

ANNUAL HEARING

Before The Joint Judiciary Committee
Of The Colorado General Assembly



APPEARING ON BEHALF OF THE AGENCY:

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Agency Overview

Mission

The Office of the State Public Defender's (OSPD) mission is to protect and defend the rights, liberties, and dignity of those accused of crimes who cannot afford to retain counsel. We do so by providing constitutionally and statutorily mandated representation that is effective, zealous, inspired and compassionate.

OSPD Enabling Legislation:

The general assembly hereby declares that the state public defender at all times shall serve his clients independently of any political considerations or private interest, provide legal services to indigent persons accused of crime that are commensurate with those available to nonindigents, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association standards relating to the administration of criminal justice, the defense function. C.R.S. 21-1-101(1).

Vision

It is OSPD's vision that every client served receives excellent legal representation through the delivery of high-quality legal services and compassionate support from a team of dedicated Public Defenders.

Current Budget

The OSPD functions as a single program devoted to providing criminal defense representation to indigent people charged with crimes where incarceration is a possibility unless there is a conflict of interest. Courts appoint the OSPD when a person qualifies for public defender services under statute, applicable case law and Chief Justice Directives.

Because our mission is to provide legal representation in criminal cases to people who are indigent, we are a service-oriented agency. Eighty-five percent of our budget is spent on personal services, with the remaining fifteen percent supporting mandated and operational costs. Any changes to our personal services budget, such as those made through legislative action on common policies and new legislation, have a tremendous effect on our overall appropriation and our ability to meet our constitutional and legislative mandate.

The OSPD is a highly efficient and effective steward of state monies. OSPD averages 175,000 active cases per year and in FY 2023-24 the cost per case was \$891. For fiscal year 24-25, the OSPD was appropriated \$178,273,311 and approximately 1177 FTE. This is comprised of approximately 621 attorneys, 176 investigators, 117 paralegals, 33 social workers, 160 administrative assistants, and 70 centralized management and support positions. These positions are distributed to cover cases across twenty-one trial offices, in twenty-three judicial districts, and sixty-four counties in the state, as well as an appellate office and centralized administrative office.

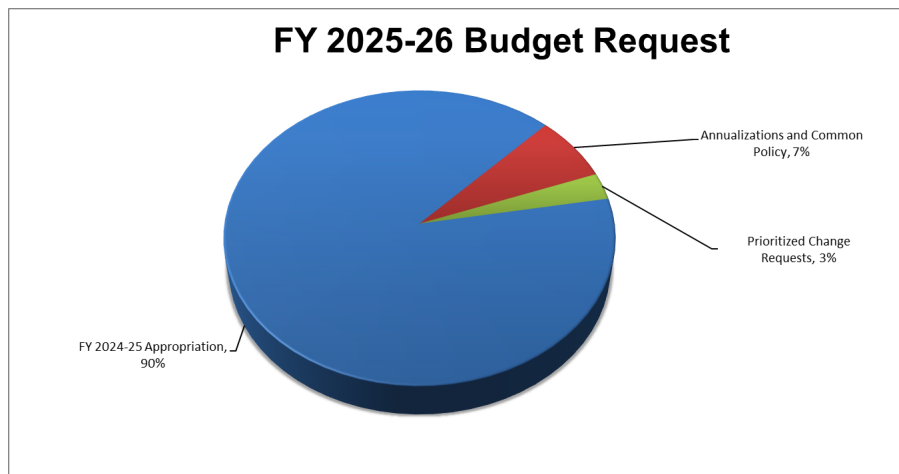
The focus of the OSPD FY 2024-25 budget submission was staffing increases to address public defender workload. Expanding workload continues to be the most significant challenge for our agency and is the top priority for agency leadership. In a July 2024 Performance Audit, the Office of the State Auditor recognized the workload demands placed on our agency and individual defenders. Public

defender workload is influenced by many factors outside of OSPD’s control such as the number of indigent people who qualify for our services, the number and type of cases filed by state prosecutors, the complexity of those cases, the mental health needs of the persons served by OSPD, and the amount of discovery. The auditors found that OSPD’s attorney workloads exceeded the guidance provided under each of the relevant workload assessments studied by the auditors.

FY 2025-26 Budget Request

The total FY 2025-26 budget request for the Office of the State Public Defender (OSPD) is \$198,170,442 and 1,221.6 FTE. We are asking for seven prioritized and two non-prioritized Change Requests in our FY 2025-26 Budget Request.

- **FY 2024-25 Appropriation of \$ 178,273,311**
 PLUS Annualizations of \$ 2,138,152
 PLUS Common Policy of \$ 11,993,244
- **FY 2025-26 Base Request of \$ 192,404,707**
 PLUS Change Request #1 for \$ 370,389
 PLUS Change Request #2 for \$ 176,400
 PLUS Change Request #3 for \$ 1,556,767
 PLUS Change Request #4 for \$ 750,179
 PLUS Change Request #5 for \$ 2,000,000
 PLUS Change Request #6 for \$ 912,000
 PLUS Change Request #7 for \$ 0
- **FY 2025-26 Budget Request of \$ 198,170,442**



FY 25-26 Budget Priorities

As demonstrated by OSPD’s low per-case cost, the OSPD continues to focus on priorities that ensure efficient use of its limited resources to complete its mission. OSPD’s FY 2025-26 budget request prioritizes measures that ensure OSPD has accurate data to inform its decision-making, improve its processes and systems to complement existing efficiencies, and help OSPD meet the expanding demands placed on the agency.

Workload Study and Standards Implementation; Impact of Aurora Domestic Violence Cases

This year's budget emphasizes the need for data to understand the agency's workload. The Office of the State Auditor conducted a routine performance audit of OSPD and released its Performance Audit report in July 2024. In Finding 1, "Resource and Workload Management," the auditors explained that, by all measures, OSPD is understaffed. This finding was consistent with OSPD's own assessment. In the FY 24-25 budget request OSPD's data showed OSPD needed 230 additional attorney FTE to handle current workload demands. In recognition of budget constraints, OSPD sought 70 attorney FTE and was appropriated 50.

The auditors further found that the workload has likely changed since OSPD's last workload study, and, therefore recommended that OSPD conduct a new workload study to understand the extent of understaffing. The most recent workload study, The Colorado Project, was published in August 2017. The auditors found that the 2017 study does not "reflect significant changes to the criminal justice system that increased workload." A key concern auditors identified was that OSPD "needs updated methods and data to measure its staffing needs and [that OSPD] can improve its process for managing attorney workloads by establishing agency-wide guidance." Further, the auditors recommended that OSPD use data from a new workload study to update its workload standards and its SMART Act performance measures "which rely on the workload standards and establish metrics as necessary to measure the impact and effectiveness of FTE increases appropriated by the General Assembly." Based on OSPD's own assessment of the prior study, OSPD agreed with these recommendations and requested funding to complete a new study to understand attorney workload in the current environment and continue OSPD's tradition of advocacy through reliable and current information to ensure compliance with the OSPD's enabling statute, federal and state constitutions, the Colorado Rules of Professional Conduct, and American Bar Associations Standards.

Additionally, OSPD is expecting an influx of domestic violence cases that require increases in FTE to handle the additional workload. The Aurora Municipal Court, which has for years heard domestic violence cases, passed a resolution to no longer accept the filing of domestic violence cases in municipal court on July 1, 2025. These cases will be filed in state courts, primarily in Arapahoe and Adams counties. OSPD estimates based upon Aurora Municipal Court data, a municipal court workload study conducted by the National Center for State Courts, and OSPD's workload data related to these kinds of cases that OSPD will need 7 attorney FTE with supporting administrative, paralegal, and investigator staff to defend approximately 600 additional DV cases per year. The Judicial Department and the district attorneys for the 18th (Arapahoe) and 17th (Adams) Judicial Districts are also seeking additional staff to handle these cases.

Representation of Clients Impacted by CBI DNA Misconduct

Based on recent reporting by the Denver Post, over 1000 prior cases involving DNA are impacted by misconduct of a DNA analyst at CBI. Well over a year since this scandal broke, OSPD still has not received from CBI a full list of the affected cases – a list that is necessary to identify the scope of state-funded counsel necessary to handle post-conviction claims. OSPD, or in the case of legal conflicts, the Office of Alternate Defense Counsel (OADC), will be responsible for the investigation and litigation of any post-conviction claims for indigent clients. This influx of complex post-conviction reviews and litigation, which requires timely action due to time limits in filing post-conviction challenges, is unprecedented and presents with significant staffing, workload, and funding concerns. It will require experienced counsel and experts to properly review and present these cases.

OSPD and OADC reached a preliminary estimate of 200-300 cases likely to require appointed counsel but have not yet been given a full list of impacted defendants. Further, additional misconduct, including that of other analysts, is still coming to light. OSPD and OADC anticipate representing the vast majority of defendants in these cases, because most people whose cases are affected are indigent and serving

decades-long or life sentences. Consequently, OSPD and OADC submitted a joint request to set up a shared fund and multi-year spending authority to handle these cases.

Electronic Discovery Legislation Sponsorship and the Cost of Discovery

The complexity and technical nature of criminal investigations in the current environment is vastly different than it was ten years ago. OSPD continues to need funding to ensure maintenance of digital storage for the expanding client files. The cost of storage is the largest of OSPD's largest requests this year, next to funding to the fallout from CBI misconduct.

In order to help control costs associated with modern investigative techniques and requirements of body worn camera for police officers, OSPD, in conjunction with the Office of Alternate Defense Counsel and with the support of the Colorado District Attorney Council, is also requesting the Joint Budget Committee bring a bill to create a task force related to the use of third-party vendors in the management and production of body camera footage and other e-discovery. At present, as contracts expire, costs for use of third-party vendors will exponentially increase placing demands on state and county budgets. This task force, to be chaired by CDAC, would mandate a study which would include a review of all the current contracts by law enforcement, district attorneys, OSPD and OADC with third-party vendors; assess barriers to solely relying on the e-discovery system operated by CDAC rather than third party vendors; assess the feasibility of joint contract negotiations across agencies and government divisions; and identify ways to control future costs. The task force, if enacted, would produce a report recommending any needed legislation to be brought in 2026.

OSPD has additional requests around modernizing Human Resources and payroll systems and managing office space needs.

Legislative Priorities

OSPD supports legislation that will improve fairness and just outcomes for our clients involved with the criminal legal system. Our agency always engages, upon request, with legislators seeking support and information for bills that will protect the constitutional rights of people, support the disenfranchised and provide better and real opportunities for our clients who suffer from the failure of systems that do not adequately address poverty, mental illness, addiction, and institutional racism. Measures that cause fewer people to be brought into the criminal legal system are priorities for OSPD and are smart fiscal policy.

Mental Health and Competency to Proceed

OSPD is continually working with other stakeholders in the area of mental health and competency to proceed. OSPD is supporting efforts to implement HB 24-1355 which created a wraparound care diversionary program that will be phased into all judicial districts in the coming year. Despite this effort, OSPD remains concerned about the competency system and civil commitment systems and the need to continue to reform them.

Sex Offense Treatment for Incarcerated Persons

An ongoing area of concern for the OSPD is the state's sex offender sentencing and treatment scheme and the continued denial of constitutional due process rights to persons incarcerated and in need of treatment. Recently, a class action lawsuit was filed in US District Court describing the due process violations and requesting judicial intervention to discontinue this unconstitutional scheme. Despite OSPD's attempts over many years to advocate for changes to these systems and the current federal

lawsuit, the waitlist for CDOC sex treatment has increased and evidence-based solutions continue to be ignored, extending unnecessary incarceration and costing the state millions of dollars. OSPD continues to work with interested legislators to change the system that is not only unconstitutional but also costly and ineffective.

Misconduct by CBI and Post-Conviction Review Rights

As referenced in OSPD's budget priorities, the recently discovered misconduct of a CBI analyst spanning decades and affecting over a thousand cases created an unprecedented demand for post-conviction review. The post-conviction laws and rules generally presume convictions are valid and require the convicted person, while unrepresented and inexperienced in these complex issues, to articulate the need for judicial review in writing, an often-impossible task even for simple claims. The law does not contemplate or provide adequate procedural protections for situations involving wide-spread intentional misconduct by state actors in criminal laboratories. Furthermore, there is no organized system to notify victims and defendants that their cases are affected. OSPD is supporting legislative efforts to provide notice to affected victims and defendants, a right to counsel to investigate for defendants, discovery about misconduct, and a process specific to claims of knowing misconduct by crime laboratory employees.

Right to Equal Access to Evidence

The protection of the defense right to equal access to evidence in a case is also a priority legislative effort this year for OSPD. Defense teams often must view the evidence held by law enforcement to properly prepare for trial and defend their clients. In recent years, defense teams have been recorded viewing evidence and discussing cases, having their confidential conversations disclosed and used against them, in violation of many constitutional principles. Conversely, in these cases, the same level of surveillance was not applied to prosecutors and law enforcement when handling evidence or discussing cases. In many instances, law enforcement has cited SB20-217, requiring officers to use body worn camera, as mandating the recording of defense teams, an unintended application of this law requiring legislative clean-up. OSPD is seeking to protect the work product, ethical requirement of confidentiality, and ability of defense teams to view evidence without compromising the evidence integrity by prohibiting recording and allowing judges to have hearings to issue orders around evidence viewing.

Mandatory Arrests for Non-violent, Non-contact Protection Order Violations

Finally, over 14,000 people are arrested each year because of a mandatory arrest requirement that applies to all violation of protection orders. A significant portion of these cases are for possession or use of drugs and alcohol and do not involve contact with victims or witnesses or violence. A contributing factor is the expanded use of protection orders to impose restrictions unrelated to protection of victims and witnesses, restrictions that should be properly reserved for conditions of bond. OSPD is seeking reforms to better track data, improve protection order forms, focus protection order conditions on protection of victims and witnesses, and make arrest discretionary for violations that are not related to the safety of any protected party.

Equity, Diversity, and Inclusion

The OSPD strives to support and better represent our clients by hiring and retaining diverse staff who bring a range of experiences and backgrounds. In late 2018, the OSPD started an intentional approach to improve diversity, equity, and inclusion within the agency. OSPD leadership has partnered with an experienced DEI expert to develop a strategic, systemic, and sustainable approach to diversity, equity, and inclusion (DEI) in the OSPD. The expert conducted focus groups of Defenders from many offices

and job types to listen and receive feedback about the system and then helped provide the OSPD develop trainings on a variety of DEI topics for managers and staff, start employee affinity groups, and continues to consult with leadership about a variety of other DEI (and Belonging) initiatives.

Committees, Boards, Task Forces, & Specialty Courts

The OSPD actively engages in many committees, boards, task forces, work groups, and specialty courts throughout the state to improve fairness and operation of the courts. The workload in these areas continues to increase.

Some committees, boards, and task forces on which members of OSPD serve include:

- The state-level Correctional Treatment Board,
- All the local Correctional Treatment Boards throughout the judicial districts,
- Community Corrections Boards throughout the state,
- Criminal Justice Coordinating Committees in several judicial districts,
- The Sex Offender Management Board,
- The Domestic Violence Offender Management Board,
- Task Force Concerning the Treatment of Persons with Behavioral Health Disorders,
- OCFMH's Consent Decree Steering Committee
- The Statewide Evaluation Subcommittee to the Judicial Mental Health Advisory Committee
- Steering committees related to the implementation of HB24-1355 creating a diversionary wrap around care program in each judicial district;
- The Statewide SB-94 Advisory Committee,
- Local SB-94 Boards,
- The Pre-Adolescent Services Task Force,
- The Jail Standards Advisory Committee,
- E-Discovery Steering Committee,
- Committees of the Colorado Supreme Court including:
 - The Public Access Committee,
 - The Rules of Appellate Procedure Committee,
 - The Rules of Criminal Procedure Committee,
 - The Advisory Committee on the Rules of Evidence,
 - Public Access Committee

In addition, OSPD staff work in specialty treatment courts. This work often entails specialized training and involves attending meetings and staffings in addition to courtroom work. Several types of specialty courts operate in some districts across the state:

- Substance Abuse courts
- DUI courts
- Veterans courts
- Behavioral Health courts
- Competency dockets

SMART ACT - Goals, Strategies and Performance Measures

To achieve our mission of providing high-quality, effective criminal defense representation for each client, the OSPD makes sure our goals, strategies and measures address the needs of our people, our process, and the end product of client representation. We have developed three overarching goals, five strategies and nineteen measures, all focused on improving service to our clients.

While our goals, strategies and measures overlap, they all tie directly to our vision and our mission. As part of our organizational structure planning, these components are continually reviewed and refined.

Goals:

1. Provide high quality attorney services and advocacy in both the trial and appellate courts throughout Colorado for indigent clients.
2. Recruit and retain quality staff to effectively manage the workload in each Public Defender office across the state.
3. Offer excellent staff development, training, technology support, and other resources to adapt to the evolving criminal legal system and ensure our advocacy meets that available to non-indigent individuals, as mandated by our statute.

Strategies:

1. Hire a sufficient number of skilled and committed staff and keep an adequate level of experienced staff to effectively manage the assigned caseload.
2. Track and analyze trends in caseloads and adjust staffing levels.
3. Provide training to address the changing legal climate.
4. Continually evaluate administrative processes and organizational infrastructure needs such as office space, technology, and staffing.
5. Work all cases as efficiently as possible, while keeping a high quality of effective and reasonable representation.

Measures:

Input

1. Number of new trial court cases.
2. Number of active trial court cases.
3. Percent of trial court attorney staff allocated vs. total required for closed trial court cases.
4. Number of attorney applications received.
5. Percent of total attorney staff allocated versus total required for closed trial court cases and active appellate cases.
6. Annual rates of attrition.

7. Percent of experienced, fully capable staff.
8. Percent compliance with minimum standards for total staffing requirements.
9. Established standard percentages for reasonable staff supervision, management, and development.
10. Number of new appellate cases.
11. Number of active appellate cases (cases awaiting filing of Opening Brief).
12. Percent of appellate attorney staff allocated vs. total required for active appellate cases.

Output

1. Number of trial court cases closed.
2. Days of training provided.
3. Number of CLE credit hours provided.
4. Ethics training hours provided, focus on Colorado criminal law.
5. Number of administrative processes and organizational infrastructure evaluations performed.
6. Number of appellate cases for which an Opening Brief has been filed.
7. Number of backlogged appellate cases.

Performance Measures

		FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	
		(actual)	(actual)	(actual)	(actual)	(projected)	(projected)	(projected)	
MEASURE 1:		Target	119,229	136,144	135,034	139,085	130,267	134,175	138,200
Number of new trial court cases.	Actual	113,453	127,391	125,329	126,473				
MEASURE 2:		Target	165,029	175,221	184,968	190,517	178,660	184,019	189,540
Number of active trial court cases.	Actual	159,292	179,581	174,489	173,456				
MEASURE 3:		Target	100%	100%	100%	100%	100%	100%	100%
Percent of actual trial court attorney staff vs. total required for closed trial court cases.	Actual	80%	79%	77%	79%				
MEASURE 4:		Target	500	500	500	500	500	500	500
Number of attorney applications received.	Actual	500	410	507	463				
MEASURE 5:		Target	100%	100%	100%	100%	100%	100%	100%
Percent of actual total attorney staff vs. total required for closed trial court cases and appellate cases.	Actual	81%	80%	76%	77%				
MEASURE 6:		Target	12%	12%	12%	12%	12%	12%	12%
Annual rates of attrition:									
Attorneys	Actual	15%	21%	18%	12%				
Investigators	Actual	9%	10%	8%	2%				
Paralegals	Actual	41%		9%	15%				
Administrative Assistants	Actual	19%	30%	19%	15%				
Total All Employees	Actual	14%	19%	16%	12%				

		FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27
		(actual)	(actual)	(actual)	(actual)	(projected)	(projected)	(projected)
MEASURE 7:	Target	70%	70%	70%	70%	70%	70%	70%
Percent of experienced, fully capable staff (journey level or higher):	Actual							
Attorneys	Actual	39%	39%	40%	41%			
Investigators	Actual	57%	53%	52%	63%			
Paralegals	Actual	41%		21%	21%			
Administrative Assistants	Actual	41%	36%	30%	32%			
Total All Employees	Actual	45%	43%	39%	42%			
MEASURE 8:	Target	100%	100%	100%	100%	100%	100%	100%
Percent compliance with minimum standards for total staffing requirements.	Actual	83%	80%	77%	81%			
MEASURE 9:	Target	12%	12%	12%	12%	12%	12%	12%
Maintain established standard percentages for reasonable staff supervision, management and development.	Actual	10%	9%	10%	9%			
MEASURE 10:	Target	524	450	480	495	497	511	527
Number of new appellate cases.	Actual	256	379	430	460			
MEASURE 11:	Target	1,870	1,627	1,629	1,596	1,669	1,670	1,683
Number of active appellate cases.	Actual	1,602	1,556	1,564	1,568			
MEASURE 12:	Target	100%	100%	100%	100%	100%	100%	100%
Percent of actual appellate attorney staff vs. total required for appellate cases awaiting filing of initial brief.	Actual	85%	84%	60%	61%			
MEASURE 13:	Target	105,353	129,507	134,333	138,362	129,020	132,890	136,877
Number of trial court cases closed.	Actual	107,099	130,421	130,856	125,263			
MEASURE 14:	Target	132	132	193	267	314	314	314
Days of training provided.	Actual	69	182	250	291			
MEASURE 15:	Target	15	15	15	15	20	20	20
Number of CLE credits provided to all attorneys.	Actual	12	14	29	36			
MEASURE 16:	Target	3	3	3	3	3	3	3
Hours of ethics training provided, focusing on Colorado criminal law.	Actual	2.2	2	4	3			
MEASURE 17:	Target	15	15	15	15	15	15	15
Number of administrative processes and organizational infrastructure evaluations performed.	Actual	15	15	15	17			

		FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27
		(actual)	(actual)	(actual)	(actual)	(projected)	(projected)	(projected)
MEASURE 18:		Target	447	358	343	378	358	358
Number of appellate cases for which an Opening Brief has been filed.		Actual	433	310	222	293		
MEASURE 19:		Target	490	271	324	324	589	629
Number of backlogged appellate cases.		Actual	287	299	451	561		