resulted in a change of many misdemeanor cases to felony cases. This did, most likely, drive an increase in OSPD felony caseload.

There are no other changes in the law that would have driven the OSPD's increase in felony caseload. Filing decisions by district attorney offices could have impacted OSPD felony caseload.

OSPD-3. OSPD R3 Arapahoe Courtroom Staffing. Why are you asking for additional staff based on the addition of half a criminal court in Arapahoe County when you based your staffing request last year on caseload?

The response to this question is closely related to that for question #4, so we combined our responses. Please see this response under question #4.

OSPD-4. Judicial request R1 (District Court Judges and Supporting Staff) is likely to increase the number of criminal courts. Will OSPD request more funding for this? Why?

The OSPD will, as it has done historically, examine the Judicial Department request for additional judges and request staffing as necessary. OSPD staffing needs result from a combination of caseload, workload and logistics. While additional judge positions ease the burden on the courts, they can add to the burden of public defenders, depending on how the additional judges are used to run court dockets and case assignments. When judicial districts create more courtrooms, the individual judges expect public defenders to be present and keep pace in their courtrooms. That can only happen with adequate staffing. Further, each judicial district allocates its judge positions differently and the number and types of cases assigned to those judges can change over the course of time at the direction of the Chief Judge. For example, the OSPD R3 request for additional staffing in Arapahoe County is being made because the Chief Judge in Arapahoe County changed the courtroom created in 2016 from half-criminal to a full criminal court.

OSPD-5. Is part of OSPD's increasing caseload due to the marijuana industry?

OSPD has no data to support the concept that the marijuana industry has impacted OSPD's increasing caseload. The October 2018 study by the Department of Public Safety, Division of Criminal Justice (pursuant to SB13-283), reports on certain impacts of legalization of marijuana on public safety. That analysis does not suggest that marijuana legalization has had any impact on OSPD caseload.

OSPD-6. What is the relative workload of the State Public Defender and the Director of the Office of the Alternate Defense Counsel?

It is not appropriate for us to assess workload factors that may be used by the Office of the Alternate Defense Counsel. The legislature may want to consider salary adjustments for both positions.

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

1. Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

We have fully implemented all legislation.

2. Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? PLEASE INDICATE WHERE IN THE DEPARTMENT'S BUDGET REQUEST ACTIONS TAKEN TOWARDS RESOLVING HIGH PRIORITY OUTSTANDING RECOMMENDATIONS CAN BE FOUND. <http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

The OSPD does not have any outstanding audit recommendations.

3. If the Department receives federal funds of any type, please respond to the following:
 - a. Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?
 - b. Does the Department have a contingency plan if federal funds are eliminated?
 - c. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

The OSPD does not receive any federal funds.

4. Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?

The OSPD does not spend any money on public awareness campaigns.

5. Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

Over the past decade, our attrition rate has averaged approximately 11.5% but, of particular concern, the attrition rate for our attorneys has been quickly escalating, reaching 18% in FY

2017-18. As of the first quarter of the current year, we have lost 26 attorneys. If this trend continues, we expect to lose over 100 attorneys by the end of the year, pushing our attrition rate to 20% in FY 2018-19.

While we have seen many reasons why attorneys leave the OSPD, a consistent theme has been the opportunity for higher pay in other jobs, including government jobs. Over the last several years, funding for salary survey and merit pay has not been consistent and, as a result, OSPD attorney salaries have not kept up with the market. This in turn has contributed to our turnover issues.

The statewide compensation policies administered by the Department of Personnel can help, somewhat, with our agency's vacancy and turnover issues, but only if the funding provided is truly enough to keep the OSPD at what is deemed to be a market level.

6. Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

The OSPD does not promulgate rules.

7. What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

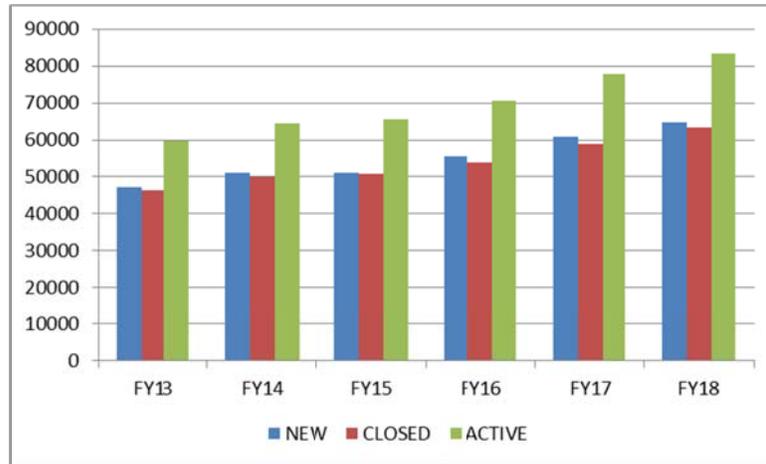
As stated previously, our largest cost increases are tied directly to the surge in felony cases. An increase in felony cases requires more resources and thus additional FTE. Since we are a service-oriented agency with 85% of our appropriation devoted to personal services, any increase in FTE will have a direct impact on our budget.

8. How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

Over the past five years, the OSPD has seen its active felony cases increase from 59,891 cases in FY 2012-13 to 83,494 cases in FY 2017-18, nearly a 40% increase. The Judicial Department District Courts are also reporting significant increases and, over the same timeframe, have experienced an approximate 44% increases in felony filings.

Felony cases, primarily the trial and pre-trial cases, require the greatest attorney effort, time and dedication of resources. They cost the State the most money and increasingly draw OSPD resources away from misdemeanor and juvenile defendant cases. Felony cases make up approximately 45% of our cases yet require 65% of our trial FTE resources.

Felony Case Trends



9. Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department's interactions with the public.

The Office of the State Public Defender is currently working on a project to revamp its public website to be released this fiscal year. The focus of the project is to make information for the public easier to find and understand, in particular for those that need our services. The new website will also make information regarding our budget and our mission clearer in describing the extent and quality of services we provide to indigent Coloradans. We will also be looking at options for making the application process for a public defender available electronically; however, those forms are owned and maintained by the Judicial Department.

OFFICE OF THE ALTERNATE DEFENSE COUNSEL

JUDICIAL BRANCH

FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Tuesday, December 18, 2018

3:30 pm – 3:45 pm

Main Presenters:

- Lindy Frolich, Executive Director
- Mary Sharon Wells, OADC Commission

Supporting Presenters:

- Darren Cantor, Deputy Director
- Daniel Nunez, Controller/Budget Manager

INTRODUCTIONS AND OPENING COMMENTS

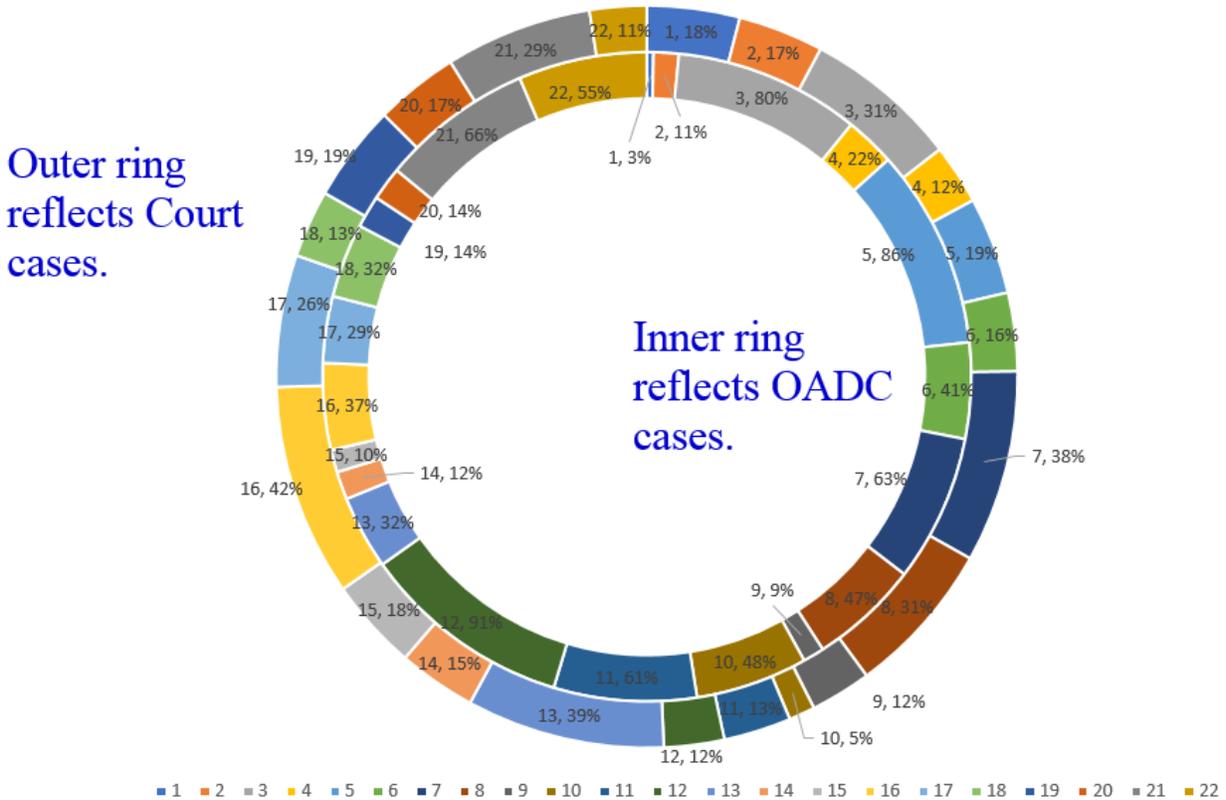
QUESTIONS FOR THE ALTERNATE DEFENSE COUNSEL

OADC Question 1. Why are felony prosecutions increasing?

Answering this is pure speculation on our part, but as Senator-elect Lee commented at the Department's budget briefing, charging decisions are made by the individual district attorney offices across the state. As the chart and graph on the following page demonstrate, felony cases have increased in some jurisdictions more rapidly than in others, and there is no correlation between the increase in the courts' felony case load and the increase in the OADC felony case load.

District	2016 OADC	2016 Court	2017 OADC	2017 Court	% inc OADC	% inc Court	2018 OADC	2018 Court	% inc OADC	% inc Court	% incr from FY16 to FY18 OADC	% incr from FY16 to FY18 Court
1	788	4,264	835	4,589	6%	8%	810	5,047	-3%	10%	3%	18%
2	1,396	5,761	1,491	6,803	7%	18%	1,547	6,736	4%	-1%	11%	17%
3	99	382	129	400	30%	5%	178	499	38%	25%	80%	31%
4	1,596	6,786	1,737	7,441	9%	10%	1,940	7,590	12%	2%	22%	12%
5	70	815	72	911	3%	12%	130	972	81%	7%	86%	19%
6	168	735	174	785	4%	7%	237	849	36%	8%	41%	16%
7	187	775	243	941	30%	21%	305	1,070	26%	14%	63%	38%
8	506	2,521	623	3,120	23%	24%	744	3,295	19%	6%	47%	31%
9	219	729	213	848	-3%	16%	239	817	12%	-4%	9%	12%
10	565	2,581	699	2,651	24%	3%	837	2,715	20%	2%	48%	5%
11	214	935	317	1,276	48%	36%	345	1,060	9%	-17%	61%	13%
12	196	1,014	300	1,087	53%	7%	374	1,135	25%	4%	91%	12%
13	291	891	332	1,038	14%	16%	383	1,241	15%	20%	32%	39%
14	125	531	127	536	2%	1%	140	613	10%	14%	12%	15%
15	83	298	76	329	-8%	10%	91	352	20%	7%	10%	18%
16	143	459	148	469	3%	2%	196	652	32%	39%	37%	42%
17	651	4,543	705	5,033	8%	11%	837	5,728	19%	14%	29%	26%
18	856	4,758	1,022	5,282	19%	11%	1,128	5,394	10%	2%	32%	13%
19	714	2,570	791	2,944	11%	15%	813	3,063	3%	4%	14%	19%
20	298	2,305	320	2,568	7%	11%	341	2,687	7%	5%	14%	17%
21	612	1,952	816	2,325	33%	19%	1,013	2,520	24%	8%	66%	29%
22	96	399	114	399	19%	0%	149	444	31%	11%	55%	11%
Total	9,873	46,004	11,284	51,775	14%	13%	12,777	54,479	13%	5%	29%	18%

Felony Cases by District Percent Change from FY16 to FY18



OADC Question 2. (A question on OADC Request R3, Operating Expense Increase): Could any of these technology requests be combined with Judicial Technical Requests?

As an independent agency within the judicial branch, it would be very difficult for the Agency to combine its technology requests with the Judicial Technical Requests. For example, the Agency’s request for AI is specifically to assist the Agency in trying to predict its caseload from year to year. Certainly a piece of the AI proposal would include analyzing available data from the courts’ criminal caseloads. The Agency’s contractor database is something that is agency specific, but will benefit the court system by allowing each judicial district to access their list of approved OADC contractors in real time. The Agency’s requests do not tie in to our understanding of the Judicial Technical Requests.

OADC Question 3. Provide a history of recent appropriations and actual spending for caseload, including the current year.

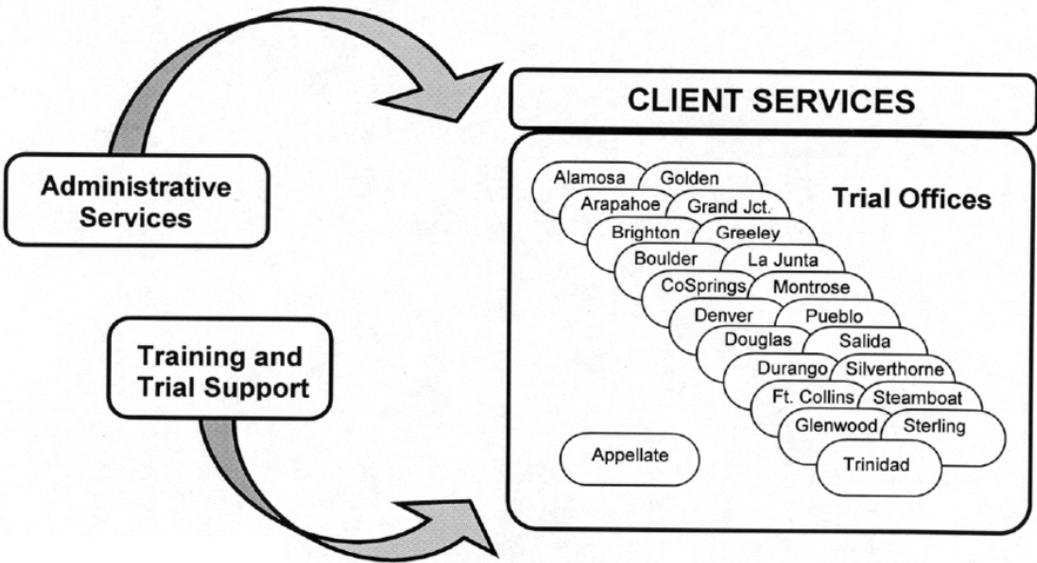
	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19*
Caseload	12,585	13,290	15,084	16,680	18,244	20,103	22,638	11,804
Caseload % change		5.60%	13.50%	10.58%	9.38%	10.19%	12.61%	
Budget Appropriated	\$ 23,228,010	\$ 22,560,446	\$ 22,896,598	\$ 29,645,966	\$ 30,062,991	\$ 31,403,173	\$ 31,738,129	\$ 42,020,721
Actual Expenditures	\$ 22,196,586	\$ 22,660,446	\$ 25,453,717	\$ 30,361,082	\$ 31,551,612	\$ 32,935,254	\$ 35,393,329	\$ 14,295,304

** as of December 1, 2018*

OADC Question 4. What is the relative workload of the State Public Defender and the Director of the Office of the Alternate Defense Counsel?

The following charts from the OSPD and OADC budgets illustrate each Agency’s organizational structure.

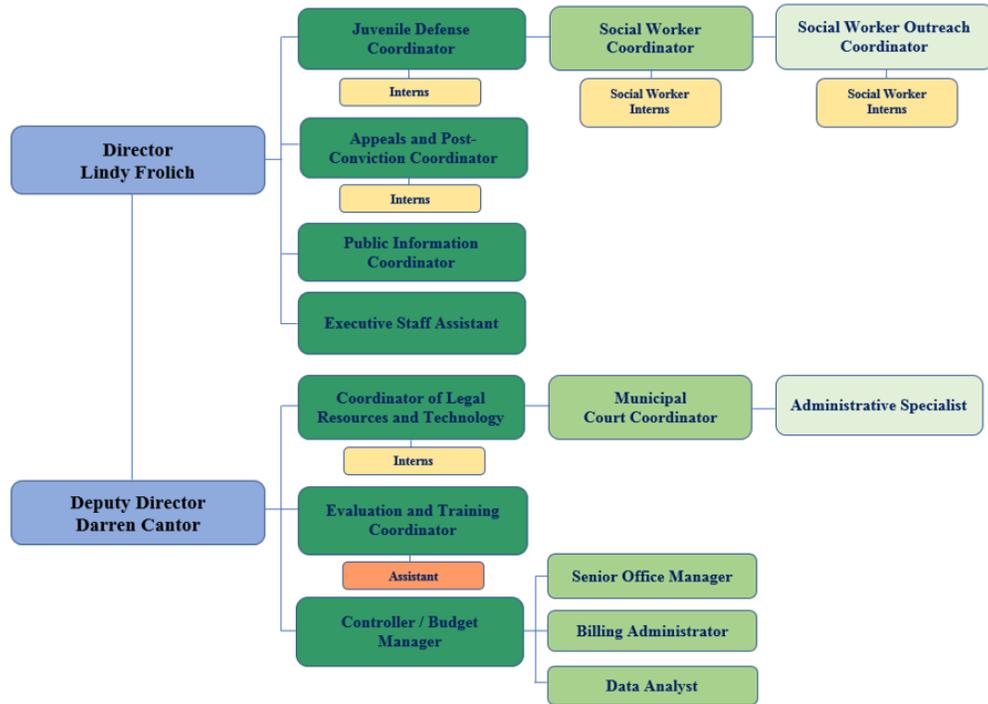
COLORADO STATE PUBLIC DEFENDER



Office of the State Public Defender Organizational Chart

Megan A. Ring State Public Defender							
Lucienne Ohanian Chief Deputy				Tina Fang Chief Deputy			
Karen Porter Chief Financial Officer				Kyle Hughes Chief Information Officer			
REGIONAL TRIAL OFFICES							APPELLATE
Alamosa Trial Office, 12th Judicial District Regional Trial Office Chief Jamie Keairns Office Manager Angelica Hart	Arapahoe Trial Office, 18th Judicial District Regional Trial Office Chief James Karbach Office Manager Cheryl Healy	Boulder Trial Office, 20th Judicial District Regional Trial Office Chief Nicole Collins Office Manager Elizabeth Cantor	Brighton Trial Office, 17th Judicial District Regional Trial Office Chief Sarah Quinn Office Manager Kim Windholz	Colorado Springs Trial Office, 4th Judicial District Regional Trial Office Chief Rosalie Roy Office Manager Norie Spooner	Denver Trial Office, 2nd Judicial District Regional Trial Office Chief Demetria Trujillo Office Manager Claudia Duran	Dillon Trial Office, 5th Judicial District Regional Trial Office Chief Thea Reiff Office Manager Meghan Layfield	Appellate Office Appellate Division Chief Jason Middleton Office Manager Jenée Bowden
Douglas Trial Office, 18th Judicial District Regional Trial Office Chief Ara Ohanian Office Manager Amy Mendigorin	Durango Trial Office, 6th & 22nd Judicial Districts Regional Trial Office Chief Justin Bogan Office Manager Tuesday Puls	Fort Collins Trial Office, 8th Judicial District Regional Trial Office Chief Kathryn Hay Office Manager Karlee Gettman	Glenwood Springs Trial Office, 9th Judicial District Regional Trial Office Chief Scott Troxell Office Manager Veronica Ulloa	Golden Trial Office, 1st Judicial District Regional Trial Office Chief Mitchell Ahnstedt Office Manager Sara Bollig	Grand Junction Trial Office, 22nd Judicial District Regional Trial Office Chief Steve Colvin Office Manager Sheila Hurd	Greeley Trial Office, 19th Judicial District Regional Trial Office Chief James Merson Office Manager Terri Cook	
La Junta Trial Office, 15 & 16th Judicial Districts Regional Trial Office Chief Raymond Torrez Office Manager Raquel Romero	Montrose Trial Office, 7th Judicial District Regional Trial Office Chief Kori Zapletal Office Manager Val Barrica	Pueblo Trial Office, 10th Judicial District Regional Trial Office Chief Albert Singleton Office Manager Marisa Herrera	Salida Trial Office, 11th Judicial District Regional Trial Office Chief Daniel Zettler Office Manager Carol Mattson	Steamboat Springs Trial Office, 14th Judicial District Regional Trial Office Chief Sheryl Uhlmann Office Manager Erin Biggs	Sterling Trial Office, 13rd Judicial District Regional Trial Office Chief Brian Johnson Office Manager Mandy Scoular	Trinidad Trial Office, 3rd Judicial District Regional Trial Office Chief Patrick McCarville Office Manager Juanita Gonzalez	

Agency Organizational Chart Office of the Alternate Defense Counsel



December 11, 2018

Dear Members of the Joint Budget Committee,

The Commission Members of the Office of the Alternate Defense Counsel would like to request that you support raising the salary of the position of the Colorado State Alternate Defense Counsel (currently \$168,202, or the equivalent of a District Court Judge) to equal that of the position of the Colorado State Public Defender (currently \$175,434, or the equivalent of a Court of Appeals Associate Judge). For several years, the members of the Alternate Defense Counsel Commission have contemplated making this request. Our request is based on the responsibilities specific to the position of State Alternate Defense Counsel and is not tied to any other agency request. Other agencies, excluding the Colorado State Public Defenders Office, do not do the same kind of work or have the same responsibilities as the Office of Alternative Defense Counsel.

The Office of the Alternate Defense Counsel and the Office of the Colorado State Public Defender are charged with accomplishing the same task; the defense of indigent defendants and juveniles. However, the agencies differ in the model they are based on to accomplish this task.

The Colorado State Public Defender model is based on that of one law office. Therefore, they can only represent one defendant in multiple criminal defendant cases. It is a conflict for one law firm to represent more than one co-defendant in a criminal case. The Office of the Alternate

Defense Counsel is made up of private contractors and is not considered one law office. Therefore, they can represent all remaining co-defendants in a multi-criminal defendant case without conflict. The difference in models is necessary to accomplish the representation of all indigent criminal defendants.

The Colorado State Alternate Defense Counsel has all the responsibilities of the Colorado State Public Defender. The Alternative Defense Counsel is responsible for maintaining the state office. The Counsel oversees the contracting and renewal or non-renewal of attorneys and support staff all around the state. The Counsel must evaluate and continue to evaluate all attorneys and support staff in the agency. The Colorado State Alternate Defense Counsel is also responsible for the preparation and justification of the budget for the agency.

Unlike the Colorado State Public Defender, the Colorado Alternate Defense Counsel does not have much help in the performance of these duties. In the Public Defender system, Office Heads around the state are responsible for the evaluation of their attorneys and support staff. The Colorado Alternate Defense Counsel has one assistant to help perform this duty for the entire state. Office Heads in the State Public Defender system also handle the issues and problems that arise in their respective jurisdictions. The Alternate Defense Counsel is responsible for the handling of issues for all judicial districts throughout the state. The Counsel makes less than some of the Office Heads in the Colorado State Public Defenders Office.

Many criminal defense attorneys are sole practitioners and cannot afford to hire staff investigators or paralegals. These paraprofessionals are necessary

for the effective representation of a charged defendant or juvenile and are provided by the State Office of Alternative Defense Counsel. The Alternate Defense Counsel participates in the contracting and renewal/non-renewal of all attorneys and attorney support staff. Under Doug Wilson this responsibility was handled by a Chief Deputy Public Defender.

The Alternate Defense Counsel also has responsibilities unique to the office. The Counsel is responsible for finding competent attorneys and support staff to accommodate each judicial district. This has been and continues to be difficult, if not an impossible task in small jurisdictions like La Junta, Craig and Alamosa where attorney populations are small. It is particularly difficult in multiple defendant cases in these jurisdictions when the State Office of Alternative Defense Counsel must handle two or more co-defendants. The State Public Defender does not have this kind of responsibility. The State Public Defender has the authority to order attorneys and support staff to man the offices in outlying jurisdictions. The State Public Defender's Office does not represent multiple co-defendants.

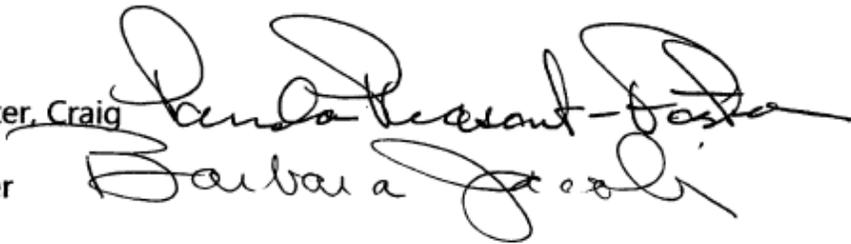
Currently, the Office of the Alternate Defense Counsel contracts with 440 attorneys, 132 investigators and 115 paralegals and 26 social workers, as well as a number of case assistants and legal researchers. Last year, the office handled 15,420 felonies and 7,218 misdemeanors. Due to recent legislation, the office is now responsible for the evaluation of defense attorneys who practice in municipal courts. There are over 250 municipal courts throughout the state. While the office has thus far been requested to handle evaluations for 31 municipalities, this number is expected to dramatically increase in 2019. The Public Defender does not handle cases in municipal courts.

We believe the number of duties the State Alternate Defense Counsel must perform are equivalent to those of the State Public Defender. It is important to remember the difference in the structure of each agency in evaluating this issue. We would ask that you take a closer look at the duties the State Alternate Defense Counsel must perform and support us in our request for compensation of this position equal to that of the State Public Defender.

Sincerely,

Pamela Pleasant-Foster, Craig

Barbara Jacobi, Denver

Handwritten signatures of Pamela Pleasant-Foster and Barbara Jacobi. The signature of Pamela Pleasant-Foster is written in black ink and is positioned above the signature of Barbara Jacobi. Both signatures are cursive and somewhat stylized.

Co-Chairmen of the Alternate Defense Commission

Members of the Alternate Defense Counsel Commission

Art Nieto, Denver

Ed Pabst, Brush

Mary Sharon Wells, Golden

Mike Moran, Colorado Springs

Carrie Clein, Denver

Violetta Raquel Chapin, Boulder

Ronald Teck, Grand Junction

Addendum: Other questions for which solely written responses are requested. Please retain the numbering in order to maintain consistent labeling for common questions across departments.

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

The OADC does not have any outstanding legislation to be implemented.

- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? [Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.](#)

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

The OADC has no outstanding recommendations identified in the Annual Report of Audit Recommendations.

- 3 If the Department receives federal funds of any type, please respond to the following:
 - a. Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?
 - b. Does the Department have a contingency plan if federal funds are eliminated?
 - c. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

The OADC does not receive federal funds of any type.

- 4 Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?

The OADC is not spending money on public awareness campaigns.

- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

The OADC has no FTE vacancies and no turnover for FY18.

- 6 Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

The OADC has not promulgated any new rules in the last two years.

- 7 What are the major cost drivers impacting the Department?

The major cost driver impacting the OADC is the increase in the number of cases upon which OADC attorneys are appointed.

Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

N/A

How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

The Agency has experienced caseload increases each fiscal year since FY12 as demonstrated by the following chart:

	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actuals	FY11 to FY18 % change
Caseload	12,585	13,290	15,085	16,680	18,244	20,103	22,638	79.88%
Change from previous FY		5.60%	13.51%	10.57%	9.38%	10.19%	12.61%	

As the Agency’s caseload increases, so does its expenditures as most of the Agency’s appropriation goes toward paying contractors for working the cases.

	FY12 Actual	FY13 Actual	FY14 Actual	FY15* Actual	FY16 Actual	FY17 Actual	FY18 Actuals	FY11 to FY18 % change
Expenditures	\$ 22,187,179	\$ 22,660,445	\$ 25,453,717	\$ 29,694,094	\$ 31,551,612	\$ 32,935,253	\$ 35,387,940	59.50%
Change from previous FY		2.13%	12.33%	16.66%	6.26%	4.39%	7.45%	

**In FY15 there was an 8% rate increase for attorney contractors, a 14% increase for Investigators, and a 20% increase for paralegals, resulting in a disproportionate increase in expenditures for that year.*

Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

This is not something that the agency can assess.

- 8 Please provide an overview of the Department’s current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department’s interactions with the public.

Currently, the Agency’s public-facing efforts mainly consist of limited access to an informational website. For the public, the website provides brief information about such topics as the process for obtaining counsel through the Agency, the process for becoming a contractor with the Agency, and occasional news items of interest, both about the Agency and about other resources in the community. A listing of links to outside organizations is maintained on the site and updated whenever additional resources are available. Public events, such as the Agency’s Commission meetings, are listed on the public site. In addition to the informational site hosted

by the Agency, outside listing sites such as Google, Bing, etc., are monitored and updated so the public can contact the Agency.

The bulk of the content currently available on the informational website is geared toward the Agency's more than 750 contract attorneys, investigators, paralegals, legal researchers, case assistants, social workers, and forensic clinical advocates, as well as their administrative staff. The Agency is constantly seeking ways to reduce individual email and telephone inquiries by producing easily accessed and helpful information regarding processes within the Agency. This includes, in addition to the informational website, periodic blog updates, a weekly email regarding current opinions issued by the U.S. Supreme Court, the 10th Circuit Court of Appeals, the Colorado Supreme Court, the Colorado Court of Appeals, and any other statutes or opinions that would impact the performance of the Agency's contractors, an on-demand podcast of the weekly caselaw update email, and an email notification system for training opportunities. An expert database provides information to help match contractors and experts without consuming Agency staff resources, and an eLibrary of motions, briefs, case opinions, legal research, and juvenile/social science research is also maintained on the site. A quarterly newsletter was launched in 2018 to provide updates, staff biographies, reminders, training event notifications, etc.

The Agency wishes to expand public-facing communication and information in the following ways:

To provide information to the public regarding the Agency. Agency staff field inquiries about getting a lawyer (particularly from members of the public who do not qualify for court appointed counsel), how to reach their court appointed lawyer, how to give feedback about a contractor, and how to navigate the court system.

To expand the content available to the public. Some of the resources compiled and provided to the Agency's contractors would be extremely useful for the public as well. At this time there is insufficient staffing to ensure that all confidential information has been redacted and is presented in a way that would be useful and accessible to non-lawyers. Some of these resources might include portions of the eLibrary and the weekly case-law update and podcast.

To improve the "Links" section of the informational site to provide more complete and accurate information about organizations that help reduce recidivism, find housing, address substance abuse issues, etc., and improve access to the many resources and related organizations that exist in the community.

To partner with other Judicial Departments, such as the Office of the State Public Defender (OSPD), the Office of the Child’s Representative (OCR), and the Office of Respondent Parent Counsel (ORPC), to coordinate messaging and resources to mutual constituencies and share information across channels.

To develop future programs, technologies, and content that provide value to the citizens of the State of Colorado.



Office of the
**Alternate
Defense
Counsel**

Judicial Branch

**Fiscal Year 2019-2020
Budget Presentation**

**Lindy Frolich, Director
Mary Sharon Wells, OADC Commission**

December 18th, 2018

- The OADC was established pursuant to §21-2-101, C.R.S. (SB96-205)
- It began operating January 1, 1997. The OADC is responsible for providing legal representation in cases involving a conflict-of-interest for the State Public Defender's office
- At that time it had 2.3 FTE and an annual budget of \$4,065,101



Cortez, CO (Population 9,007)
 District 22 – 288 cases in FY18

Free article

UPDATE: At least eight face charges in Cortez after pot raids

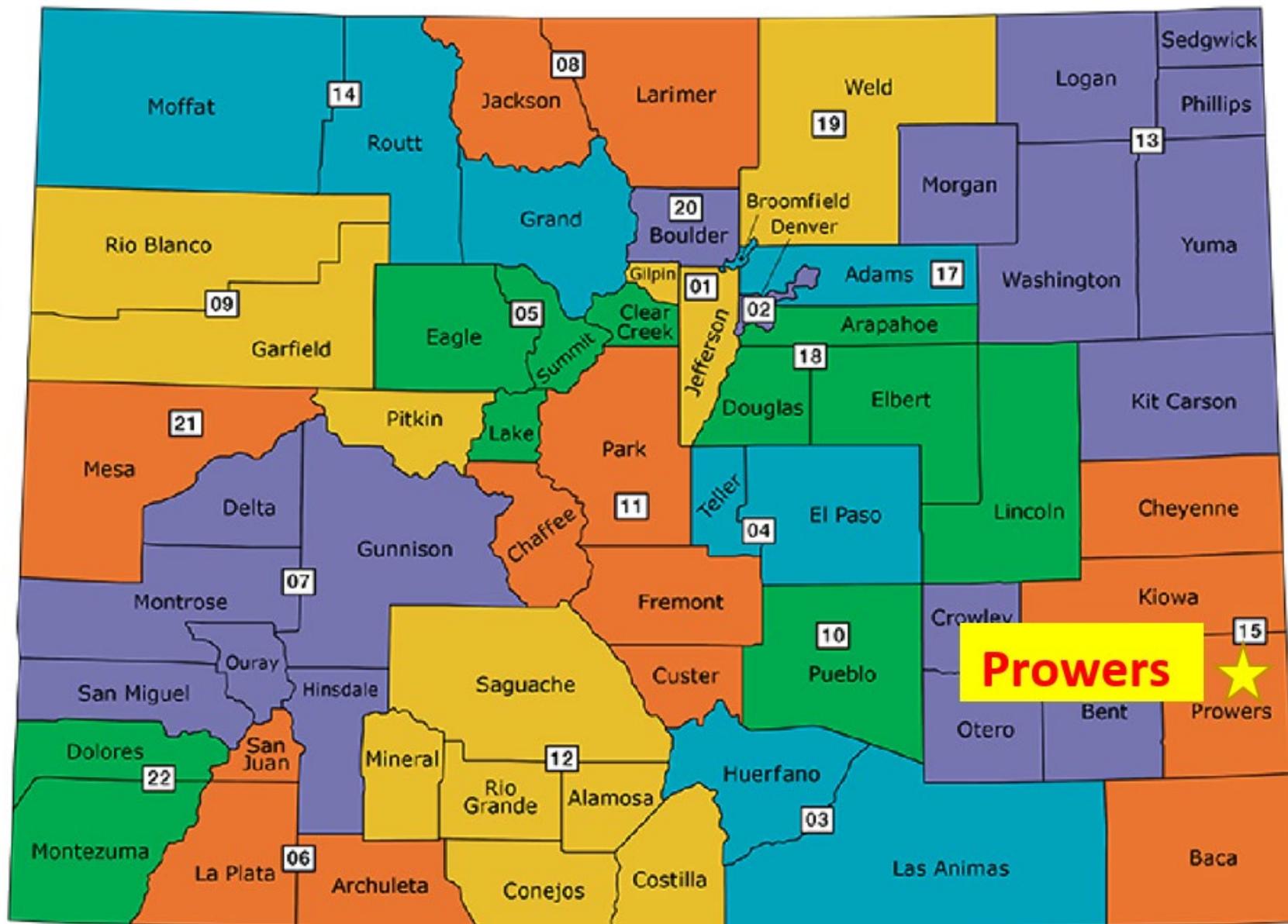


Thousands of plants, hundreds of pounds of marijuana seized from properties

By Journal Staff Writers

Thursday, Aug. 30, 2018 3:00 PM Updated: Friday, Aug. 31, 2018 10:03 AM



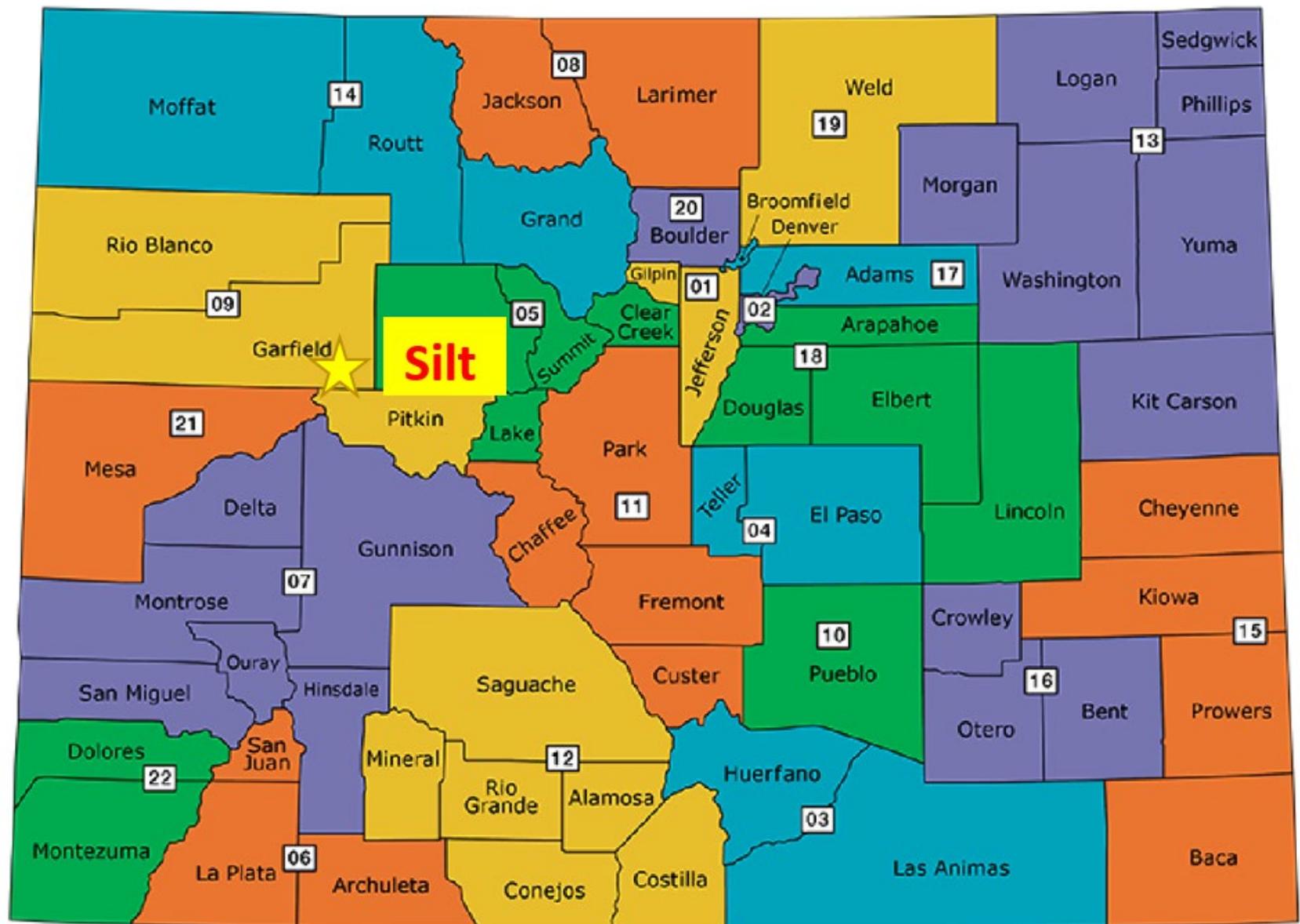


Prowers County, CO (Population 12,551)
District 15 – 157 cases in FY18

Prowers County Jail Food Fight

- 11 Inmates charged with Misdemeanors due to food fight
- *“Inmates were not happy because they did not believe they got enough food and that the TV was turned off because inmates were not bringing the trays after eating.”*
- Of the 11 inmates 6 were appointed OADC Counsel



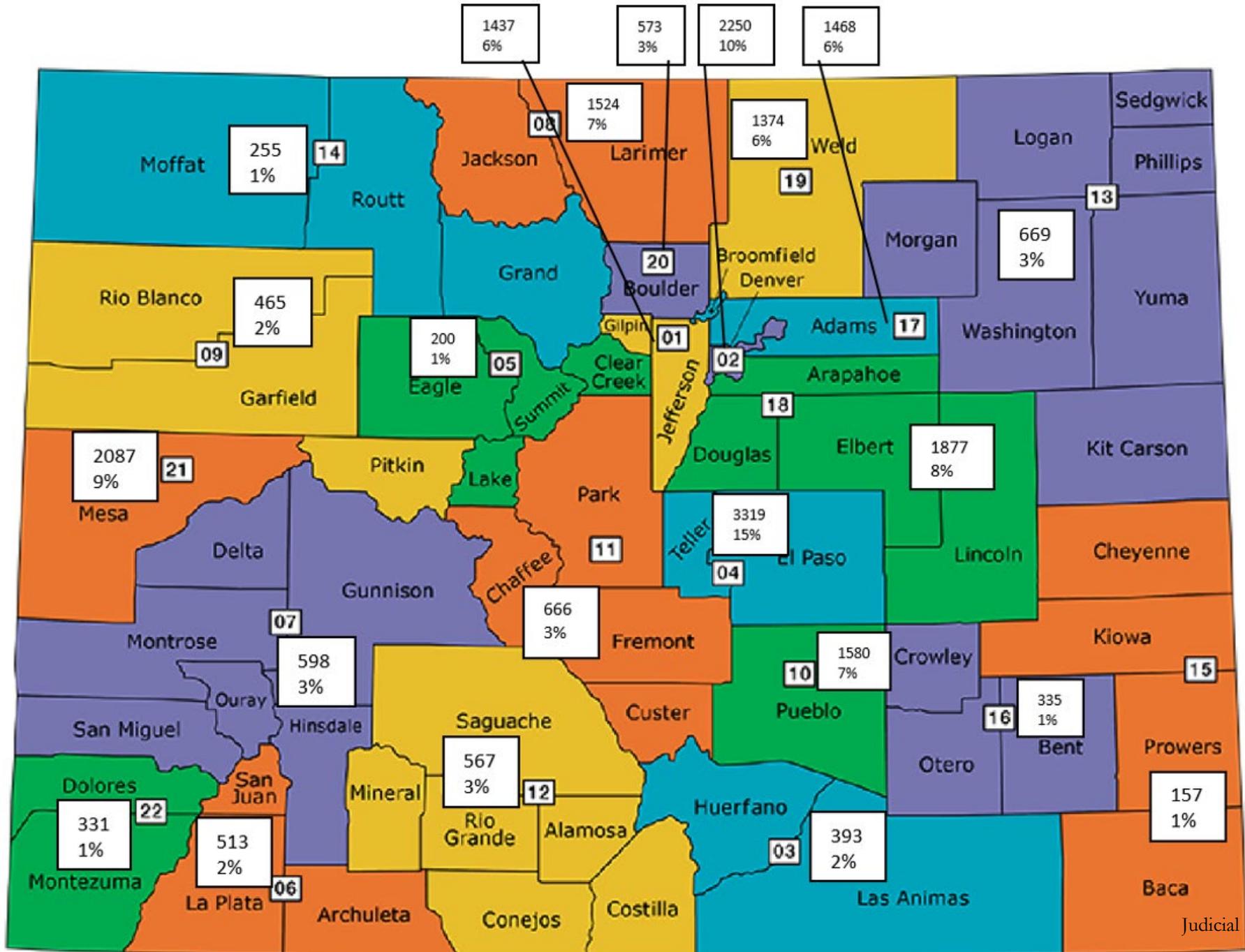


Silt, CO (Population 2,930)
District 09 – 465 cases in FY18

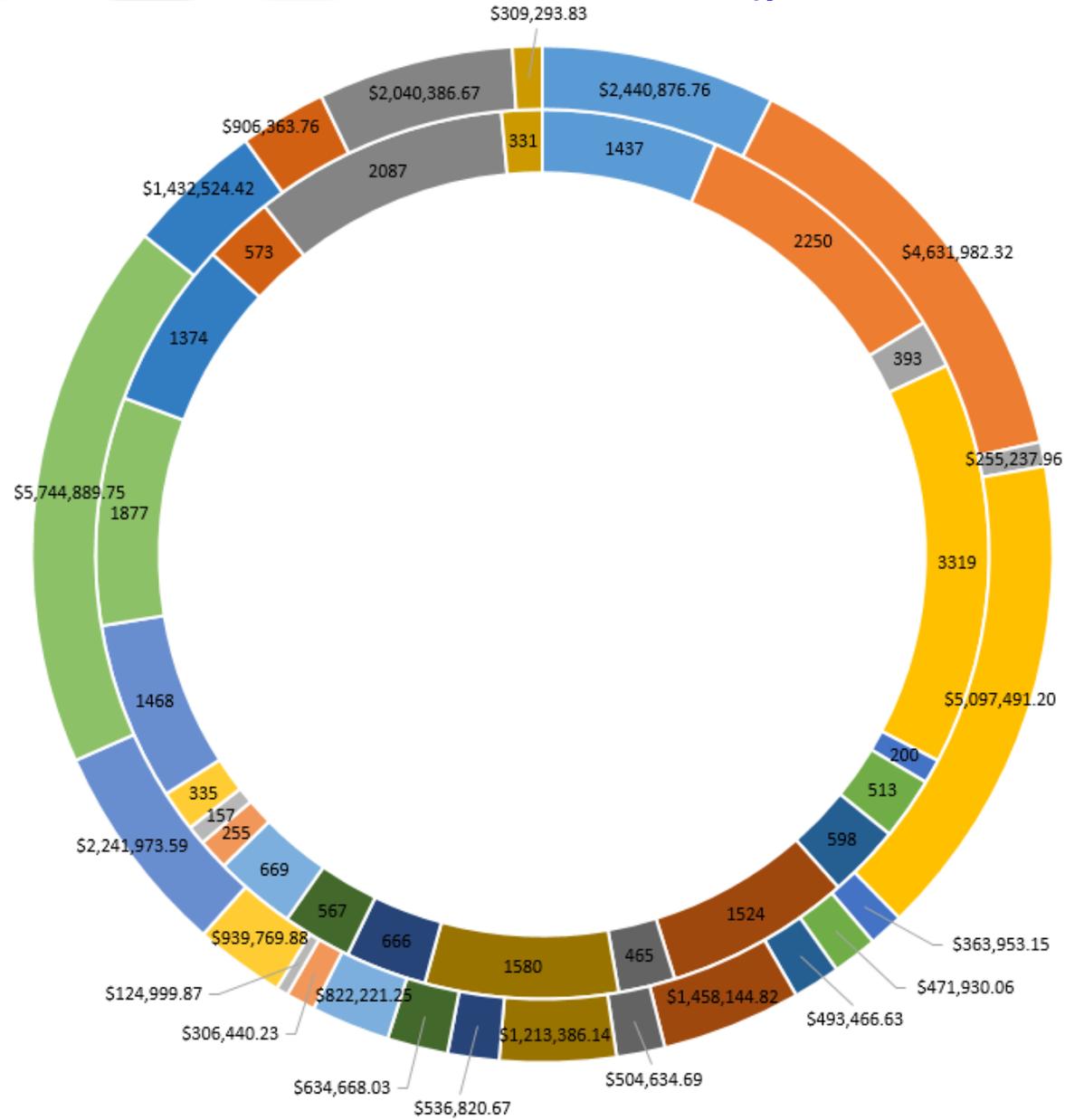
Silt, CO - House Party Arrests

- 17 children charged
- 7 adults charged
- 12 requiring OADC Counsel
- Charges ranging from class 3 to class 5 Felonies

NAME	CASE NO.	CHARGES	COUNSEL
Child Client	18 JD XXXX	F5 TRESPASS	OADC
Child Client	18 JD XXXX	F3 2ND DEGREE BURG; F5 TRESPASS; F5 CRIM MISCHIEF	OADC
Child Client	18 JD XXXX	F5 TRESPASS	OADC
Child Client	18 JD XXXX	F5 TRESPASS	OADC
Child Client	18 JD XXXX	F5 TRESPASS	OADC
Adult Client	18 CR XXXX	ARRESTED FOR F3 2ND DEGREE BURG; F5 TRESPASS; F5 CRIM MISCHIEF	OADC
Adult Client	18 CR XXXX	F5 TRESPASS; F5 CRIM MISCHIEF	OADC
Adult Client	18 CR XXXX	F5 TRESPASS	OADC
Adult Client	18 CR XXXX	F5 TRESPASS; F5 CRIM MISCHIEF	OADC
Adult Client	18 CR XXXX	F5 TRESPASS; F5 CRIM MISCHIEF	OADC
Adult Client	18 CR XXXX	F5 TRESPASS; F5 CRIM MISCHIEF	OADC
Adult Client	18 CR XXXX	F5 TRESPASS	OADC
Child Client	18 JD XXXX	F5 TRESPASS	PD
Child Client	18 JD XXXX	F4 2ND DEGREE BURG; F5 TRESPASS; F5 CRIM MISCHIEF	Pro se
Child Client	18 JD XXXX	F3 2ND DEGREE BURG; F5 TRESPASS; F5 CRIM MISCHIEF	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se
Child Client	18 JD XXXX	F3 2ND DEGREE BURG; F5 TRESPASS; F5 CRIM MISCHIEF	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se
Child Client	18 JD XXXX	F5 TRESPASS	Pro se



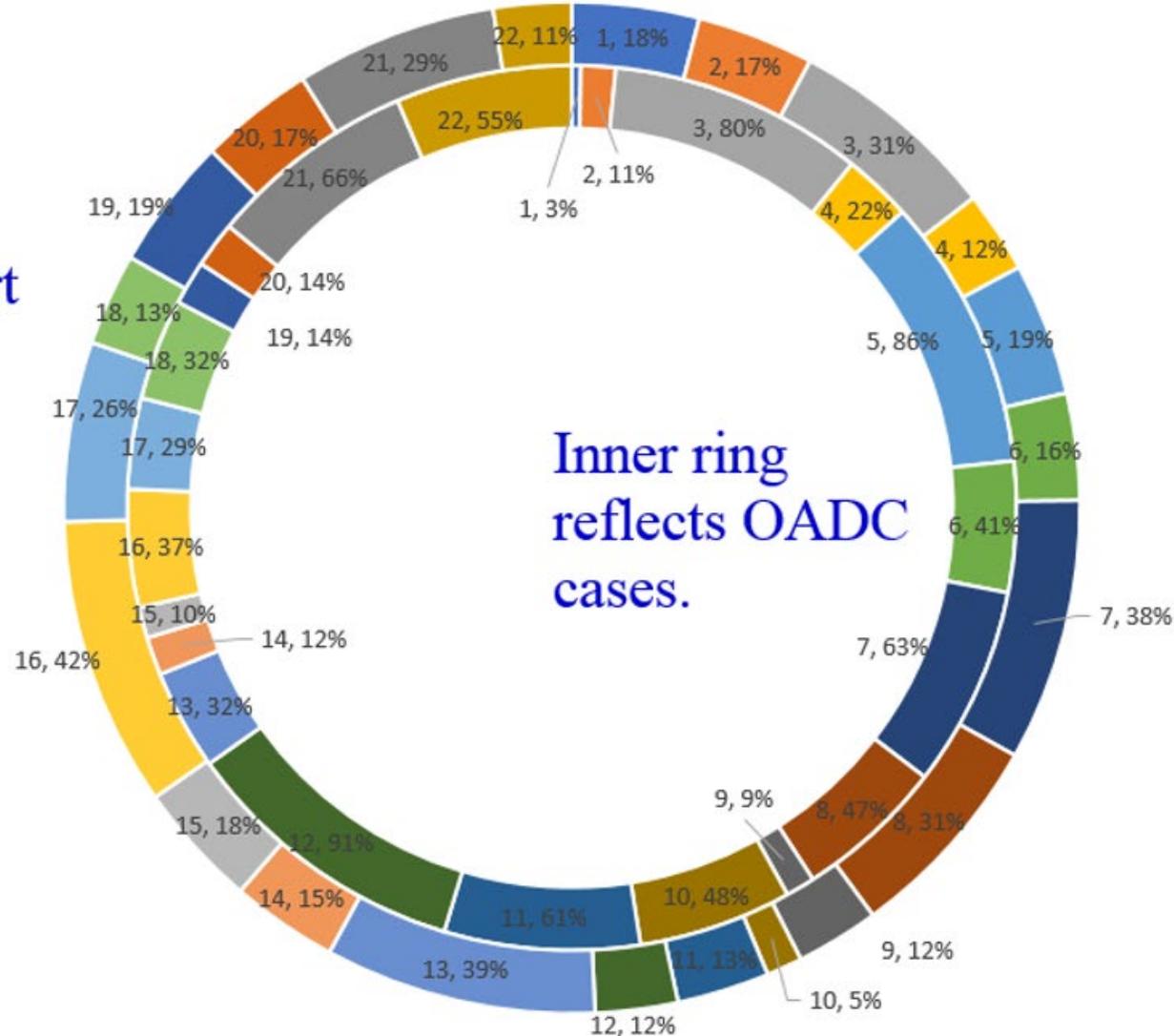
OADC Caseload by Districts



Felony Cases by District Percent Change from FY16 to FY18

Outer ring reflects Court cases.

Inner ring reflects OADC cases.



- FY2018-19 Annual Budget of **\$42,020,721**
- 13.8 FTE

	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15* Actual	FY16 Actual	FY17 Actual	FY18 Actuals	FY11 to FY18 % change
Caseload	11,878	12,585	13,290	15,085	16,680	18,244	20,103	22,638	90.59%
Change from previous FY		5.95%	5.60%	13.51%	10.57%	9.38%	10.19%	12.61%	
Expenditures	\$ 20,496,774	\$ 22,187,179	\$ 22,660,445	\$ 25,453,717	\$ 29,694,094	\$ 31,551,612	\$ 32,935,253	\$ 35,387,940	72.65%
Change from previous FY		8.25%	2.13%	12.33%	16.66%	6.26%	4.39%	7.45%	

**In FY15 there was an 8% rate increase for attorney contractors, a 14% increase for Investigators, and a 20% increase for paralegals, resulting in a disproportionate increase in expenditures for that year.*

Contain Case Costs		FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actuals	FY19 Budget	FY20 Request	FY10 to FY18 % change
Average Cost per Case	Target	<i>na</i>	\$1,581	\$1,581	\$1,581	\$1,456							
	Actual	\$ 1,697	\$ 1,620	\$ 1,641	\$ 1,593	\$1,596	\$1,722	\$1,581	\$1,523	\$1,456			-14.2%
	% change		-4.5%	1.3%	-2.9%	0.2%	7.9%	-8.2%	-3.7%	-4.4%			

$$(\$1,697 - \$1,456) = \$241 \times 22,638 = \$5,455,758$$

OADC FY2019-20 Budget Request

- DI # R-1 – OADC Caseload Increase (FY19)*: \$6,980,861
- DI # R-1 – OADC Caseload Increase (FY20) : \$7,620,251

**The OADC anticipates submitting an FY19 supplemental to cover this \$6,980,861, or a lesser amount once there is additional data for FY19 to make a better forecast for the year.*

DI #1 Anticipated Supplemental Decrease as of Numbers from December 1, 2018

	Requested	Revised	Difference
DI #1 Request (FY19) \$	6,980,861	\$ 3,431,443	\$ 3,549,417

OADC Social Worker Program

Support the use of Evidence Based Practices	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actual
Number of Cases with Social Workers	27 cases	75 cases	181 cases	263 cases	320 cases
Change from previous FY	<i>na</i>	200%	141%	45%	22%

Number of Social Worker Contractors	1 contractors	9 contractors	11 contractors	16 contractors	22 contractors
Change from previous FY	<i>na</i>	800%	22%	45%	38%

Number of Social Worker Interns	2 interns	3 interns	3 interns	2 interns	3 interns
Change from previous FY	<i>na</i>	50%	0%	-33%	50%

Annual Cost of Adult Sentencing Options Per Offender FY17-18

	1 yr of cost	3 yrs of cost	5 yrs of cost	25 yrs of cost
Probation	\$ 1,512	\$ 4,536	\$ 7,560	\$ 37,800
Community Corrections	\$ 8,924	\$ 26,772	\$ 44,620	\$ 223,100
Parole *	\$ 6,125	\$ 18,375	\$ 30,625	\$ 153,125
Department of Corrections **	\$ 38,146	\$ 114,438	\$ 190,730	\$ 953,650

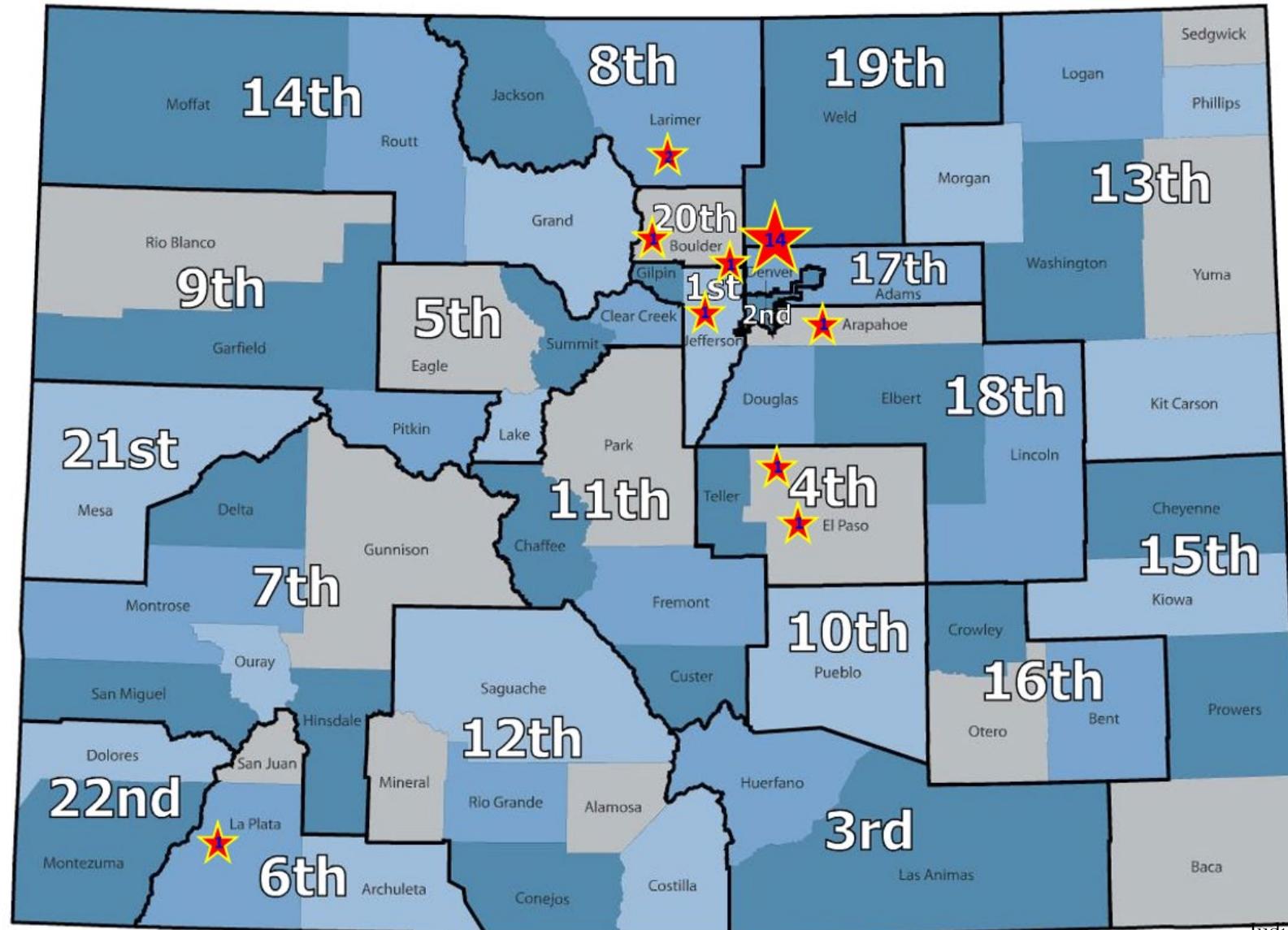
Source: DOC: Office of Planning & Analysis; DCJ: Office of Community Corrections; Probation: Division of Probation Services

Annual Cost of Juvenile Sentencing Options Per Child FY17

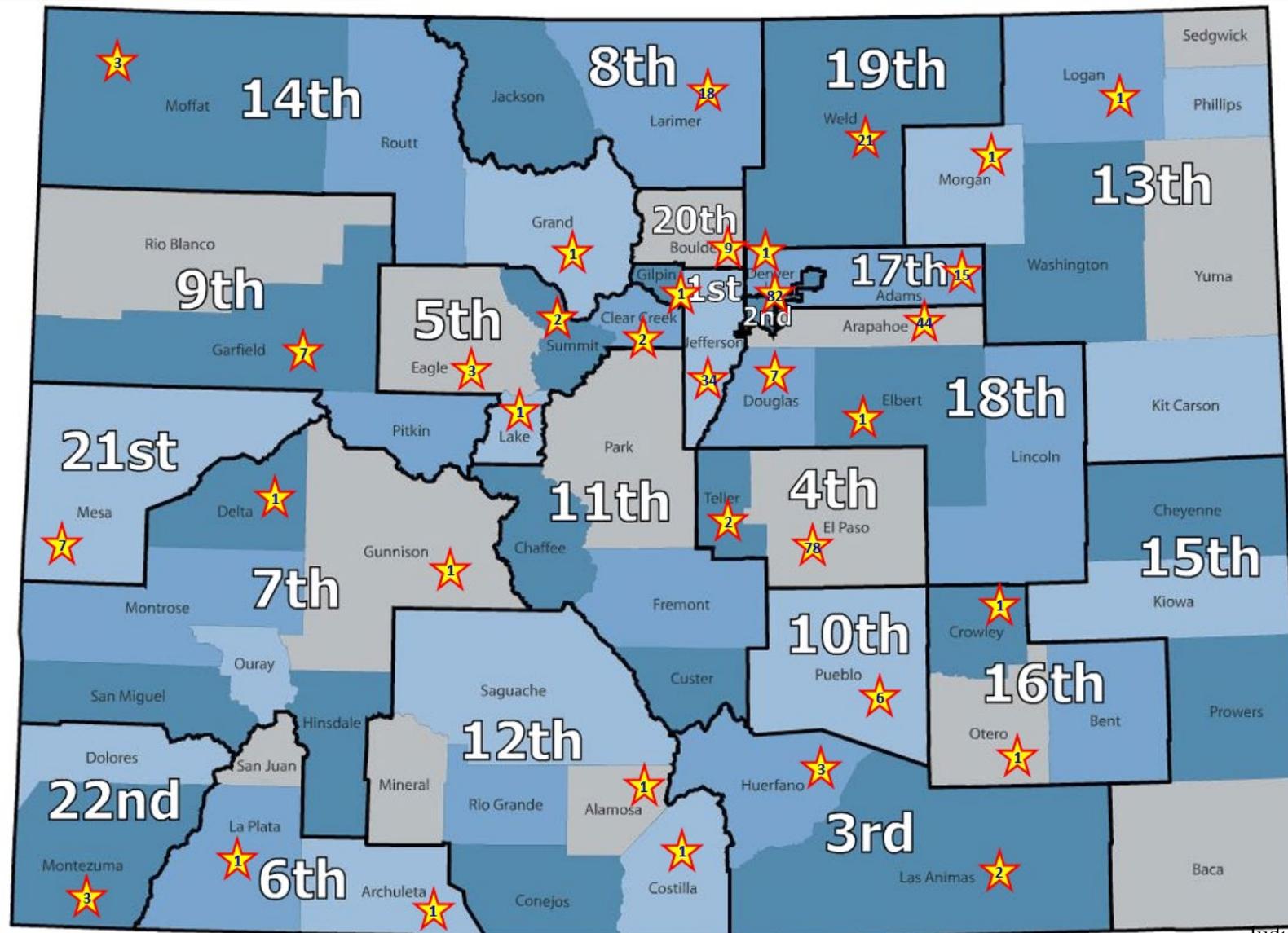
	1 yr of cost	2 yrs of cost
Probation	\$ 1,876	\$ 3,752
Secure Facility	\$ 131,046	\$ 262,092
Private Secure Facility	\$ 81,636	\$ 163,272
Community Residential	\$ 73,975	\$ 147,949
Parole	\$ 17,170	\$ 34,339

Source: The Council of State Governments (CSG) - Justice Center. September 6, 2018

OADC Contract Social Workers Statewide



OADC Cases with Social Workers by County



OADC FY2019-20 Budget Request

- DI # R-2 – Social Worker Outreach Coordinator : \$116,809 (1.0 FTE)

SB18-203 Municipal Courts Bill

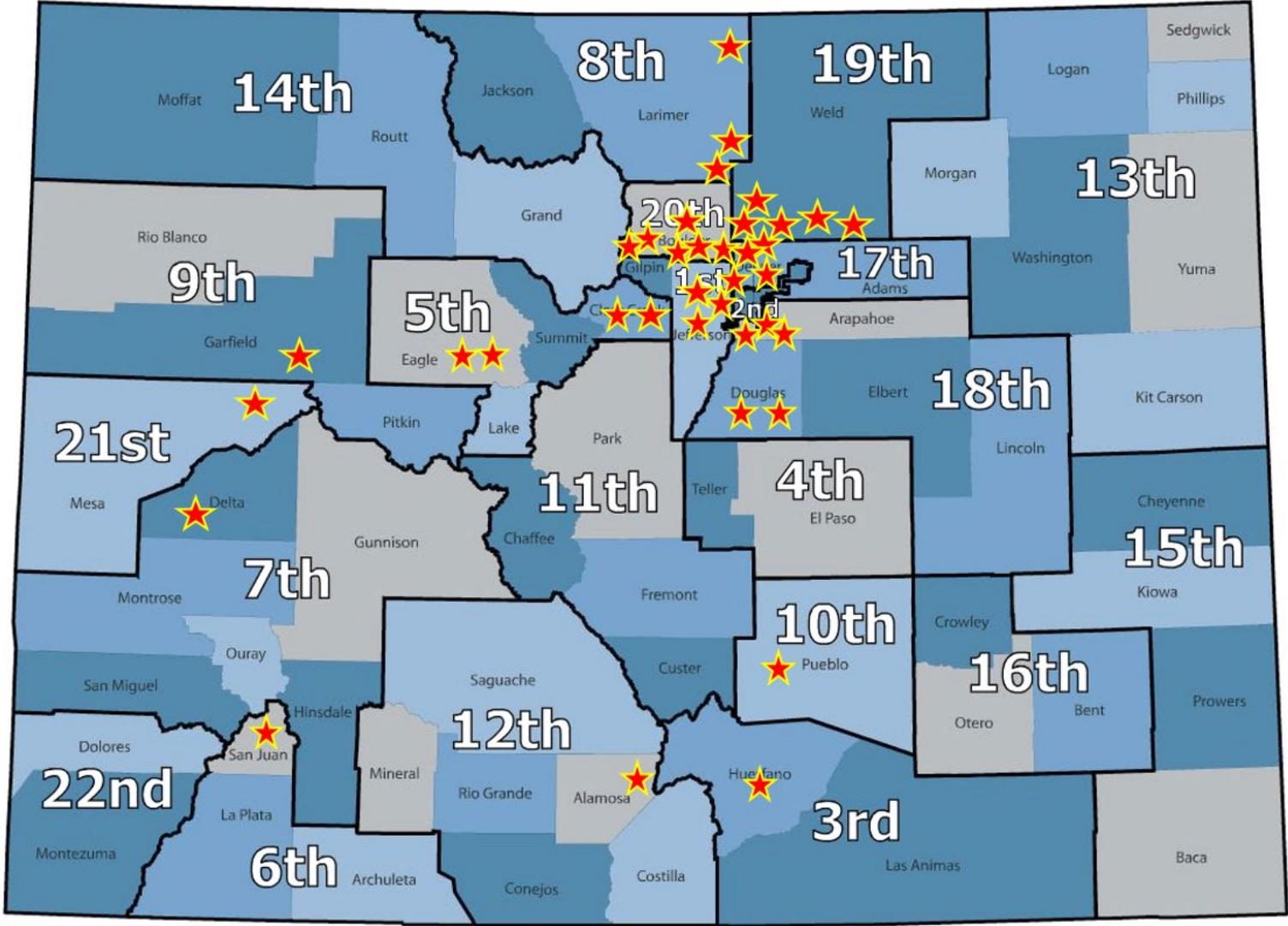
Concerning the provision of independent counsel to indigent defendants in municipal courts.

- Senate Bill 18-203 signed into Law 06/01/18
- Appropriated \$202,593 GF and 2.0 FTE to the OADC by FY20
 - 1.0 FTE in FY19 – Municipal Court Coordinator
 - 1.0 FTE in FY20 – Administrative Specialist

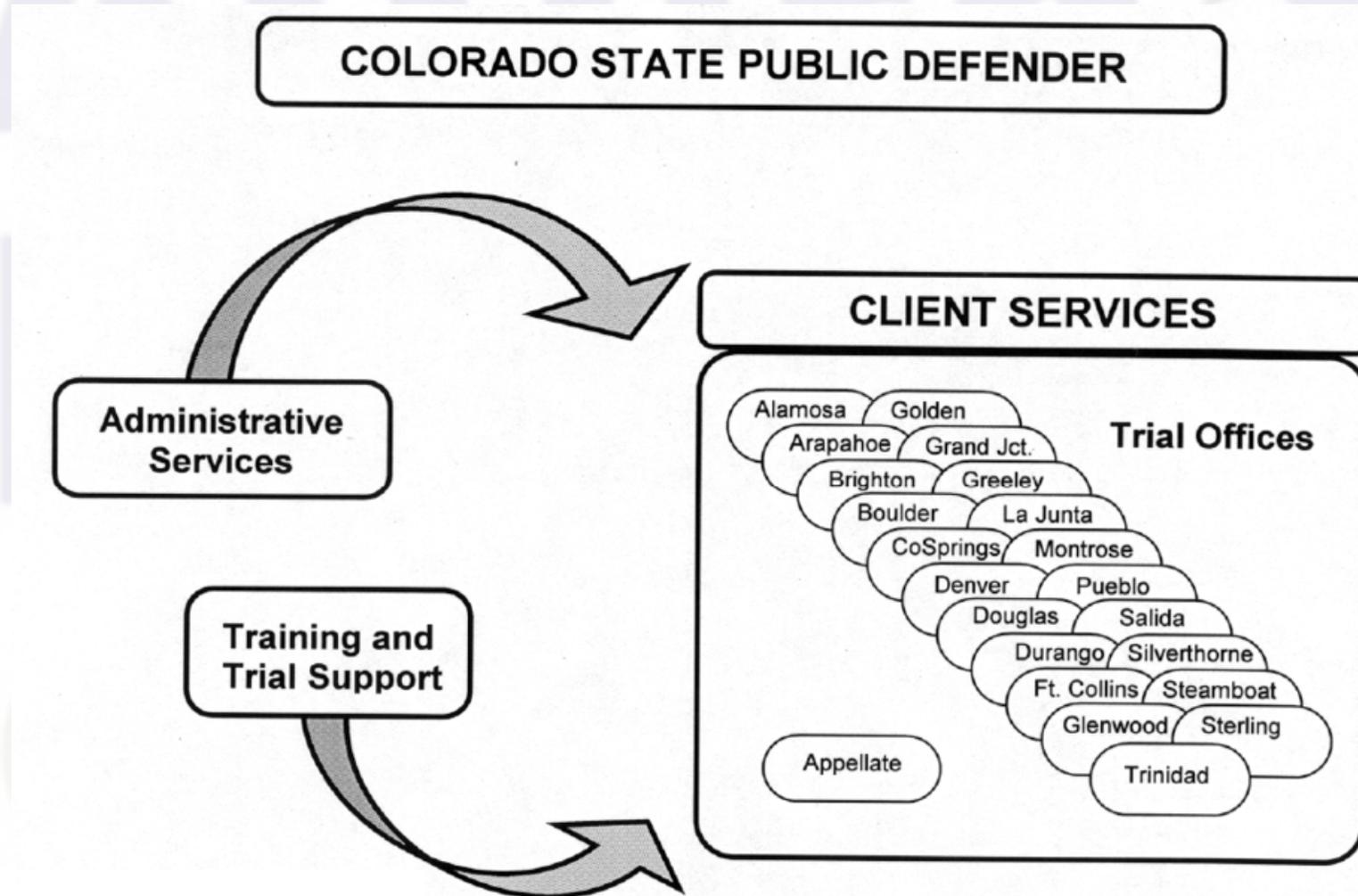
Milestones

- September 1, 2018 Municipalities request OADC services
- May 1, 2019 OADC announces staffing availability to perform evaluations
- January 1, 2020 Begin municipal attorney evaluation process
- September 1, 2020 Municipalities request OADC potential contractor list
- May 1, 2021 OADC announces staffing availability to provide lists
- January 1, 2022 OADC to provide contractor list to Municipalities

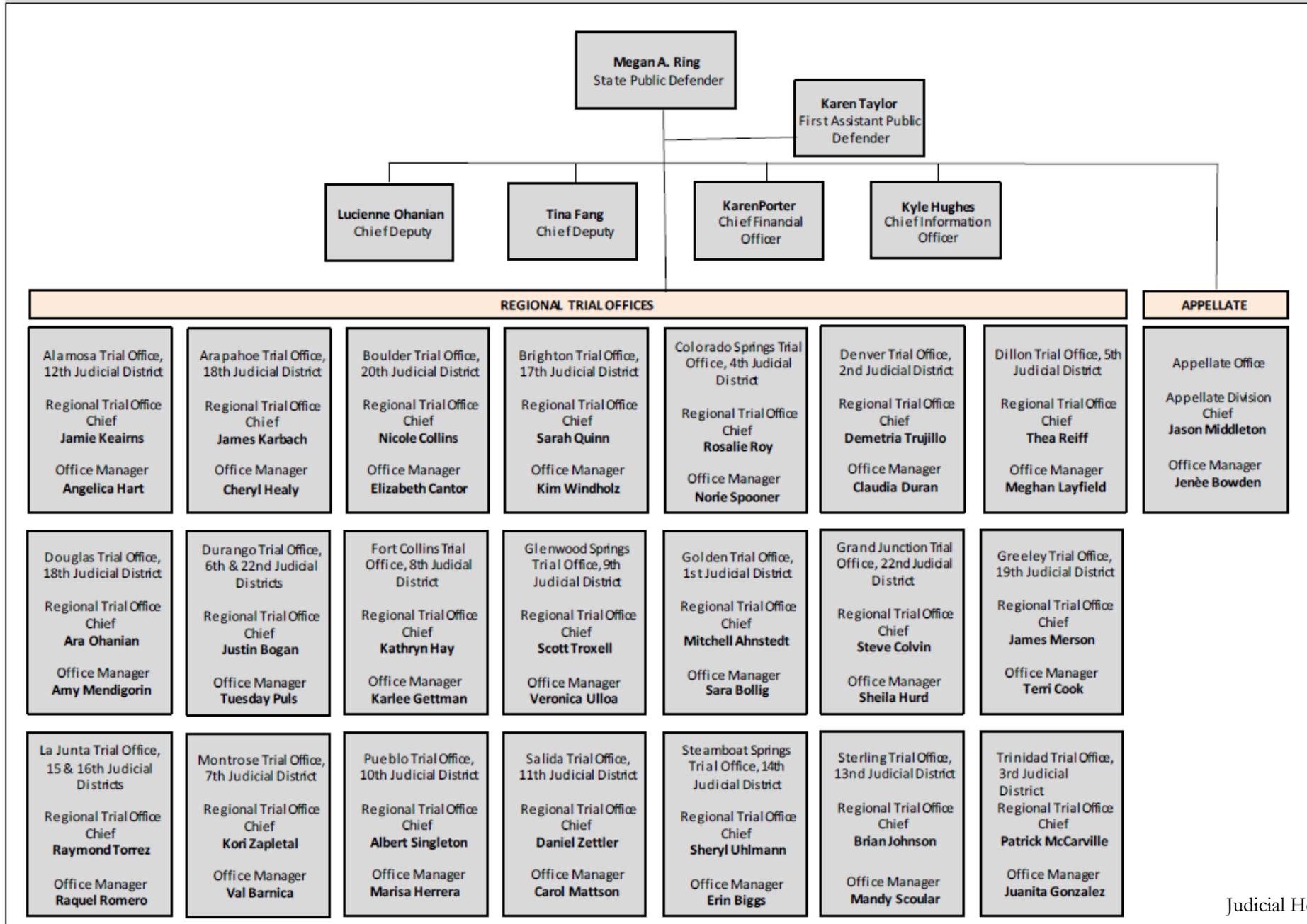
Participating Municipal Courts 2018



The following charts from the OSPD and OADC budgets illustrates each Agency's Organization structure.

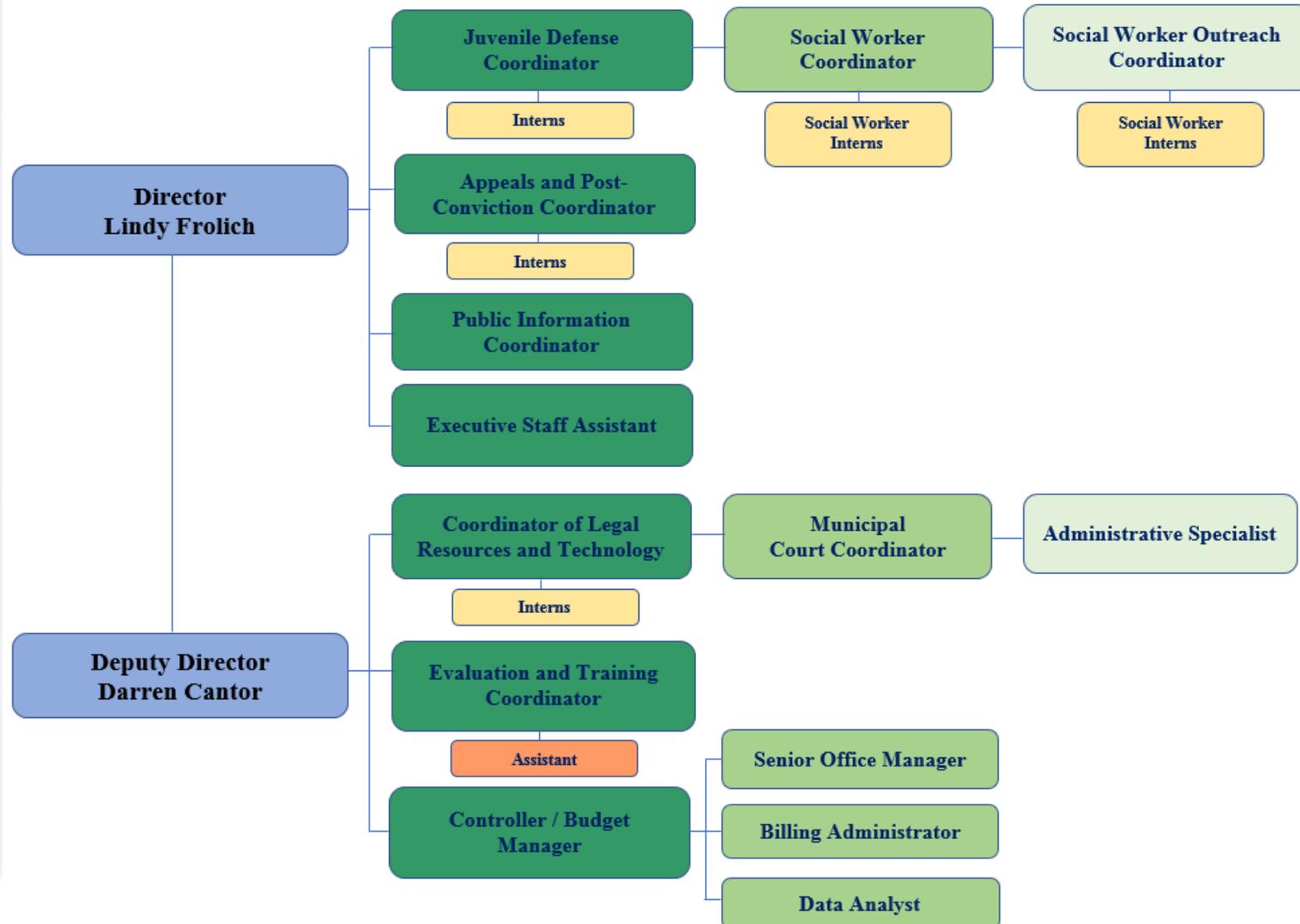


Office of the State Public Defender Organizational Chart



Agency Organizational Chart

Office of the Alternate Defense Counsel



Mary Sharon Wells,
OADC Commission Member



Questions ?

- Contact Information

- Lindy Frolich – Director - (303) 515-6925
lindy@coloroadc.com

- Darren Cantor – Deputy Director - (303) 515-6935
darren@coloroadc.com

- Daniel R. Nunez – Controller/Budget Manager – (303) 515-6924
daniel@coloroadc.com

JOINT PRESENTATION BY THE OFFICE OF THE CHILD'S
REPRESENTATIVE (OCR) AND THE OFFICE OF THE
RESPONDENT PARENTS' COUNSEL (ORPC)

JUDICIAL BRANCH

FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Tuesday, December 18, 2018

3:45 – 3:55 pm

Main Presenters:

- Melissa Thompson, Executive Director, ORPC
- Chris Henderson, Executive Director, OCR

TOPIC: WHO'S IN THE COURTROOM FOR DEPENDENCY AND NEGLECT (D&N) PROCEEDINGS?

Parties in a Dependency and Neglect case

Judge

Dependency proceedings are generally heard in front of district court judges. They make the final determinations based on the law and the best interests of the child or children.

Parents

The number of parents added to a case depends upon the allegations in the petition filed by the county attorney. If both parents are named as respondents in the case, then both parents become parties. It is possible to have multiple parents in case. If a grandparent or other relative has formal guardianship of a child, then they can also be named as a respondent in a case.

Respondent Parent Counsel (RPC)

Each indigent respondent in a case is appointed counsel through the Office of Respondent Parents' Counsel or ORPC. These attorneys are known as RPC's.

Child

The number of children named in a case depends upon the allegations in the petition filed by the county attorney. Entire sibling groups may be named in the petition.

Guardian *ad litem* (GAL)

The subject child (or children) named in a petition are appointed a Guardian *ad litem* (GAL) through the Office of the Child's Representative or OCR. The GAL represents the best interests of the child (or children).

County Attorney

The county attorney represents the county department of human services and is generally the initiating party of the dependency proceedings.

Caseworker

The caseworker is an employee of the county department of human services. Case workers are sometimes licensed social workers, but not always.

Court Appointed Special Advocate (CASA)

CASAs are appointed by the court on a case by case basis. CASAs are community volunteers appointed to provide the Court additional information regarding the children.

Intervenor or Special Respondent

Other parties, like family members, can be added to the case as special respondents by the court, so that the court can order those parties to comply with specific orders. If a foster parent has a child placed with them for at least 3 months, they can file a motion to intervene as a party in the case. Grandparents can also intervene in a case. Intervenors and Special Respondents are not usually appointed counsel through the court, but they can hire private counsel.

Parent Social Worker

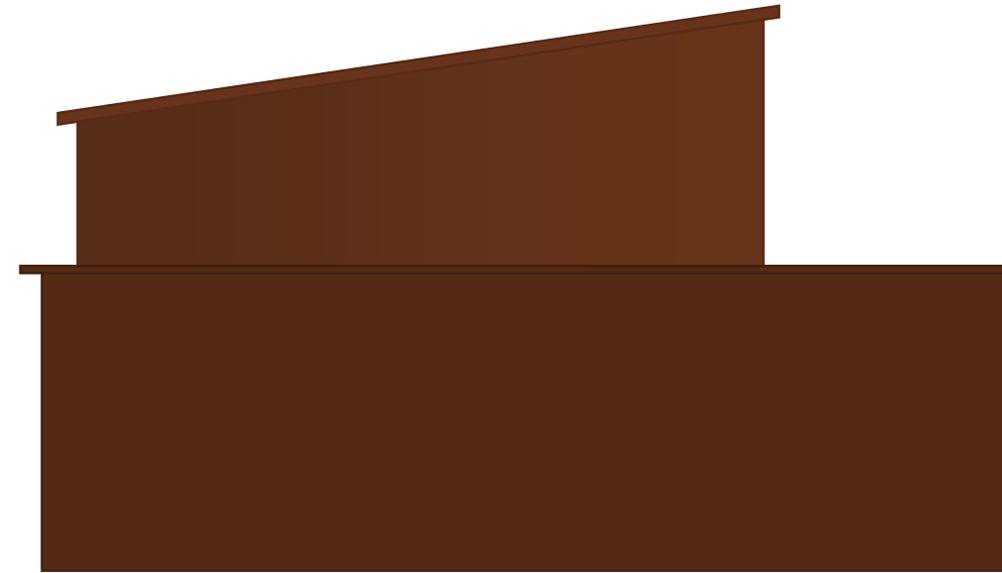
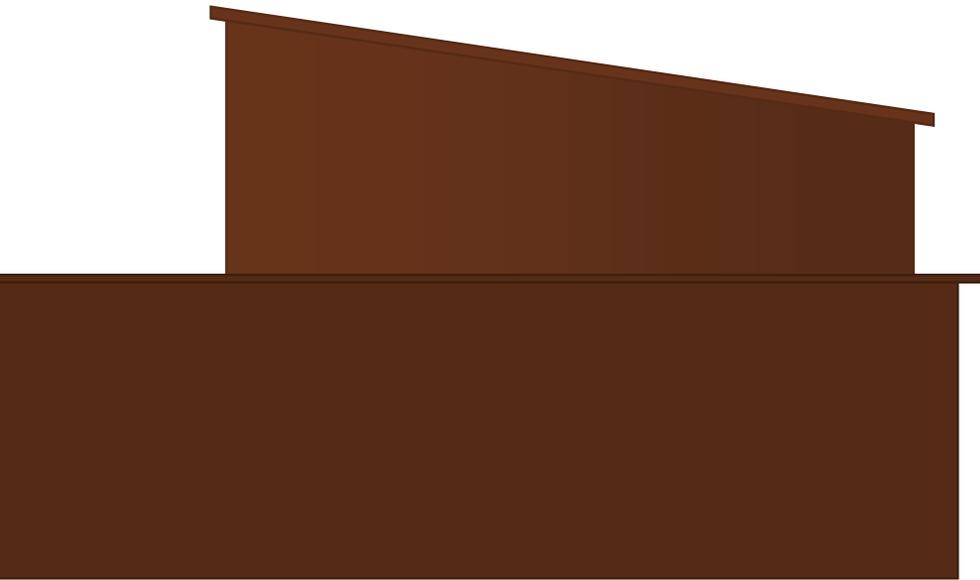
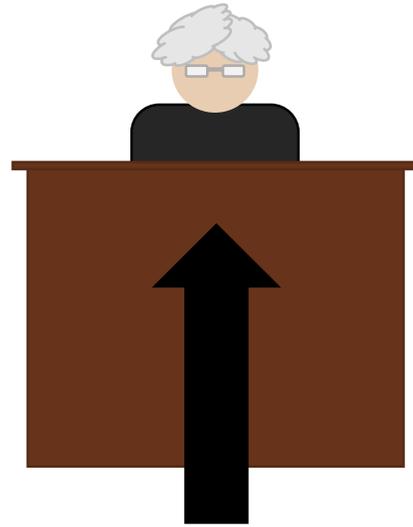
In pilot jurisdictions (Adams, El Paso, and Mesa) RPC's can be appointed a social worker through the ORPC. A social worker helps a parent engage meaningfully in their legal representation,

supports a parent in complying with appropriate treatment plans, and resolves obstacles along the way.

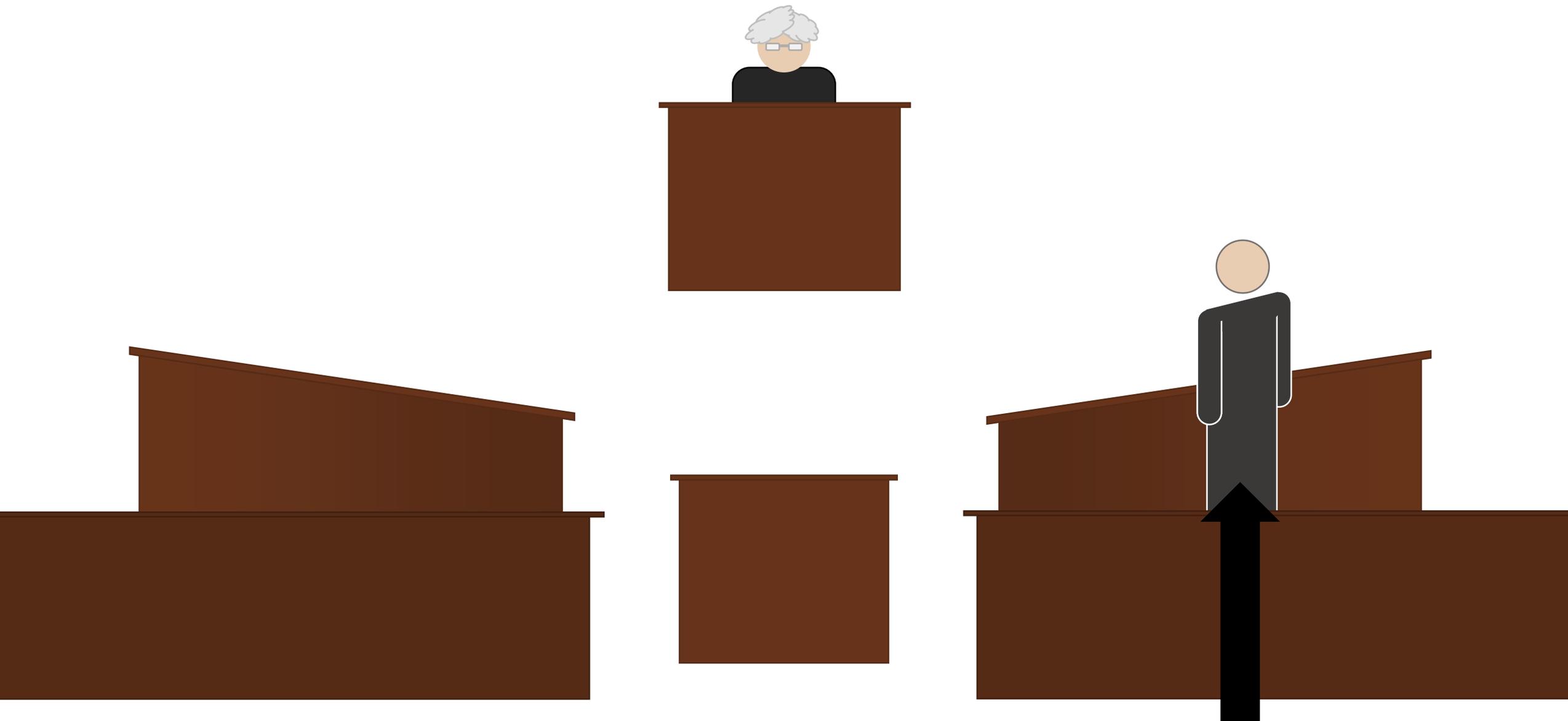
Guardian ad litem Case Consultant

GALs can be appointed a case consultant through the OCR or independently, who is generally a social worker. A GAL social worker helps with case investigation and supports the GAL in determining what is in the best interests of the child or children in the case.

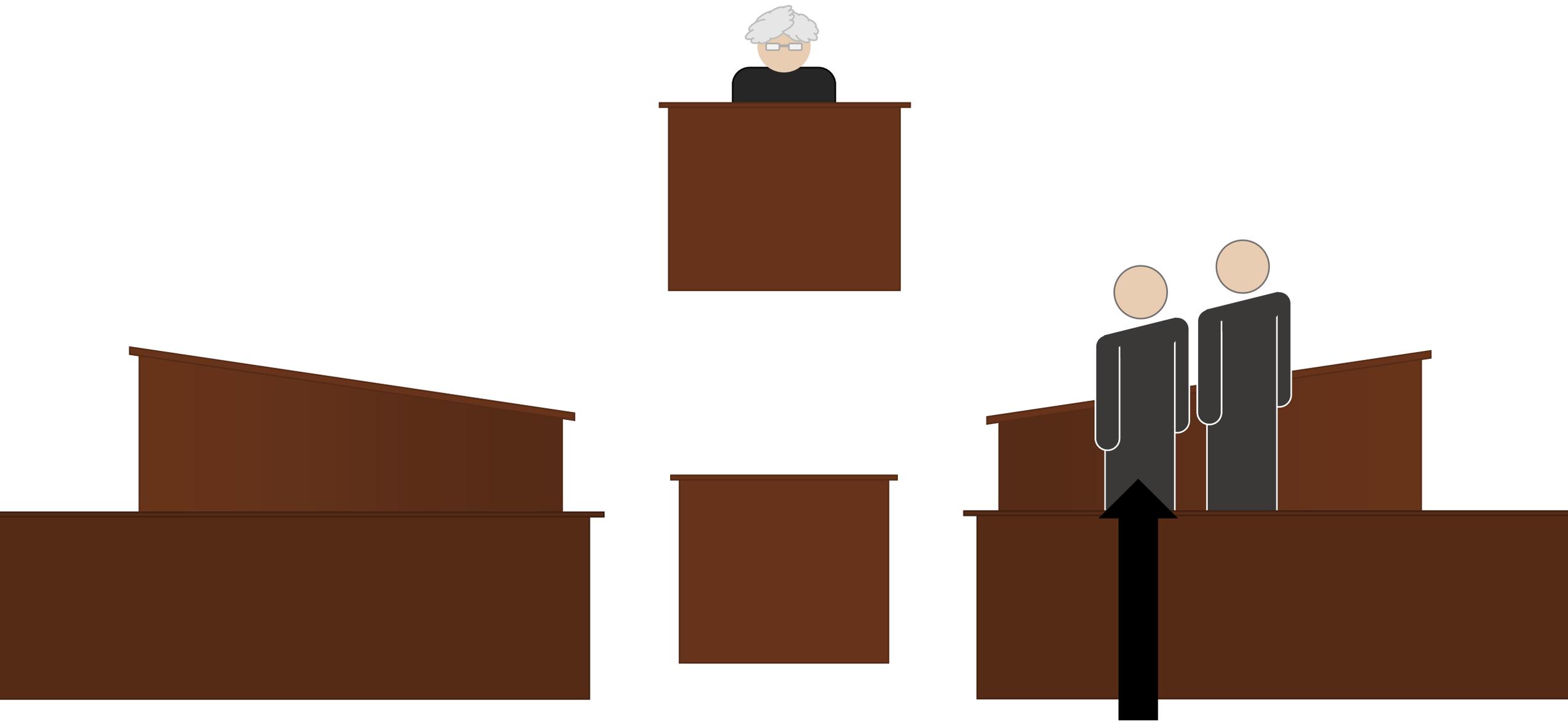
Who may be in the courtroom in a Dependency and Neglect case?



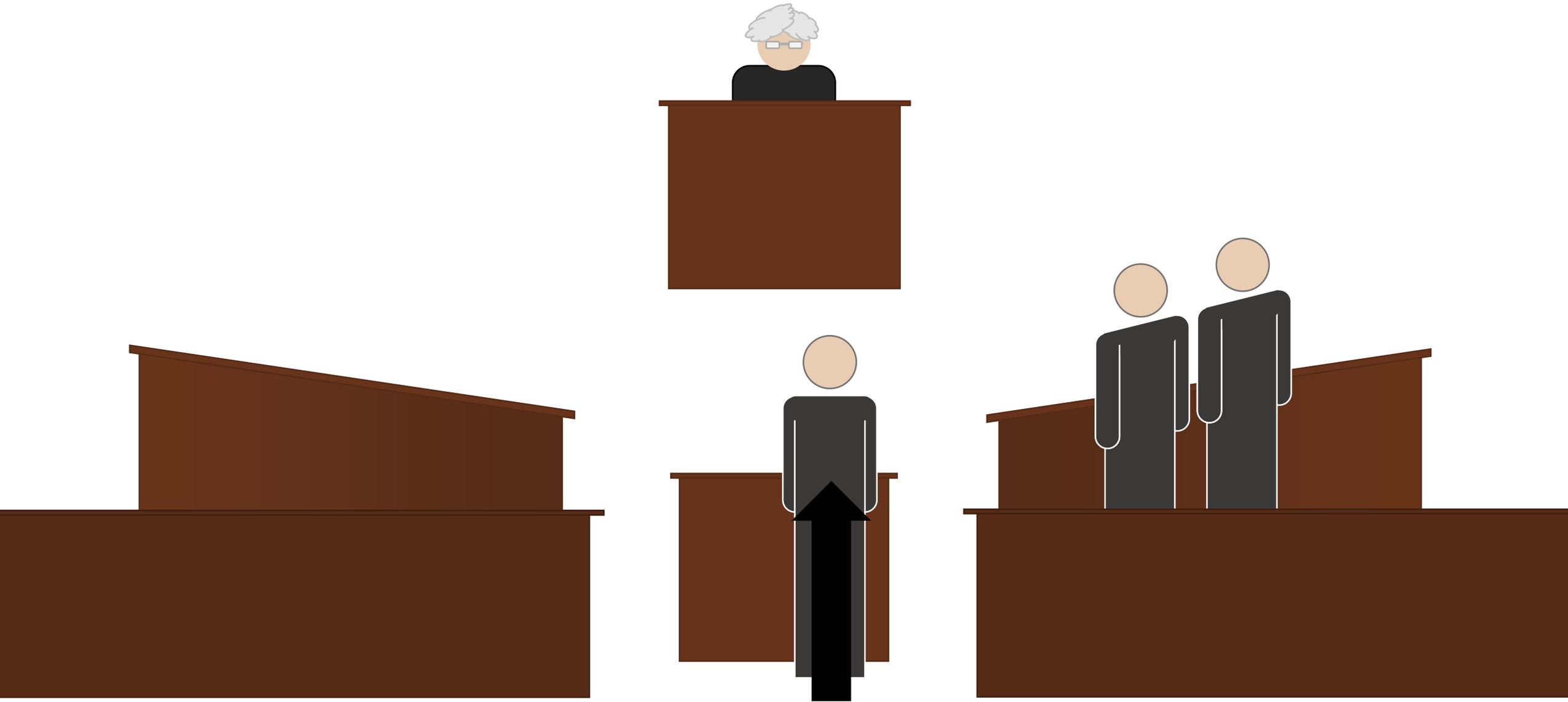
Judge



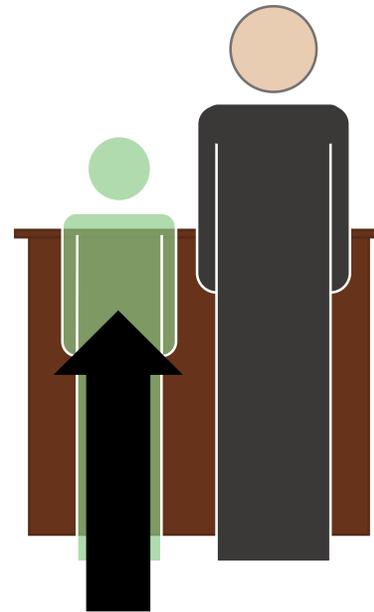
Caseworker



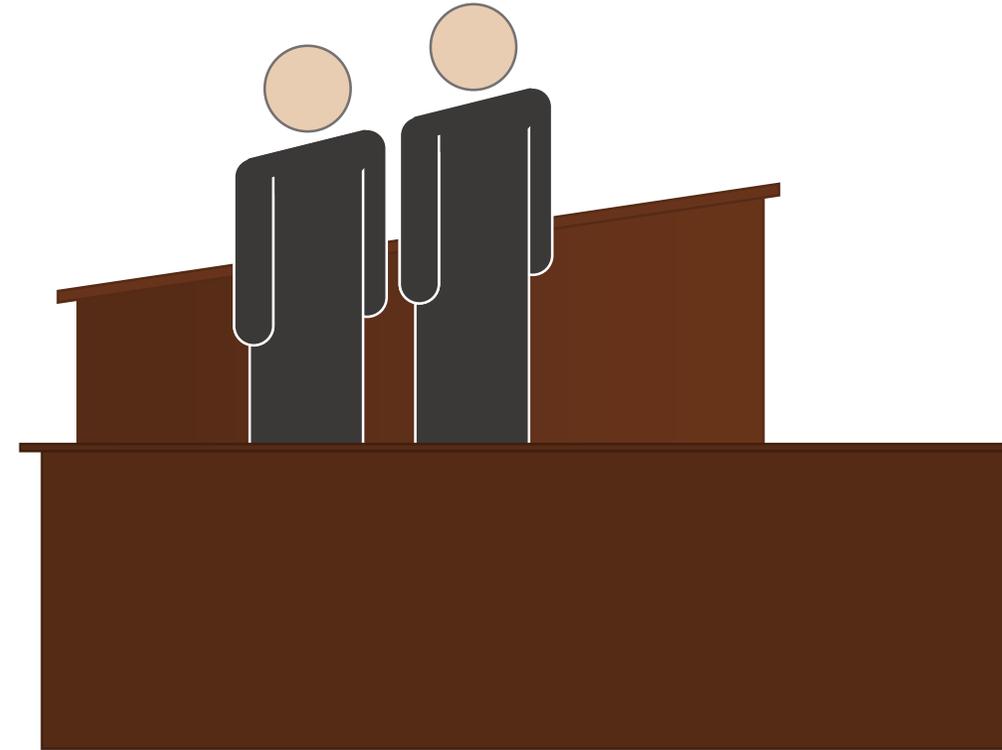
County Attorney

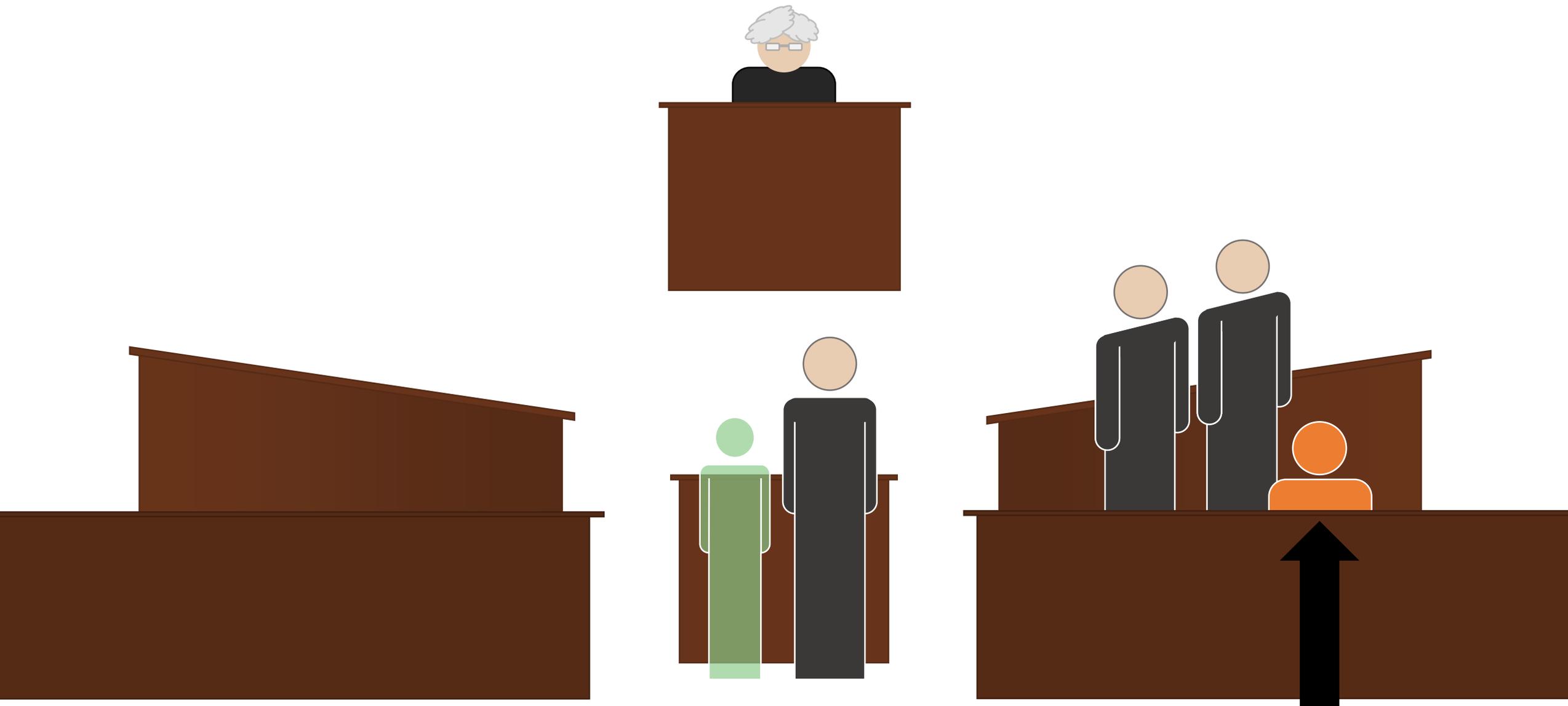


Guardian *ad litem* (GAL)

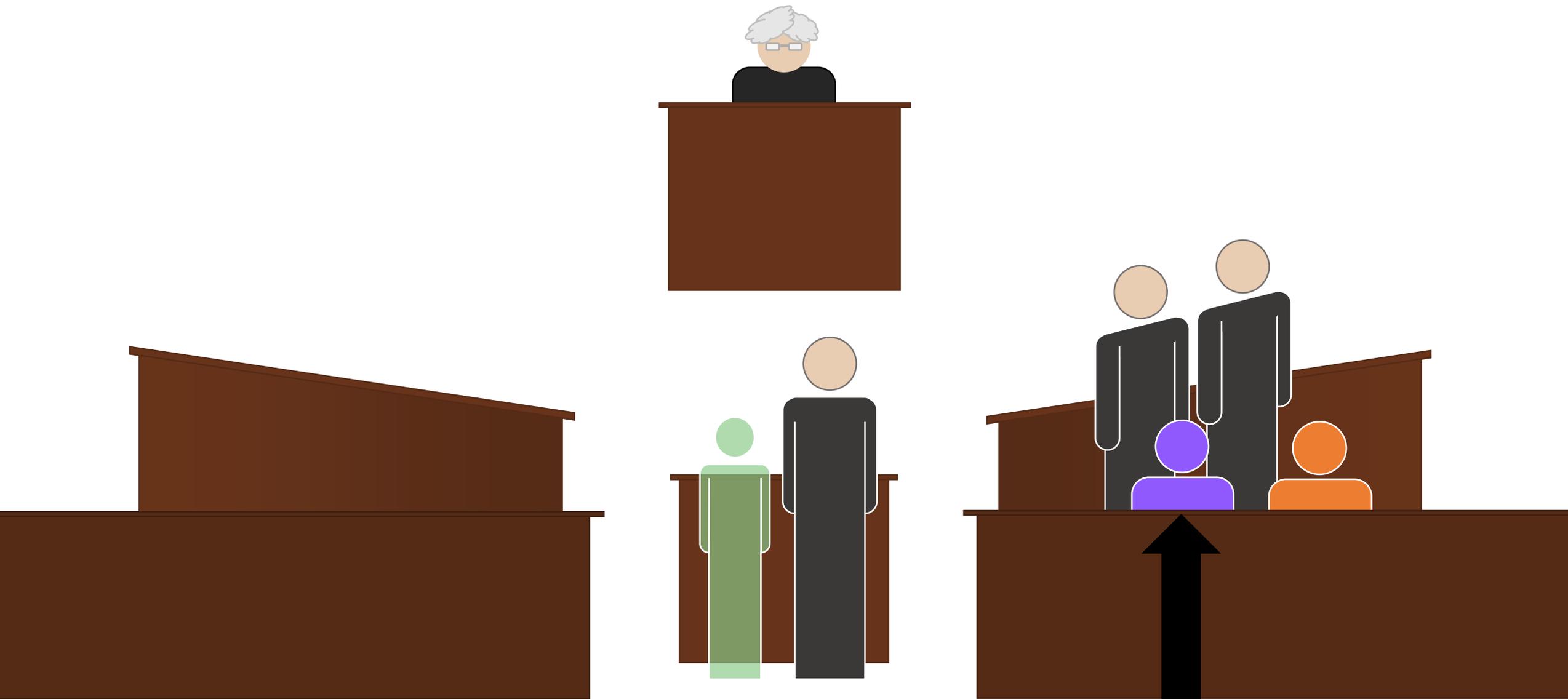


Child

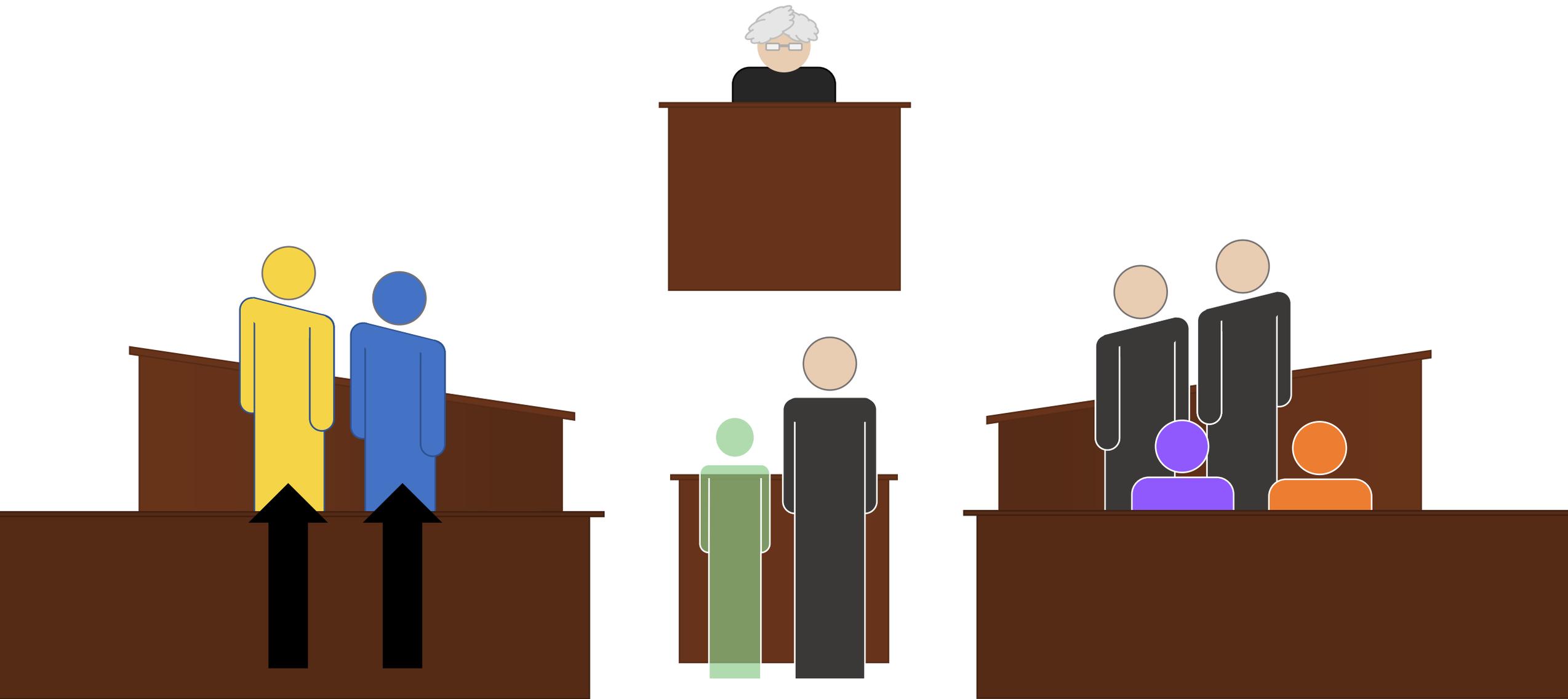




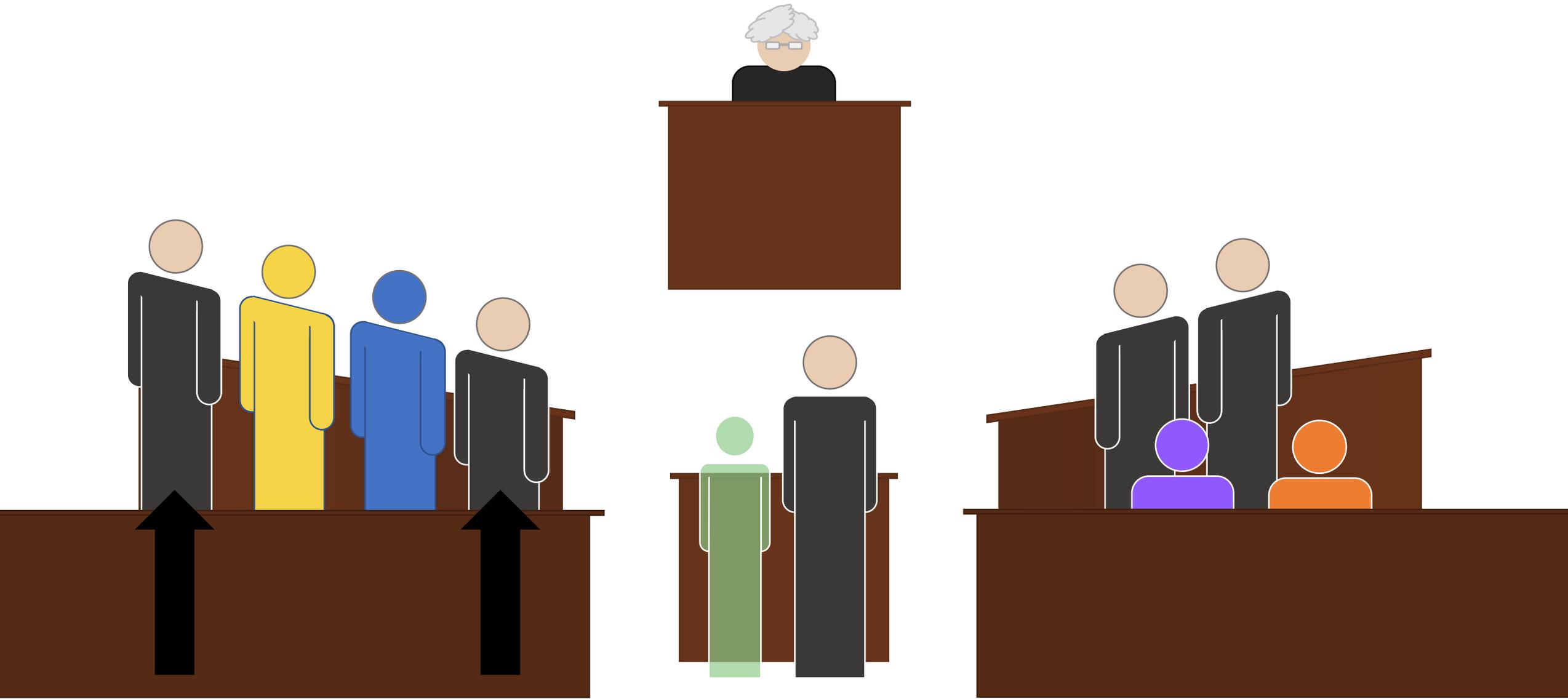
Special Respondent/ Intervenor



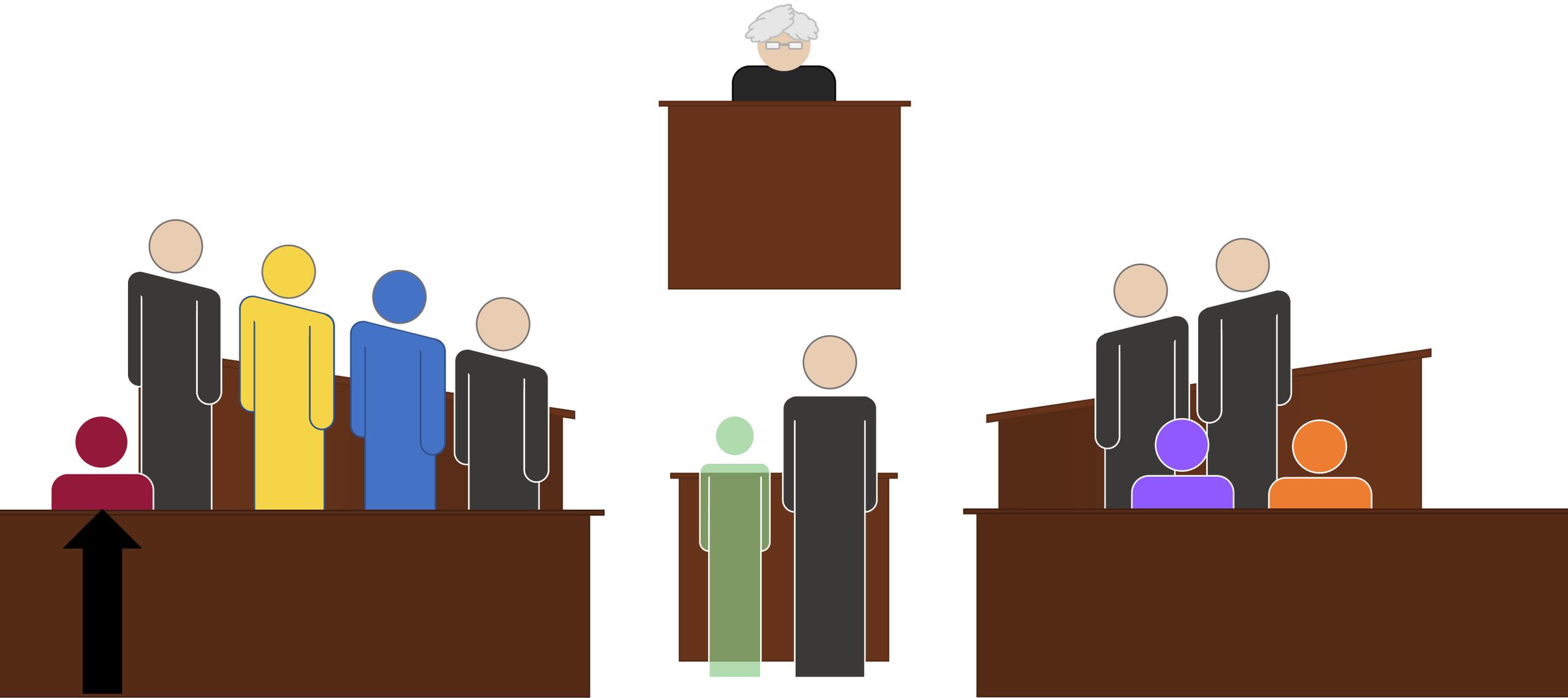
Court Appointed Special Advocate (CASA)



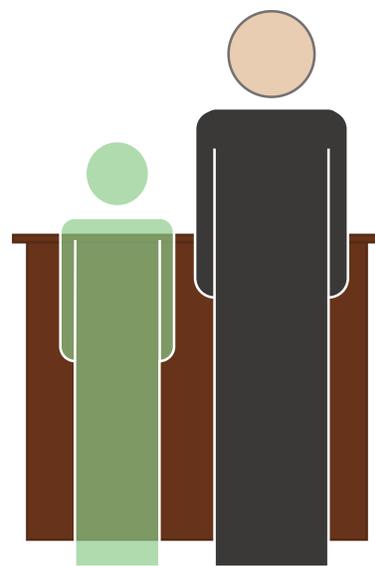
Respondent Parents



Respondent Parent's Counsel



Parent Social Worker



OFFICE OF THE CHILD'S REPRESENTATIVE
JUDICIAL BRANCH
FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Tuesday, December 18, 2018
3:55 pm – 4:05 pm

Main Presenters:

- Chris Henderson, Executive Director
- Ashley Chase, Staff Attorney and Legislative Liaison

INTRODUCTIONS AND OPENING COMMENTS

QUESTIONS FOR THE OFFICE OF THE CHILD'S REPRESENTATIVE

OCR 1. How do the OCR and ORPC interact in a typical case?

Response: In Dependency and Neglect (D&N) proceedings, attorneys from the Office of the Child's Representative (OCR) and Office of Respondent Parents' Counsel (ORPC) represent clients with independent legal interests throughout all phases of the proceeding. Guardians *ad litem* (GALs), attorneys under contract with the OCR, must provide diligent representation to the best interests of the child, while Respondent Parent Counsel (RPCs), attorneys under contract with the ORPC, represent the parent's legal interests. As the goal of D&N proceedings is to preserve and strengthen family ties whenever possible, GALs and RPCs are often aligned on the ultimate goal of preserving family placements and/or reunifying children with their parents. GALs recognize that parents have important information and insights about their children and, with RPC permission, interview and engage with parents throughout the proceeding as part of their assessment of each child's best interests.

Often, the circumstances that lead to the filing of a D&N case arise from serious concerns about children's safety and well-being while in their parents' care and so GALs will advocate for more protective orders regarding the need for judicial intervention, placement, visits, and services. Conversely, RPC's are ethically tasked with advocating for the wishes of their individual clients regarding placement decisions, services, and visits. Sometimes the GAL's position and the parent's wishes align and sometimes they do not, which can result in GALs and RPCs taking adverse positions in court. Unfortunately, when the services offered through the D&N proceeding do not remedy the safety concerns, GALs must advocate for termination of parental rights to achieve permanency that serves the child's best interests. Effective legal advocacy by all attorneys in the proceeding, including GALs and RPC, promotes effective judicial decision making.

As oversight agencies, the OCR and the ORPC do not typically interact in the court cases themselves. However, the two agencies participate in many committees addressing child welfare issues and reform and work collaboratively to exchange ideas and information relevant to their respective oversight

responsibilities. Occasionally, the ORPC and OCR put on collaborative trainings for both RPCs and GALs. In 2017 and 2018, the OCR and ORPC worked together to update the Guided Reference in Dependency, a complete reference guide covering the stages of a dependency and neglect case and detailing black letter law, statutes, seminal cases, checklists of activities, and considerations for each hearing type. Both agencies share a strong belief that effective legal representation for parents and children in D&N proceedings leads to better case outcomes.

OCR 2. The federal Family First Prevention Services Act of 2018 makes significant changes to the child welfare system aimed at keeping children and youth safely with families and avoiding placement in foster care by strengthening the protective capacity of families long before child welfare services are needed. The Act also expands the eligible use of funds from Title IV-E of the Social Security Act to include approved prevention and intervention services meeting the evidence-based threshold of promising-, supported-, or well-supported practices as defined by the federally selected clearing house. Several programs currently exist in the State of Colorado through which services are provided and that are intended to strengthen the protective capacity of families. The coordination or delivery of many of these services are or could be integrated with other programs and services with the intent of providing wrap-around services to children and families. The FFPSA provides an opportunity for the State of Colorado to evaluate existing programs and funding in order to leverage resources across systems, departments, and divisions and to improve service delivery. The FFPSA also includes specific requirements related to court ordered out of home placements.

In what way will the federal Family First Prevention Services Act impact the Department's programs and budget? What statutory, policy, and rule changes does the Department anticipate will be required to ensure that the State of Colorado complies with all provisions of the federal Act?

Response: OCR has been participating in statewide compression planning regarding the implementation of this legislation. FFPSA effectuates a fundamental change in child welfare funding and will result in changes to law and practice in child welfare cases, D&N proceedings, and potentially some delinquency proceedings in Colorado. While the details and timing of those changes have yet to be decided for Colorado, the GAL will play a critical role in ensuring that the individual needs of each child are fully represented throughout the case and at each decision point. OCR will continue to monitor the impact of the FFPSA on its caseload and workload and will ensure GALs remain apprised of the legal and practice changes through its training program and litigation supports.

There will be increased oversight from the courts for children in qualified residential treatment programs (QRTPs). There will ideally be a decrease in the number of children in out-of-home placements, and the GAL will continue to visit the children wherever they are placed. There may be increased advocacy to ensure children are not diverted into the juvenile delinquency system. Eventually, if prevention services are effective, the case numbers may go down. The GAL will continue to advocate for the needs of the child. OCR is committed to remaining on the forefront during implementation of the FFPSA.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

Response: Title 13, Section 91 of Colorado Revised Statutes requires the Office of the Child's Representative (OCR) to enhance the Court-Appointed Special Advocates (CASA) program. The OCR has historically transferred its CASA appropriation directly to Colorado CASA for allocation to local CASA programs, a transparent practice reflected in OCR's legislative reports, Joint Budget Committee documents, and a previous audit. While this practice has been understood by the OCR and relevant stakeholders to be consistent with the OCR's enabling legislation, the OCR's recent performance audit found that the practice was not in compliance with the enabling legislation. The OCR understands the issues identified by the audit and agrees with the recommendations. During the upcoming 2019 legislative session the OCR will seek statutory changes to address the issues and will also establish a process to allocate CASA funds to local CASA programs consistent with the OCR's statutory obligations.

- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? [Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.](#)

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

Response:

The OCR does not have any high priority outstanding recommendations in the "Annual Report: Status of Outstanding Audit Recommendations" published by the Office of the State Auditor. The OCR's performance audit was presented to the Legislative Audit Committee on September 25, 2018. The OCR accepted and is in the process of implementing all recommendations identified in the audit.

- 3 If the Department receives federal funds of any type, please respond to the following:
 - a. Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?

Response: The OCR does not receive federal funds directly; rather, it receives reappropriated funds as available from the Department of Human Services and the State Court Administrator's Office. The OCR does not expect significant changes in funding from either source.

- b. Does the Department have a contingency plan if federal funds are eliminated?

Response: If any of these discretionary reappropriated federal funds are eliminated, the OCR would be forced to reduce its training activities. Reappropriated federal funds represented approximately 0.2% of the OCR's total expenditures in fiscal year 2018.

- c. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

Response: The OCR is not aware of any federal sanctions or potential sanctions.

- 4 Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?

Response: The OCR does not spend money on public awareness campaigns.

- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

Response: The OCR's vacancy rate in FY 2017-18 was 3.1%; its turnover rate was 26%. Turnover of attorney positions (3 positions during FY 2017-18) in the OCR's El Paso office is attributable to higher salaries offered by the El Paso County Attorney's Office.

- 6 Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

Response: The OCR does not promulgate any rules (i.e., regulations).

- 7 What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

Response: Contract attorney caseload and workload are the primary cost drivers impacting the OCR. Because the rates paid to contractors are already established, the general CPI is not a factor in the OCR's costs. Appropriations that may be influenced by the CPI represent less than one percent of the OCR's total appropriations. However, the increasing complexity in juvenile law may have an impact on the OCR's caseload and workload.

- 8 How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

Response: The OCR projects an increase in both its Dependency and Neglect (D&N) and Juvenile Delinquency (JD) caseloads, building on a trend the OCR has experienced over the last several years (OCR attorneys are appointed in ALL D&N cases, while it is up to the judge's discretion to appoint OCR attorneys in JD cases). While it is difficult to quantify all the factors driving these increases, conversations with attorneys and judges point to an increased prevalence of D&N-like issues in JD cases and an increasing awareness of adequately addressing the needs presented in JD cases as a means of promoting long-term success and minimizing the potential for future court involvement. Additionally, while Appellate appointments represent a relatively small portion of the OCR's overall caseload, these filings increased significantly in FY 2018 due to the complexity and length of D&N cases. The OCR expects this increased caseload to continue in FY 2020.

- 9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department's interactions with the public.

Response: The OCR's website provides useful information to and allows for feedback and records requests from the public. However, the website provides significant resources for attorneys, including a litigation toolkit to enhance best practices and efficiencies, a complete Guided Reference in Dependency (GRID), and centralized access to the OCR's policies. Furthermore, the OCR's web-based Colorado Attorney Reimbursement Electronic System (CARES) provides a case management/billing system for all attorneys with whom the OCR contracts. This system was recently redesigned, launching April 1, 2018 with enhanced functionality and reporting capabilities.

Office of the Child's Representative

Presentation to the Joint Budget Committee

December 18, 2018



Office of the Child's Representative

Mission and Values

MISSION

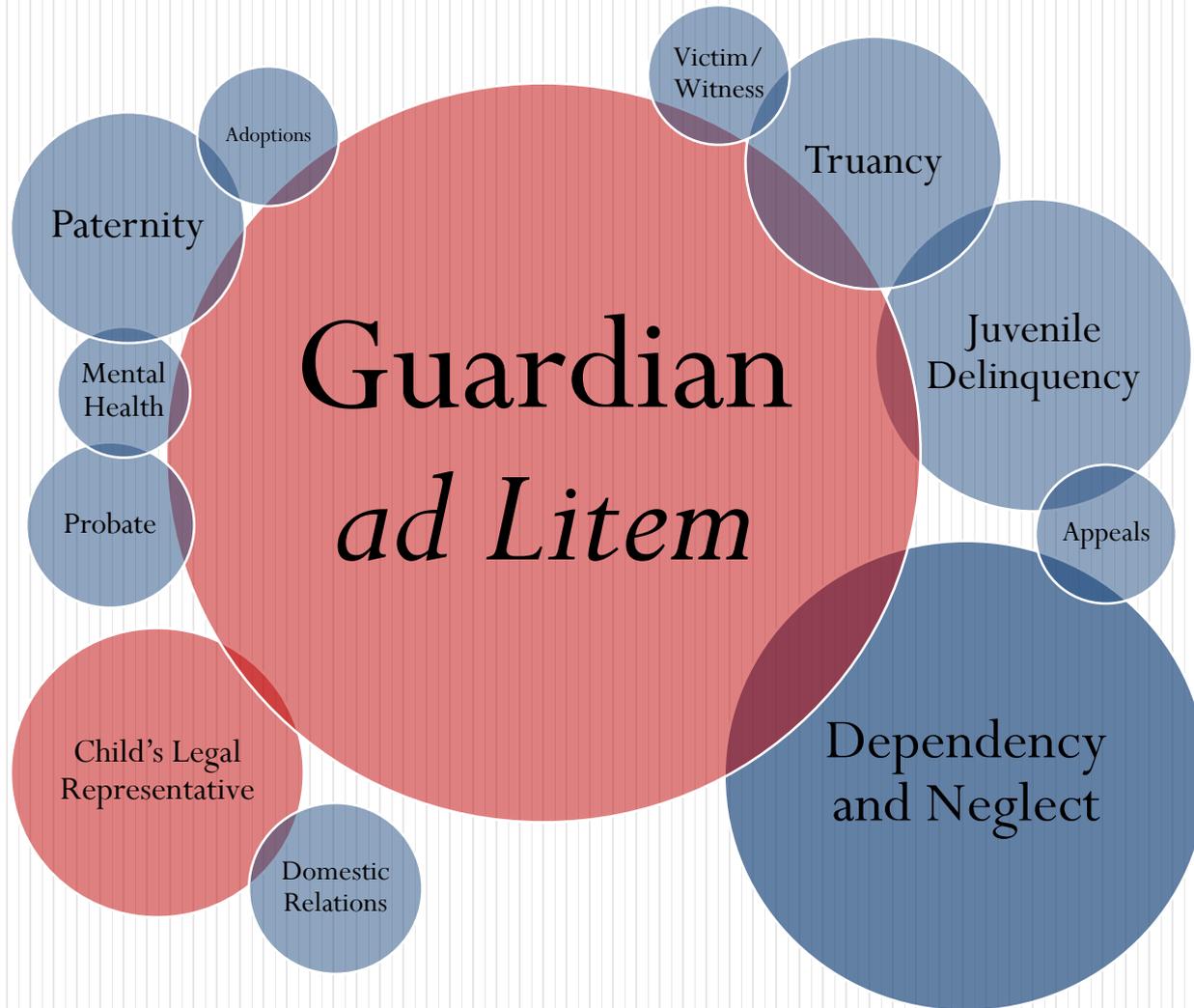
The mission of the Office of the Child's Representative (OCR) is to provide effective legal representation to Colorado's children involved in the court system because they have been abused and neglected, impacted by high-conflict parenting time disputes, or charged with delinquent acts and without a parent able to provide relevant information to the court or protect their best interests during the proceedings. As a state agency, the OCR is accountable to the State of Colorado to achieve this mission in the most cost-efficient manner without compromising the integrity of services or the safety and well-being of children. The OCR is committed to ensuring that its attorneys provide these children, Colorado's most vulnerable and marginalized population in the courts, the best legal services available to protect and promote their safety and well-being and to have their voice heard throughout all aspects of a case.

OCR VALUES

Accountability: Colorado's children, attorneys, and taxpayers can count on OCR to ensure that each decision we make and action we take advances our mission in a fair and transparent manner.

Efficiency: OCR strives to accomplish its mission and conserve resources by streamlining efforts, adhering to deadlines, resolving conflict constructively, and honoring well-defined projects, processes, and roles. We balance our drive to achieve with thoughtful planning and implementation.

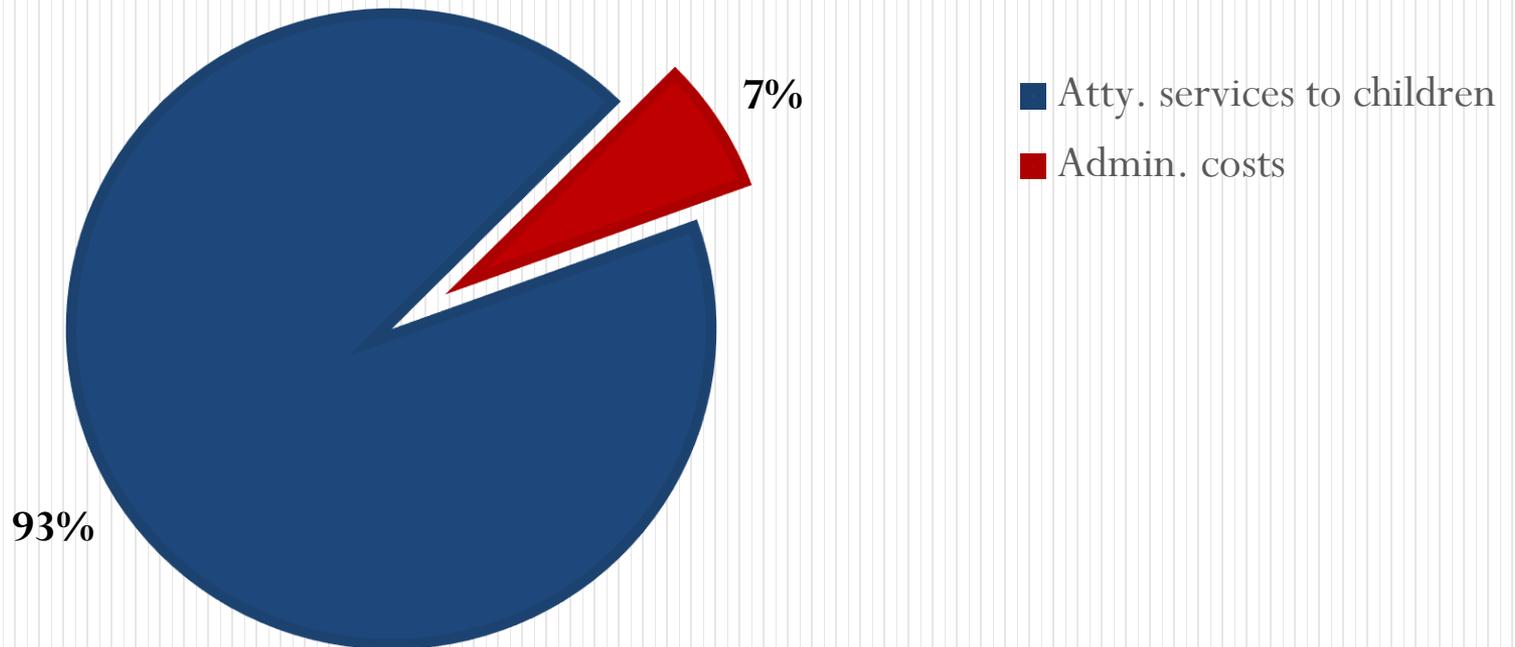
Empowerment: OCR cultivates an environment of respect and honesty. We value the experience and expertise of the children we serve, our contract attorneys, and our staff. We invest time to connect, focus on strengths, value feedback, and recognize success. We support each other in our mission to empower children.



OCR contracts with approximately 250 attorneys, spanning all 22 judicial districts, who act as Guardians ad Litem (attorneys who advocate for the best interests of a child) for every child involved in a dependency and neglect case as well as these other case types, at the discretion of the court.

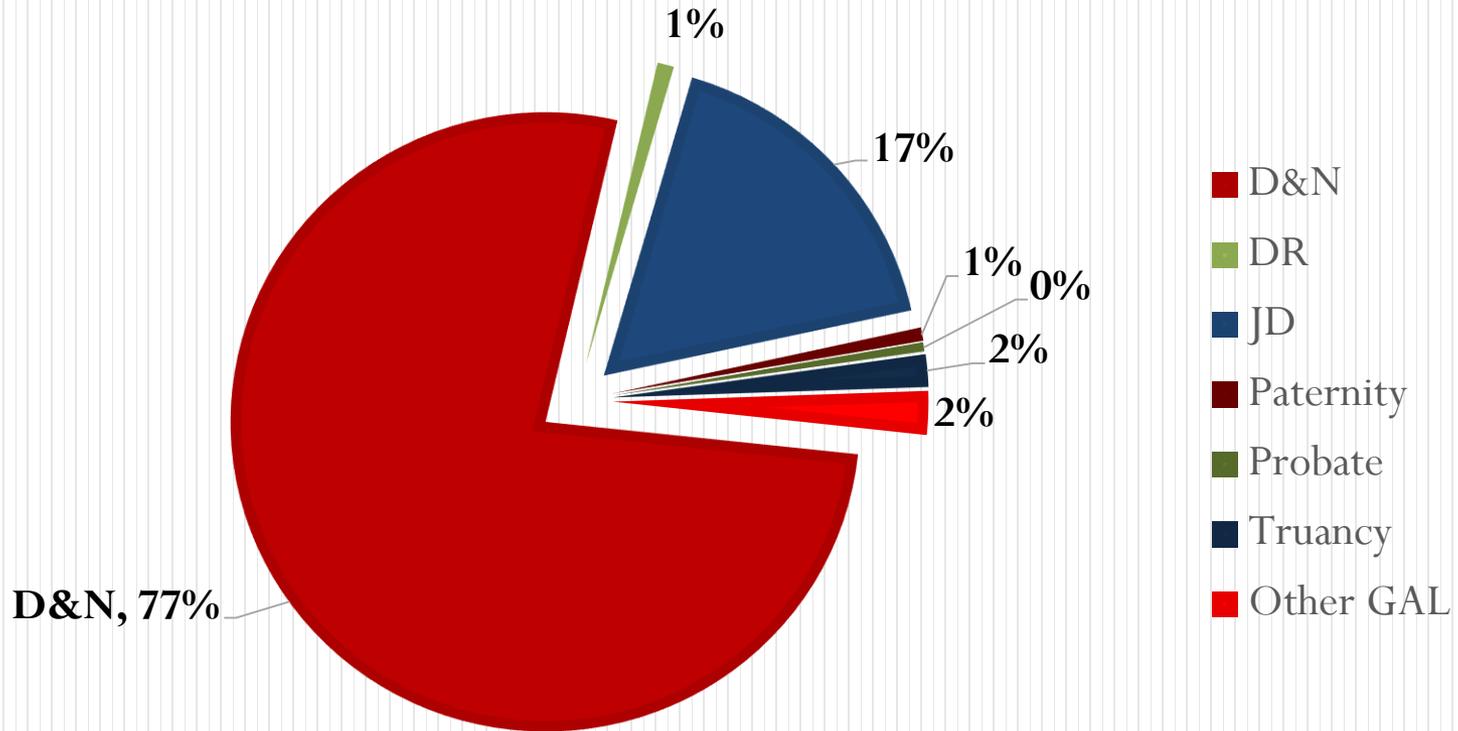
OCR Expenses

FY 18 ADMINISTRATIVE EXPENDITURES



OCR Expenses

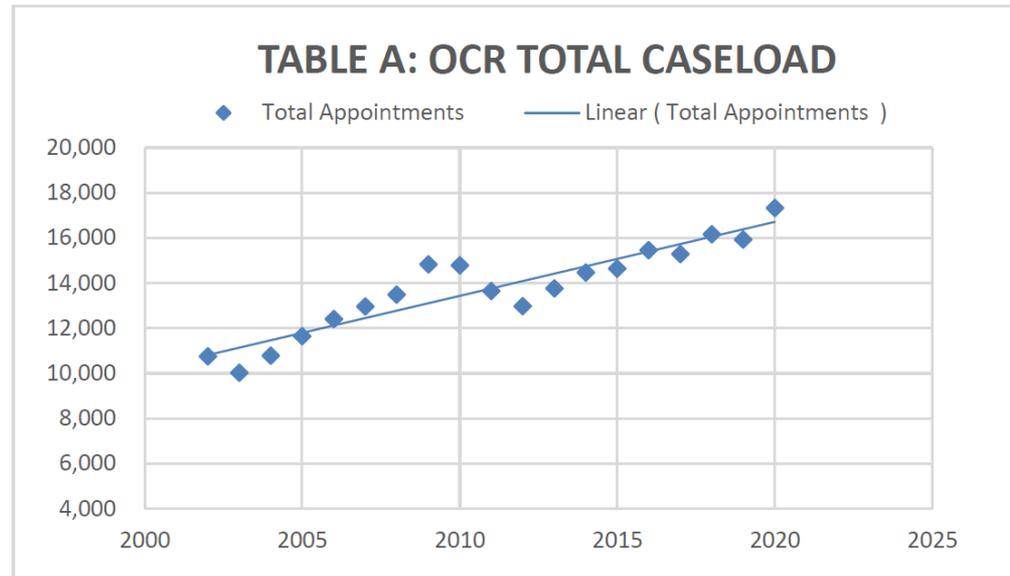
PERCENTAGE OF CASE TYPE EXPENDITURES



FY2020 Budget Request Summary



Caseload & Mandated Costs Adjustment



▲ *FY 19 and FY 20 are budgeted amounts; all other years are actual amounts.*

- The Colorado's Children's Code mandates the appointment of a GAL for each child subject to a D&N proceeding.
- OCR projects an increase in its juvenile delinquency caseload for FY 2020.
- Mandated costs for OCR include discovery, expert witnesses, interpreters, process servers, and transcripts. The costs have increased due to the complexity of cases. These costs are critical to a GAL so that they can conduct an independent investigation.

2018 Performance Audit Progress



2018 Performance Audit Next Steps

Risk-based reviews of attorney activities and billing

Increased frequency of reporting

Standardized follow-up on benchmarks

More intensive analysis of activity and billing reports

Increased and standardized documentation of attorney selection process

Improve court observations

4 Staff Attorneys Currently Responsible for



... And, going forward, OCR needs to increase oversight and reporting.

FTE Request: 2 Programs and Compliance Analysts

Common Compensation Plan

- Previous JBC Analyst suggestion
- Collaboration among OADC, ORPC, OCR
- Ties agencies' staff positions to those in larger state organizations for standardization
- Enhances recruitment and retention

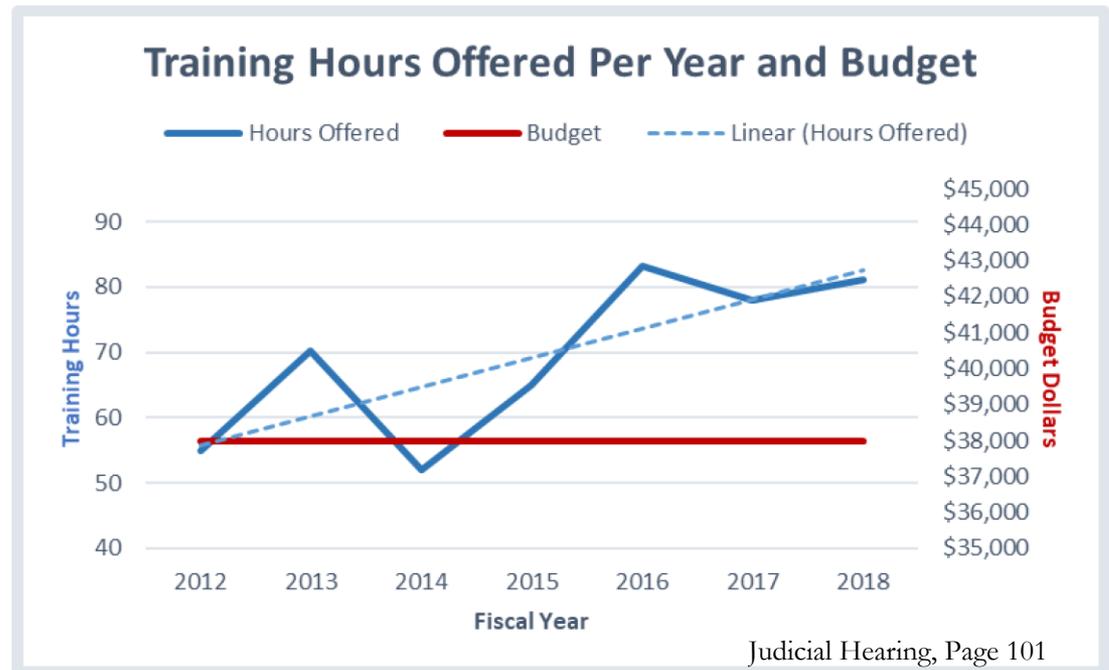
Increase to Training & Operating Budget

Operating

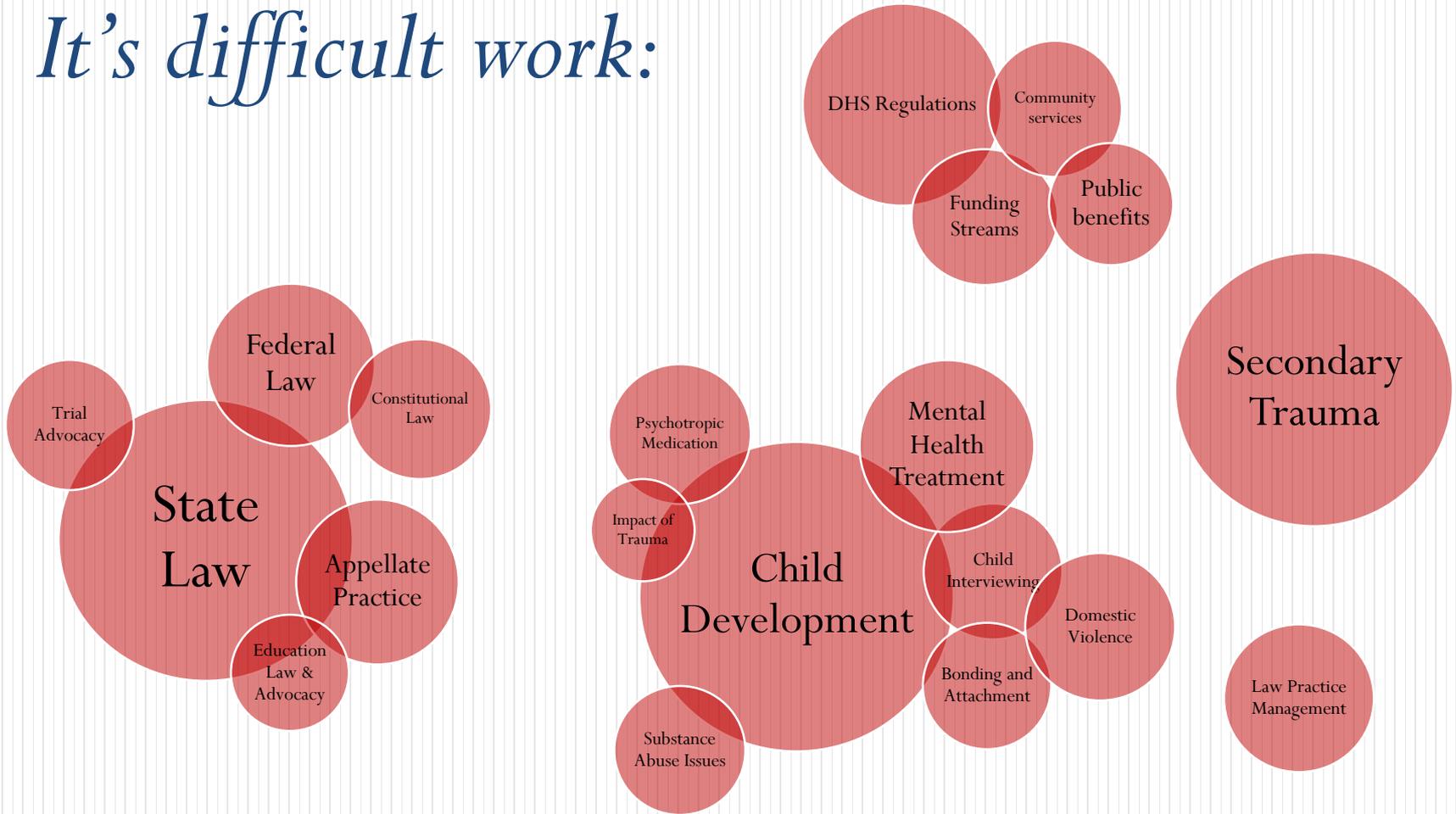
- Ongoing cloud storage costs for the CARES case management/billing system.
- Ongoing maintenance and report writing functionality for CARES case management/billing system.
- Ongoing technology hardware replacement (e.g., personal computers, router(s), etc.).
- Ongoing hardware maintenance by OCR's IT contractor.
- Periodic server replacement.

Training

- Statutory mandate
- As shown at right, trainings offered have increased while budget has remained static



It's difficult work:



Contact Us:

Chris Henderson, Executive Director

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Ashley Chase, Legislative Liaison

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ashleychase@coloradochildrep.org

“She really, really cares about the kids she is advocating for. She goes above and beyond what is expected – she truly loves these kids and wants things to be alright. She does that for all her kids. She really loves the people. I was so honored to have her as my GAL and now as my friend. She is an immaculate person. I would not be as successful without her in my life.”

– quote from a former foster youth about her GAL in 2018 case references interviews.

OFFICE OF RESPONDENT PARENTS' COUNSEL
JUDICIAL BRANCH
FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Tuesday, December 18, 2018
4:05 pm – 4:15 pm

Main Presenters:

- Melissa Thompson, Executive Director
- Linda Edwards, Chief Financial Officer

QUESTIONS FOR THE OFFICE OF RESPONDENT PARENTS' COUNSEL

ORPC Question 1. How do the OCR and ORPC interact in a typical case?

In D&N proceedings, attorneys from the OCR and ORPC represent clients with independent legal interests throughout all phases of the proceeding. GALs, attorneys under contract with the OCR, must provide diligent representation to the best interests of the child, while RPCs, attorneys under contract with the ORPC, represent the parent's legal interests. As the goal of D&N proceedings is to preserve and strengthen family ties whenever possible, GALs and RPCs are often aligned on the ultimate goal of preserving family placements and/or reunifying children with their parents. GALs recognize that parents have important information and insights about their children and, with RPC permission, interview and engage with parents throughout the proceeding as part of their assessment of each child's best interests.

Often, the circumstances that lead to the filing of a D&N case arise from serious concerns about children's safety and well-being while in their parents' care and so GALs will advocate for more protective orders regarding the need for judicial intervention, placement, visits, and services. Conversely, RPC's are ethically tasked with advocating for the wishes of their individual clients regarding placement decisions, services, and visits. Sometimes the GAL's position and the parent's wishes align and sometimes they do not, which can result in GALs and RPCs taking adverse positions in court. Unfortunately, when the services offered through the D&N proceeding do not remedy the safety concerns, GALs must advocate for termination of parental rights to achieve permanency that serves the child's best interests. Effective legal advocacy by all attorneys in the proceeding, including GALs and RPC, promotes effective judicial decision making.

As oversight agencies, the OCR and the ORPC do not typically interact in the court cases themselves. However, the two agencies participate in many committees addressing child welfare issues and reform and work collaboratively to exchange ideas and information relevant to their respective oversight responsibilities. Occasionally, the ORPC and OCR put on collaborative trainings for both RPCs and GALs. In 2017 and 2018, the OCR and ORPC worked together to update the Guided Reference in

Dependency, a complete reference guide covering the stages of a dependency and neglect case and detailing black letter law, statutes, seminal cases, checklists of activities, and considerations for each hearing type. Both agencies share a strong belief that effective legal representation for parents and children in D&N proceedings leads to better case outcomes.

A flowchart of a typical D&N case and a list of the participants in a typical D&N case are attached.

ORPC Question 2. The federal Family First Prevention Services Act of 2018 makes significant changes to the child welfare system aimed at keeping children and youth safely with families and avoiding placement in foster care by strengthening the protective capacity of families long before child welfare services are needed. The Act also expands the eligible use of funds from Title IV-E of the Social Security Act to include approved prevention and intervention services meeting the evidence-based threshold of promising-, supported-, or well-supported practices as defined by the federally selected clearing house. Several programs currently exist in the State of Colorado through which services are provided and that are intended to strengthen the protective capacity of families. The coordination or delivery of many of these services are or could be integrated with other programs and services with the intent of providing wrap-around services to children and families. The FFPSA provides an opportunity for the State of Colorado to evaluate existing programs and funding in order to leverage resources across systems, departments, and divisions and to improve service delivery. The FFPSA also includes specific requirements related to court ordered out of home placements.

In what way will the federal Family First Prevention Services Act impact the Department's programs and budget? What statutory, policy, and rule changes does the Department anticipate will be required to ensure that the State of Colorado complies with all provisions of the federal Act?

The ORPC believes that a move toward prevention in the child welfare system is going to be good for many Colorado families, but anticipates that the legislation may also increase costs for the agency in specific ways.

Generally, when a family is involved with the county department of human services without a concurrently filed court proceeding (and therefore no attorneys and no court oversight) the case is called a non court involved case. That means that the department of human services has received a referral, has screened the case and agreed that it needs some level of department involvement, and provided services to the family based on an initial assessment of the abuse or neglect allegations. Because the emphasis in family first is to move federal funding dollars to drive an increase in preventative services, the ORPC anticipates that the number of voluntary cases will increase. That means that there might be a drop in actual court case filings.

The ORPC has seen firsthand that when non court involved cases begin to fail (e.g., the child's safety becomes an issue and out of home placement is discussed, or sometimes parents outright reject DHS' interventions) the case is then converted into a court proceeding. It is only during the court proceeding that the parent(s) are appointed counsel through the ORPC. Because voluntary cases are often more

complex (because of prior department involvement) the issues in the court case are necessarily going to be more complex and require more litigation, attorney time, and perhaps even more experts to evaluate the case. Thus, even though case filings might decrease, the cases that are eventually filed will require more work.

Further, families first reduces the use of congregate care placements except for in very specific and limited circumstances. Currently, many congregate care facilities are being used as placements for severely behaviorally impacted children or other high-needs children. Without congregate care as an option for these children, there might be an increase in services to support children remaining home or expediting reunification. Creating safety plans for children to remain home with their parents requires additional resources, including more frequent review dates in court and ORPC social workers, which will increase ORPC costs. This placement preference could increase the number of cases requiring ORPC social workers and lawyers to support parents, which would increase costs.

The impact of significant changes in federal legislation are hard to predict. One possible outcome of the reduction in congregate care is erosion of the availability of related services that allow children with severe mental health and behavioral disabilities to remain in the home. With the erosion of one-stop-shop services, the services are replaced by services from different agencies, forcing families to navigate multiple systems who have limited availability outside work hours. Parents who currently would not qualify for court appointed counsel because they are able to work full-time become eligible as they reduce work hours to access dispersed services. This cut in salary would then allow parents who don't currently qualify for counsel through the ORPC to obtain legal services through the agency, which would drive up costs.

One rule change that the ORPC believes might be necessary to continue to afford parents due process after the implementation of families first and during voluntary proceedings is a rule or statute change allowing parents to be appointed advisory counsel through the ORPC, at the very least, to advise them of their rights during department involvement. Such a rule change would increase ORPC attorney time and therefore increase costs.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

The Office of Respondent Parents' Counsel (ORPC) has implemented all legislation.

- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was

published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? [Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.](#)

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

The ORPC does not have any High Priority Outstanding Audit Recommendations.

- 3 If the Department receives federal funds of any type, please respond to the following:
- a. Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?

The ORPC does not expect any changes.

- b. Does the Department have a contingency plan if federal funds are eliminated?

The ORPC expects to receive two small subrecipient grants to implement training programs. If these federal funds are eliminated, the ORPC will schedule fewer trainings and/or scale back scheduled trainings.

- c. Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

The ORPC does not have and does not anticipate any federal sanctions.

- 4 Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?
- The ORPC is not spending money on public awareness campaigns.**

- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

In FY2017-18, the ORPC vacancy rate was 3%, which was the result of normal delays between the departure of existing employees and the hiring of new employees. In the first 5 months of FY2018-19, the ORPC vacancy rate was 8%, which is due to the same cause. The FY2018-19 rate is higher because we have held one position open for a longer than normal period because the highly qualified applicant we have offered the position is unavailable to start until January. The statewide compensation policies administered

by the Department of Personnel have a minimal impact in addressing vacancy or turnover issues of the ORPC.

- 6 Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

24-4-102 (3), C.R.S., excludes the Judicial Branch from the definition of Agency. As an independent agency within the Judicial Branch, the ORPC is not subject to the requirements of 24-4, C.R.S.

- 7 What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

The major cost drivers impacting the ORPC is the number of appointments and the cost per appointment.

The number of appointments is important because in a child welfare case, attorneys are appointed for each indigent respondent parent named by the county department of social services in a petition in dependency and neglect. In practice, this means there are cases where one RPC is appointed because only one indigent parent was named in the petition or, conversely, there are cases where five or six attorneys are appointed because multiple children with different parents are named as respondents to the petition. Measuring costs must take these cases with multiple appointments into account, and ORPC data measures are therefore appointment-driven instead of case-driven. In the first 4 months of FY2018-19, the number of appointments was 13.9% greater than in the same period of FY2017-18. This is significantly greater than the general CPI as reported in the September 2018 Economic & Revenue Forecast prepared by Colorado Legislative Council Staff, which forecasts that the 2018 Denver-Boulder-Greeley CPI-U inflation rate will be 3.2%.

In addition to the number of appointments, the cost per appointment is a major cost driver for the ORPC. The average cost per closed appointment increased by 9.7% in the first three months of FY2018-19 as compared to FY2017-18.

- 8 How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

As noted above, the number of appointments is the best measure of the “caseload” of the ORPC and has increased by 13.9% in the first four months of FY2018-19. It is unclear if specific population changes are affecting the increase.

- 9 Please provide an overview of the Department’s current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department’s interactions with the public.

Our strategy for the use of outward facing technology is to continue to make incremental improvements to our website (the only ORPC technology that is used by both the general public and our contractors), to our attorney application system, and to our attorney payment application (RPPS) based on changing agency needs and the feedback provided by users. In addition, we have identified a need for an online database of ORPC-approved experts.

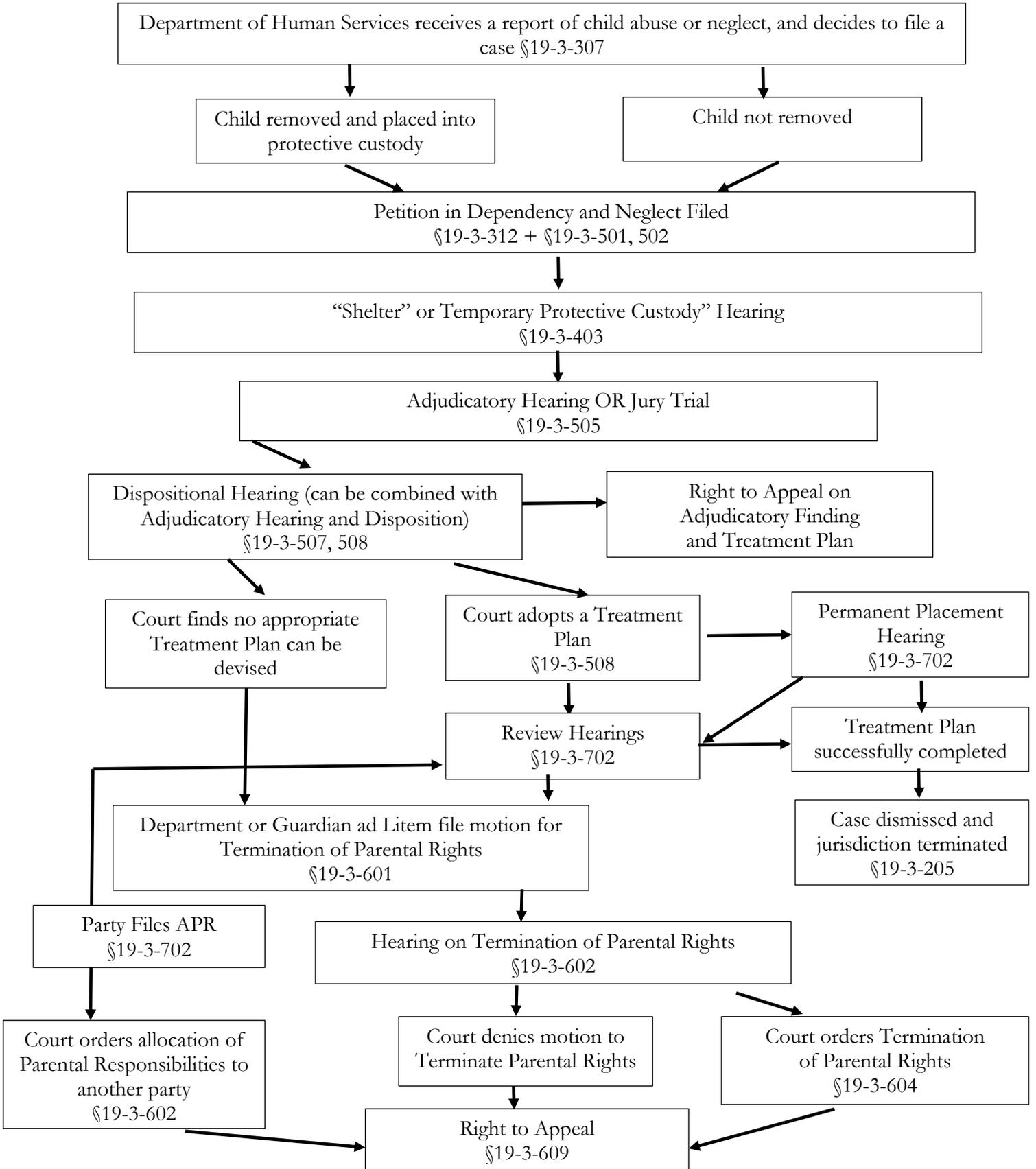
The ORPC has a website (<https://www.coloradoorpc.org/>) which provides information and resources to parents, Respondent Parents’ Counsel, and others. The website provides complete, accurate and useful information about our agency, family resources, attorney resources (including a comprehensive motions bank), trainings, and events. The website provides current information about the agency to parents and the public, and provides a number of resources for our attorneys. In addition, the website provides a form for complaints and other feedback. We strive to make the website as comprehensive and user-friendly as possible and intend to continue to do so. The motions bank is the most used portion of our website and has new motions and practice resources added on a regular basis.

Completing a database of ORPC-approved experts and making it available online for our contractors will save staff time providing contact information to ORPC contract attorneys. Currently, ORPC staff must provide contact information for ORPC experts each time an attorney needs to talk to an expert about potential retention on a case. Making this information available will decrease attorney costs as well, as they can simply obtain the information they need, rather than calling or emailing the office. The expert list is in constant flux, as we add new experts, experts stop taking cases, have caseloads that fill or open up, or experience disciplinary issues in their respective professions. It is not feasible to convert our internal database to a printed resource on a daily basis.

The ORPC uses a database for contractor applications and annual verifications. ORPC plans upgrades to the database that will allow contractors to update vital information such as addresses and phone numbers themselves. This too will save staff time making these changes manually.

The ORPC also has an online payment system which all attorneys and those social workers in the Social Worker Pilot Program use to provide information about appointments and to submit payment requests. This allows ORPC to collect consistent information about cases, as well as to ensure payments comply with our billing policies.

COLORADO DEPENDENCY AND NEGLECT CASE FLOWCHART



Parties in a Dependency and Neglect case

Judge

Dependency proceedings are generally heard in front of district court judges. They make the final determinations based on the law and the best interests of the child or children.

Parents

The number of parents added to a case depends upon the allegations in the petition filed by the county attorney. If both parents are named as respondents in the case, then both parents become parties. It is possible to have multiple parents in case. If a grandparent or other relative has formal guardianship of a child, then they can also be named as a respondent in a case.

Respondent Parent Counsel (RPC)

Each indigent respondent in a case is appointed counsel through the Office of Respondent Parents' Counsel or ORPC. These attorneys are known as RPC's.

Child

The number of children named in a case depends upon the allegations in the petition filed by the county attorney. Entire sibling groups may be named in the petition.

Guardian ad litem (GAL)

The subject child (or children) named in a petition are appointed a Guardian *ad litem* (GAL) through the Office of the Child's Representative or OCR. The GAL represents the best interests of the child (or children).

County Attorney

The county attorney represents the county department of human services and is generally the initiating party of the dependency proceedings.

Caseworker

The caseworker is an employee of the county department of human services. Case workers are sometimes licensed social workers, but not always.

Court Appointed Special Advocate (CASA)

CASAs are appointed by the court on a case by case basis. CASAs are community volunteers appointed to provide the Court additional information regarding the children.

Intervenor or Special Respondent

Other parties, like family members, can be added to the case as special respondents by the court, so that the court can order those parties to comply with specific orders. If a foster parent has a child placed with them for at least 3 months, they can file a motion to intervene as a party in the case. Grandparents can also intervene in a case. Intervenors and Special Respondents are not usually appointed counsel through the court, but they can hire private counsel.

Parent Social Worker

In pilot jurisdictions (Adams, El Paso, and Mesa) RPC's can be appointed a social worker through the ORPC. A social worker helps a parent engage meaningfully in their legal representation,

supports a parent in complying with appropriate treatment plans, and resolves obstacles along the way.

Guardian ad litem Case Consultant

GALs can be appointed a case consultant through the OCR or independently, who is generally a social worker. A GAL social worker helps with case investigation and supports the GAL in determining what is in the best interests of the child or children in the case.

INDEPENDENT ETHICS COMMISSION
JUDICIAL BRANCH
FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Tuesday, December 18, 2018

4:30 pm – 4:45 pm

Main Presenters:

- April Jones, Chair, Independent Ethics Commission
- Matt Smith, Commissioner, Independent Ethics Commission

Supporting Presenters:

- Dino Ioannides, Executive Director, Independent Ethics Commission

INTRODUCTIONS AND OPENING COMMENTS

QUESTIONS FOR THE INDEPENDENT ETHICS COMMISSION

None.

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

None.

- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? [Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.](#)

<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>

None.

- 3 If the Department receives federal funds of any type, please respond to the following:
- Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?
 - Does the Department have a contingency plan if federal funds are eliminated?
 - Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.

The Independent Ethics Commission receives no federal funding.

- 4 Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?

Although the Independent Ethics Commission conducts outreach and training, these efforts are almost exclusively aimed at covered individuals within state or local government, not at members of the public, as such. Therefore, the Commission spends no money on public awareness campaigns of the type that are contemplated by this question (i.e., broadcast media).

- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?

The Independent Ethics Commission has only one FTE and no vacancies. The attrition rate over the last two years has been zero. Because there is only one data point (one FTE) for the Commission, it is difficult to attribute a zero-attrition rate to any one factor. The statewide compensation policies of DPA do not appear to have any direct effect on the Commission's employee attrition rate.

- 6 Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis.

The Independent Ethics Commission promulgated one rule in the past two years. No cost-benefit analysis was required or completed. No cost-benefit analysis of the Commission's rules as a whole has been required or completed.

- 7 What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations.

There are two primary cost drivers for the Commission: personnel and legal expenses. The general CPI for all urban consumers rose 2.5% from October 2017 to October 2018. The Commission's expenditures during roughly that same period (comparing expenditures from FY 17 to expenditures from FY 18) rose 9.1%. Legal costs over that period rose 21.6%, representing the largest portion of the Commission's cost increases. However, this increase comes after several years of decreasing legal expenses.

- 8 How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth?

Caseload is driven by two major Commission functions: complaints and opinion requests. The Commission's overall caseload can vary significantly from year to year, especially with respect to complaints. Complaints are also a large driver of legal expenses, particularly when the Commission's complaint decisions are appealed in the courts. Both complaints and opinion requests are largely driven by outside factors and, as such, caseloads are difficult to predict. Demographic changes and general population growth have little, if any, impact on the Commission's caseload.

- 9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department's interactions with the public.

The Commission's outward facing technology needs are simple and its website continues to meet most of those needs. Some members of the public have expressed the desire that the Commission live-stream its meetings. The Commission has already addressed this issue in its budget request document, as follows:

Increase access to the Commission proceedings for covered individuals and citizens outside the Denver metro area. This remains an ongoing area of concern for the Commission, to ensure access to its proceedings to all those who may be interested. The IEC has experimented with video live-streaming and audio transmission of its meetings to the public and archiving the recordings. However, audio-visual transmission to promote public participation remains an ongoing challenge: professional production is cost-prohibitive; and one staff member is insufficient to assist with meetings while operating audio-visual equipment and preserving the Constitutional requirement to maintain as confidential select portions of the proceedings.

Additionally, the Commission has made appearance by telephone a possibility for complainants, respondents, witnesses, opinion requesters, attorneys, and other members of the public. Allowing telephone appearances has worked well and has provided meaningful options for participants.

OFFICE OF PUBLIC GUARDIANSHIP
JUDICIAL BRANCH
FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Tuesday, December 18, 2018
4:45 pm – 5:00 pm

Main Presenters:

- Shari Caton, Chair of the Office of Public Guardianship Commission

Supporting Presenters:

- Dr. Deb Bennett-Woods, Vice-Chair of the Office of Public Guardianship
- Marco Chayet, Commissioner of the Office of Public Guardianship
- Kelsey Lesco, Commissioner of the Office of Public Guardianship
- Karen Kelley, Commissioner of the Office of Public Guardianship

INTRODUCTIONS AND OPENING COMMENTS

HB 17-1087 is the enabling legislation that directs the establishment and conduct of a pilot project within the Judicial Department to evaluate the feasibility, scope and funding of a permanent Office of Public Guardianship (OPG) for the State of Colorado. The enabling legislation created a five-member Commission, whose responsibility it is to raise monies from gifts, grants, and donations, and hire the Executive Director for the OPG Office.

The pilot project is supported by four expert reports. In 2012, the final report of the Elder Abuse Task Force included a recommendation to create an office of public guardianship. In 2014, the Public Guardianship Advisory Committee (OPGAC) was established by the Chief Justice and produced two reports affirming the need for an OPG, recommending the most viable model, and proposing a pilot project to gather data needed to support the establishment of an OPG. No action was taken on the initial reports; however, the 2016 Strategic Action Plan on Aging, released by the Strategic Action Planning Group on Aging, again called for implementation of the key recommendations from the OPGAC, including the establishment of a state OPG to help ensure that older adults are free from abuse, neglect and exploitation.

HB 17-1087 was introduced with the original intent of funding the project with general appropriations; however, the final version of the bill was amended to include no appropriation, and instead required that the pilot be funded with gifts, grants and donations. The Interim Report of the Colorado Office of Public Guardianship Commission (September 7, 2018) details the extensive efforts and subsequent inability of Commissioners to secure external funding.

JBC members are referred to the following documents for more detailed information.

- Elder Abuse Task Force Report (November 2012), available at <https://www.colorado.gov/pacific/sites/default/files/Elder%20Abuse%20TYF%20Final%20Report.pdf>
- Office of Public Guardianship Advisory Committee Recommendations (2014), available at [https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Committees/Public_Guardian/2014_OfficeofPublicGuardianship-FinalReport\(2\).pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Committees/Public_Guardian/2014_OfficeofPublicGuardianship-FinalReport(2).pdf)
- Office of Public Guardianship Advisory Committee Recommendations for Pilot Program (July 2014), available at https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Committees/Public_Guardian/OfficeofPublicGuardianshipFinalReportandRecommendationsJuly312.pdf
- SAPGA Strategic Action Plan on Aging (November 2016), available at <https://www.colorado.gov/pacific/sites/default/files/SAPGA-Nov-2016-Strategic-Plan.pdf>
- 2018 Interim Report of the OPG Commission (September 2018), available at <https://www.courts.state.co.us/userfiles/file/Media/OPG%20Commission/2018%20INTERIM%20REPORT%20FINAL%20-%20FULLY%20EXECUTED%20-%2009-7-2018.pdf>

As an initial matter, guardianship laws for an adult are found at §§ 15-14-301-319, C.R.S. Definitions for guardianship matters can be found at § 15-14-102, C.R.S. Under § 15-14-311, C.R.S., a guardian for an adult can only be ordered after the court has found by clear and convincing evidence that the respondent is an incapacitated person and the respondent's needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance.

An incapacitated person for purposes of an adult guardianship in Colorado “means an individual, other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.” § 15-14-102(5), C.R.S. Therefore, in the context of guardianship, we refer to the respondent or ward as an incapacitated person, not “incompetent.”

A person's incapacity may have different causes, such as a primary diagnosis of mental illness, intellectual or developmental disabilities, complications from Alzheimer's disease, dementia or traumatic brain injury. Many individuals who are incapacitated, isolated, indigent and without a guardian are maintained in inappropriate settings which are not the least restrictive, such as a hospital intensive care unit or other inpatient acute care setting, a care facility rather than a community setting or in a county jail. Some incapacitated, isolated and indigent individuals who need a guardian are homeless, as they are unable to successfully apply for services which would assist them to obtain housing, food and medical services.

QUESTIONS FOR THE OFFICE OF PUBLIC GUARDIANSHIP

OPG Question 1. Who does the guardianship work now for incompetent people who lack the resources to pay for a guardian and lack friends or family who can serve as guardians?

Currently, there are no consistent, reliable or funded options for those persons in need of a guardian throughout Colorado who lack resources, friends or family.

The target population for these services is characterized by Colorado's lack of sufficient systems to protect *incapacitated* adults who are *isolated* and do not have appropriate family or friends available to act as guardian, and who are indigent and do not have the financial resources to hire a professional fiduciary. The need for a guardian arises when a qualified local source identifies a person who may be in need of guardianship services. For those types of individuals, the State relies on a patchwork system of private and volunteer guardians to provide guardianship services for adults with no other appropriate guardian available. The local source may include but not be limited to an adult care facility, Adult Protective Service units within the County Departments of Human Services ("APS"), a hospital, or any other organization that supports individuals who work with indigent and incapacitated people.

As reported in S.B. 12-078 Elder Abuse Task Force Policy Decisions, the State of Colorado does not have a public guardianship program for persons in need of guardianship and who do not have appropriate family or friends available to act as the guardian. Additionally, the state does not have the resources available to provide a private guardian to these individuals.

Guardianships are the most restrictive interventions used in APS. For APS clients with adequate resources, a private guardian can be appointed as there are assets available to pay the guardian fees. But for many APS clients there are not adequate resources to cover the costs of a private guardian. Some counties do have a public

administrator available to take on the role of conservator for finances. In these situations, APS will generally file the petition for conservatorship with a recommendation to appoint the public administrator.

The Denver metro area and the Colorado Springs metro area have a volunteer guardianship organization that may be utilized for some clients, but this type of organization is not available in other areas of the state. Additionally, volunteer guardianship programs have limitations, particularly in the type of client they can serve and the overall number of clients they can serve. Volunteer organizations generally do not provide services to manage difficult individuals.

County APS units are the guardian of last resort and county APS units are not required by Colorado law to take guardianship. *See In re Estate of Sarah Morgan*, 160 P.3d 356 (Colo. App. 2007) (Despite a court's finding of incapacity, a court does not have statutory authority to require a public agency to assist an incapacitated person who needs a guardian). As a result, wards are left to their own devices and may linger in institutional settings, such as a jail or hospital, without a guardian or may become homeless.

OPG Question 2. Are there state or local offices that provides these services?

As noted in Question 1, Colorado relies on an informal system of volunteer guardians and APS staff to provide guardianship services to indigent and incapacitated adults who have no other appropriate person to serve as guardian. These resources, however, are insufficient and the State of Colorado does not have a public guardianship program that can assume guardianship.

As for state or local offices that currently handle these types of services, APS provides guardianship services in certain instances. § 26-3.1-104, C.R.S. This statute provides for protective services for at-risk adults, both with and without consent. In the event that an at-risk adult appears to lack capacity and does not consent to protective services and if no other appropriate person is able or willing, the county department of human services director is urged, but not required, to petition the court for an order authorizing the provision of specific protective services and the appointment of a guardian.

Between one-third to one-half of APS county departments are appointed guardian for at least one person. As of December 10, 2018, 28 counties hold at least one guardianship and county departments hold 336 guardianships statewide.¹ Quite

¹ Email from Peg Rogers, Manager Adult Protective Servs., CO Dept. of Hum. Servs., to Kelsey Lesco, Off. of Pub. Guardianship Commr., Guardianship Services Question (Dec. 10, 2018, 07:24 MST).

simply, though, there are not enough guardians and county social/human services department do not have enough funding to provide all guardianship services. Therefore, counties restrict the number guardianship cases they accept or may not provide guardianship services at all.

In addition to lack of resources, there are at least two issues. First, APS routinely gets calls from health care providers and long-term care facilities requesting that APS take guardianship in order to make healthcare and end of life decisions for patients or residents with no advanced directive and with no one available to assist with these decisions. But APS is prohibited from petitioning for guardianship to make health care decisions, as these highly personal and sensitive decisions are outside the statutory authority and ethical scope of the APS program.

Second, OPGAC determined that APS units have an inherent conflict of interest in acting as public guardians. Many argue that APS should not be acting as public guardians as well, if they make the initial determination of incapacity. APS caseworkers receive reports of suspected elder abuse, self-neglect and exploitation, and then investigate those reports.

OPG Question 3. How many people are estimated to need these services?

The current number of Coloradoans estimated to need public guardianship services is presently unknown.

Although the current number is unknown, in February 2014, the Public Guardianship Advisory Committee (“PGAC”) utilized a population-based extrapolation model and estimated that 5,792 individuals, statewide, may need public guardianship services. [*PGAC Feb. 2014, Report, p. 18-20*]

The Office of Public Guardianship pilot project is intended to collect the requested data, quantify the unmet need, and ultimately provide a report to the General Assembly with these figures.

OPG Question 4. Could this be partly or fully funded through probate fees? What level of fee would be required?

The program could be funded with an increase in probate filing fees, although it would require a change in statute. The current filing fee on probate cases totals \$164 and in 2018 there were 16,738 case filings. To raise sufficient revenue to fund the OPG pilot it would require raising the filing fee by approximately \$105 per case (64% increase), although it may need to exceed that amount as many probate case fees are waived due to indigency. Further, there may be TABOR implications.

OPG Question 5. Could the pilot project be contracted out to the private sector rather than using state employees? Could a pilot with private contractors answer the important questions that need to be answer?

Contracting the pilot program to the private sector diverges from the intent and specific requirements of the enabling legislation. The pilot program, as legislated, was proposed by the Office of Public Guardianship Advisory Committee (OPGAC) in the follow-up report to their original recommendations report, both issued in 2014. The OPGAC examined four models for the creation of public guardianship services in Colorado. Those models included: (1) court model; (2) independent agency model; (3) social agency model; and (4) private sector model. Of the four models, the private sector model was determined to be the least viable. No other state was found to be using a private model, and there is no evidence that there are enough incentives to create a market condition that would support a subsidized private model for this growing and indigent population. [*OPGAC Feb 2014, Report, p. 9-10*]. The OPG Commission, of which some members are attorneys expert in the issues of guardianship, agree that there are not enough private guardians in Colorado to meet the anticipated need for the pilot program or eventual roll out on a statewide basis.

Office of Public Guardianship Pilot Program HB17-1087

Shari D. Caton, Esq.
Commission Chair

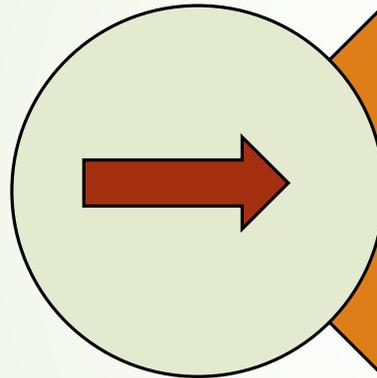
1

Office of Public Guardianship Pilot Program Basics

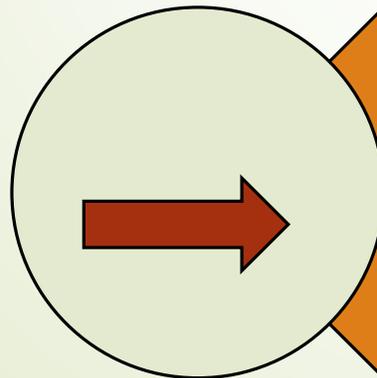
2

HB17-1087 established a pilot program and created an **independent** Office of Public Guardianship ("Office") within the Judicial Department.

The Office must provide legal guardianship services to **indigent and incapacitated** adults who:



Have no responsible family members or friends who are available and appropriate to serve as a guardian; and



Lack adequate resources to compensate a private guardian and pay the costs and fees associated with an appointment proceeding.

Office of Public Guardianship Pilot Program Judicial Districts

3

The pilot program will provide legal guardianship services for incapacitated and indigent adults in the 2nd, 7th, and 16th judicial districts (separately representing a large, medium and small county and combined accounts for approximately 17% of the population).



2nd Judicial District

- Denver County



7th Judicial District

- The counties of the District include: Delta, Gunnison, Hinsdale, Montrose, Ouray and San Miguel.



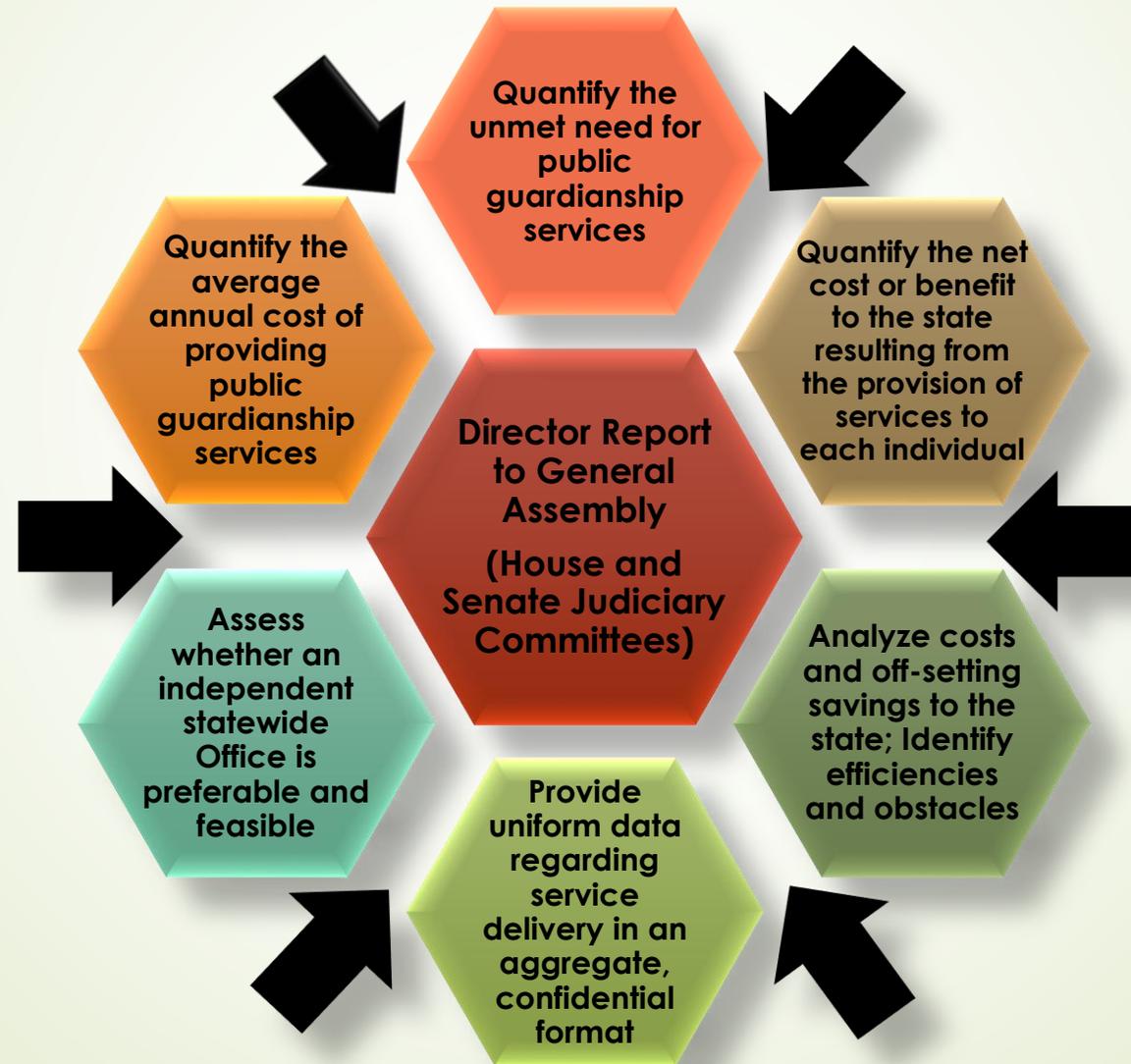
16th Judicial District

- The counties of the District include: Bent, Crowley and Otero.

Office of Public Guardianship Pilot Program Director Report

4

The pilot program is also tasked with gathering data to help the General Assembly determine the need for, and the feasibility of, a statewide office of public guardianship. The Director will submit a report to the General Assembly that must:



Office of Public Guardianship Pilot Program Commission and Director

5

The legislation creates a five-member Public Guardianship Commission. The Commission is charged with appointing the Director who will establish, develop, and administer the office.

Supreme Court
Appoints three (3) members.
Two (2) must be attorneys and one (1) must be a non-attorney.

Governor
Appoints two (2) members. One (1) must be an attorney and one (1) must be a non-attorney.

Office of Public Guardianship
Commissioners
Shari D. Caton
Marco Chayet
Kelsey Lesco
Deb Bennett-Woods
Karen Kelley

Office of Public
Guardianship
Director

Office of Public Guardianship Pilot Program Timeline per HB17-1087

6

On or before **November 1, 2017**

C.R.S 13-94-104(1)(a) &(b)

Governor and Supreme Court appoint members of Commission.

Not more than 1 month after receiving \$1.7 million

C.R.S 13-94-104 (3)

Members of Commission must appoint Director.

Not more than 5 months after receiving \$1.7 million

C.R.S 13-94-105

Office of Public Guardianship services provided.

On or before **January 1, 2021**

CRS 13-94-105(4)

Director must submit Report to the House and Senate Judiciary Committees.

June 30, 2021

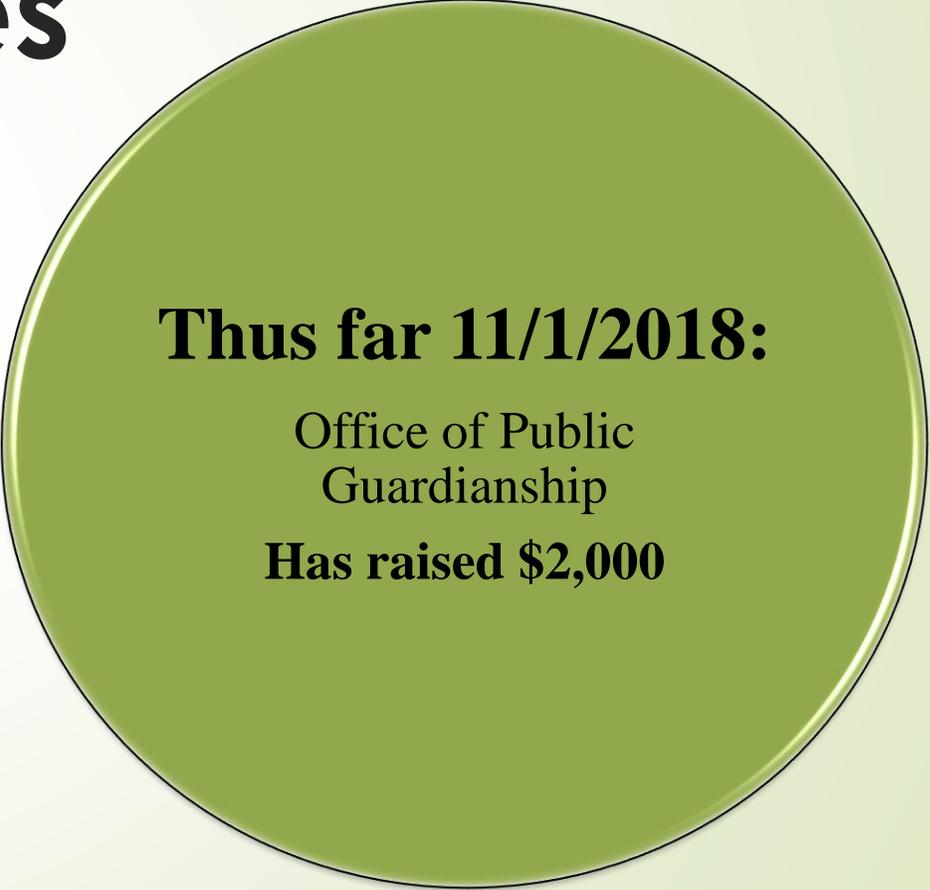
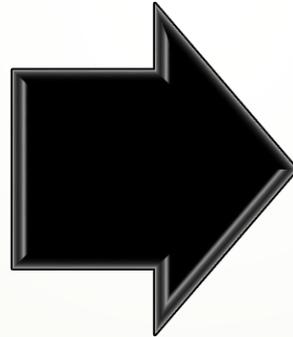
CRS 13-94-102(2)(b) and CRS 13-94-111

Pilot Program repeals if General Assembly does not continue.

Funding Challenges



\$\$\$



Thus far 11/1/2018:

Office of Public
Guardianship

Has raised \$2,000

OPG has no funding, no staff and is unable to fulfill the statutory requirements of HB17-1087

Therefore, the Commission is taking the following Action:

- ▶ The Office is submitting a supplemental/budget amendment December 31st to fund the Office with General Funds
- ▶ The Commission is seeking statutory changes to the original legislation to revise deadlines that are not possible to meet.

Bottom Line: No funding - no Office of Public Guardianship.

Office of Public Guardianship Pilot Program

Shari D. Caton, Esq.
Commission Chair

9

OFFICE OF COLORADO'S CHILD PROTECTION OMBUDSMAN
JUDICIAL BRANCH
FY 2019-20 JOINT BUDGET COMMITTEE HEARING

Tuesday, December 18, 2018
Time: 4:15-4:30 p.m.

Main Presenter

- Stephanie Villafuerte, Executive Director

INTRODUCTIONS AND OPENING COMMENTS

QUESTIONS FOR THE OFFICE OF COLORADO'S CHILD PROTECTION OMBUDSMAN

OCPO Question 1. The federal Family First Prevention Services Act of 2018 makes significant changes to the child welfare system aimed at keeping children and youth safely with families and avoiding placement in foster care by strengthening the protective capacity of families long before child welfare services are needed. The Act also expands the eligible use of funds from Title IV-E of the Social Security Act to include approved prevention and intervention services meeting the evidence-based threshold of promising-, supported-, or well-supported practices as defined by the federally selected clearing house. Several programs currently exist in the State of Colorado through which services are provided and that are intended to strengthen the protective capacity of families. The coordination or delivery of many of these services are or could be integrated with other programs and services with the intent of providing wrap-around services to children and families. The FFPSA provides an opportunity for the State of Colorado to evaluate existing programs and funding in order to leverage resources across systems, departments, and divisions and to improve service delivery. The FFPSA also includes specific requirements related to court ordered out of home placements. In what way will the federal Family First Prevention Services Act impact the Department's programs and budget? What statutory, policy, and rule changes does the Department anticipate will be required to ensure that the State of Colorado complies with all provisions of the federal Act?

OCPO Response Question 1:

The OCPO must be well-versed in the FFPSA to be able to fully and effectively assist citizens when inquiries are made. Activities the FFPSA will affect include:

- Participation in workgroups, task forces, committees and training sessions:
 - It is essential that the OCPO is present for training sessions for judicial officers, counties, the CDHS and community providers. This will allow the OCPO to learn information simultaneously with each of the aforementioned partners and will promote strong partnerships and understanding of each of their roles within the FFPSA.
 - CDHS-Child Welfare Volume VII rules will be rewritten. The OCPO should be present for discussions related to the impact of the FFPSA on current rules and be able to hear input from all agencies affected by rule changes. This allows the OCPO

to remain current in its understanding of case practice expectations so that investigations are conducted properly.

- Licensing and monitoring activities and rules will change. The OCPO must be present in that process so that the OCPO fully understands the new QRTP description and requirements related to that level of care.
- The courts play a critical role in the FFPSA. The OCPO must be able to fully understand the requirements of judicial officers and how the FFPSA will affect the child welfare cases that are court-involved. Additionally, the OCPO must understand any new language and procedural changes made because of the FFPSA.
- The CDHS Trails Database will require additional updates. The OCPO will require the same training counties, the CDHS and providers receive so that the office is able to conduct investigations properly and without the hinderance of not knowing where FFPSA requirements live within the system.
- The state is to develop a manual that will identify and outline descriptions of eligible services under the FFPSA. The OCPO requires this information to be able to understand which services are effective in each treatment area.
- Because of the requirement within the FFPSA that the juvenile justice population will not grow, the OCPO must have current information regarding court practices related to the delinquency population. Remaining informed about DYS practices is also important.
- The OCPO may see an increase in the number of inquiries based on the rollout of FFPSA placement requirements and prevention activities. It's likely that families and other concerned parties will feel underserved until use of the state's identified prevention services stabilizes.
 - However, eligible prevention services and approved QRTPs have not yet been formally identified by the state and it could be some time before there is enough bandwidth to serve every family in need of those services. This could lead to an increase in inquiries as well.
- Changes in legislation related to the FFPSA in other departments must be closely monitored and the OCPO should have a role in the development of legislative initiatives.

Some of the OCPO's practices will change as rules are redefined, and until some progress is made toward implementation of the requirements of the FFPSA, the full extent of the impact of this legislation is unknown. It is reasonable to suppose that workloads will increase as the OCPO's staff learn more about how county practice will change.

Common Questions (Sent to all agencies)

ADDENDUM: OTHER QUESTIONS FOR WHICH SOLELY WRITTEN RESPONSES ARE REQUESTED. PLEASE RETAIN THE NUMBERING IN ORDER TO MAINTAIN CONSISTENT LABELING FOR COMMON QUESTIONS ACROSS DEPARTMENTS.

- 1 Provide a list of any legislation that the Department has: (a) not implemented, or (b) partially implemented. Explain why the Department has not implemented or has only partially implemented the legislation on this list. Please explain any problems the Department is having implementing any legislation and any suggestions you have to modify legislation.

Not Applicable.

- 2 Does the Department have any HIGH PRIORITY OUTSTANDING recommendations as identified in the "Annual Report: Status of Outstanding Audit Recommendations" that was published by the State Auditor's Office and dated June 30, 2018 (link below)? What is the Department doing to resolve the HIGH PRIORITY OUTSTANDING recommendations? [Please indicate where in the Department's budget request actions taken towards resolving HIGH PRIORITY OUTSTANDING recommendations can be found.](http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018)
<http://leg.colorado.gov/audits/annual-report-status-outstanding-audit-recommendations-june-30-2018>
Not Applicable.
- 3 If the Department receives federal funds of any type, please respond to the following:
- Are you expecting any changes in federal funding with the passage of the FFY 2018-19 or 2019-20 federal budget? If yes, in which programs, and what is the match requirement for each program?
 - Does the Department have a contingency plan if federal funds are eliminated?
 - Please provide a detailed description of any federal sanctions or potential sanctions for state activities of which the Department is already aware. In addition, please provide a detailed description of any sanctions that MAY be issued against the Department by the federal government during FFY 2018-19 or 2019-20.
Not Applicable
- 4 Is the Department spending money on public awareness campaigns? If so, please describe these campaigns, the goal of the messaging, the cost of the campaign, and distinguish between paid media and earned media. Further, please describe any metrics regarding effectiveness and whether the Department is working with other state or federal departments to coordinate the campaign?
Not Applicable.
- 5 Based on the Department's most recent available record, what is the FTE vacancy and turnover rate by department and by division? To what does the Department attribute this turnover/vacancy? Do the statewide compensation policies administered by the Department of Personnel help or hinder in addressing vacancy or turnover issues?
The OCPO had one FTE vacancy in March 2018. This vacancy was not the result of statewide compensation policies.
- 6 Please identify how many rules you have promulgated in the past two years (FYs 2016-17 and 2017-18). With respect to these rules, have you done any cost-benefit analyses pursuant to Section 24-4-103 (2.5), C.R.S., regulatory analyses pursuant to Section 24-4-103 (4.5), C.R.S., or any other similar analysis? Have you conducted a cost-benefit analysis of the Department's rules as a whole? If so, please provide an overview of each analysis. **Not Applicable.**
- 7 What are the major cost drivers impacting the Department? Is there a difference between the price inflation the Department is experiencing compared to the general CPI? Please describe any specific cost escalations. **Not Applicable.**

- 8 How is the Department's caseload changing and how does it impact the Department's budget? Are there specific population changes or service needs (e.g. aging population) that are different from general population growth? **Not Applicable.**
- 9 Please provide an overview of the Department's current and future strategies for the use of outward facing technology (e.g. websites, apps) and the role of these technologies in the Department's interactions with the public. **Not Applicable.**