

ANNUAL HEARING

Before
The Joint Judiciary Committee
Of The Colorado General Assembly



APPEARING ON BEHALF OF THE AGENCY:

MEGAN A. RING
COLORADO STATE PUBLIC DEFENDER

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Director of Legislative Policy and Organizational Communication

Tuesday, January 25, 2022

Hearing Agenda

Office of the State Public Defender

Introductions

Opening Comments

- Introductory remarks
- Our role under the United States and Colorado Constitutions

Mission

The mission of the Office of the State Public Defender is to defend and protect 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 the vision of the Office of the State Public Defender that every OSPD 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

To support the OSPD in the representation of its FY 2021-22 projected caseload, the OSPD was appropriated \$ 118,904,447 and 966.4 FTE. The FTEs consist of 576 attorneys, 201 investigators/paralegals (including 22 social workers), 140 administrative assistants and 49 centralized management and support positions.

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

Because our mission is to provide legal representation to the poor in criminal cases, 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. Accordingly, any changes to our personal services budget, such as those made through legislative action on common policies and for new legislation, have a tremendous effect on our overall appropriation.

In addition, our personal services budget is driven by attorney FTE need because of workload associated with the increase in the agency's caseload. Prior to the pandemic, the number of cases handled by the OSPD steadily grew with significant increases seen in its felony cases. Although the total number of cases dropped initially, this is no longer the case. As we emerge from the pandemic, the number of cases (primarily both the higher-level felony and misdemeanor cases) we are handling are returning to pre-COVID levels and are projected to continue upward. Felony cases require the greatest attorney effort, time and dedication of resources and this had been the primary factor driving our projections and budget requests.

A major driver in OSPD's Budget Request for FY 2022-23 is the proliferation of electronic records and digital media storage and security needs, which is impacting the workload, storage costs, and business strategies across all industries. The criminal legal system is no exception. The increased need for storage capabilities and the ability for OSPD to manage the incredible growth in the amount and type of discovery materials in our cases requires skilled staff who can process, organize, and review the information to help the attorney on the casework effectively and efficiently.

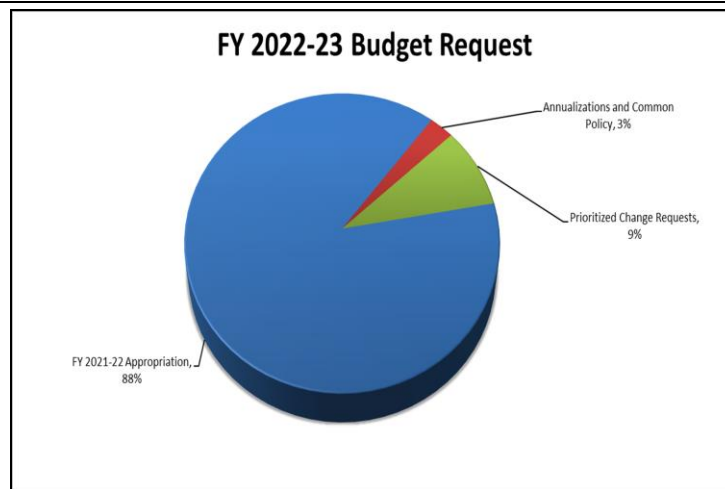
FY 2022-23 Budget Request

The total FY 2022-23 budget request for the OSPD is \$ 135,235,104 and 1,053 FTE. Our organization is a service-heavy organization, with 85% of our expenses going directly to personal services. Consistent with our service focus, each one of our SMART Act goals ties to providing quality representation for our indigent clients. We have prioritized requests of \$ 12,658,549 and 81.6 FTE.

- **FY 2021-22 Appropriation of \$ 118,904,447**
 - PLUS Annualizations of \$ 209,564
 - PLUS Common Policy of \$ 3,462,544

- **FY 2022-23 Base Request of \$ 122,576,555**
 - Change Request #1 for \$ 6,023,930**
 - Change Request #2 for \$ 5,795,856**
 - Change Request #3 for \$ 650,106**
 - Change Request #4 for \$ 188,657**

- **FY 2022-23 Budget Request of \$ 135,235,104**



Budget Priority & Challenges

The OSPD continually reviews, analyzes and prioritizes its needs to efficiently use its limited resources in a manner that still accomplishes our mission. While COVID-19 has affected caseloads, of particular current concern is our ability to accomplish our constitutional mandate while faced with the continually growing backlog of cases that are awaiting their time in court. Our change requests are a direct result of these needs.

Our primary budget request is for additional funds due to how the proliferation of electronic records and digital media has impacted the workload, storage costs, and business strategies across all industries. The criminal legal system is no exception. Over the last ten years the complexity and amount of digital information that is transmitted, stored, tracked, and reviewed between and by justice-involved agencies has grown exponentially. The OSPD receives discovery (information about the case) from the prosecution and law enforcement agencies. It is commonly comprised of electronically shared digital files that include large PDF files, audio/video media files, cell phone and other device “dumps,” photos, and digital files that contain various technology-based investigative techniques. The OSPD must store this discovery and have it readily accessible to its attorneys, support staff, and clients whether in the office, at court, in the jail, or out in the field. While storage is a basic need for the agency, OSPD must also provide its staff the tools to efficiently review and synthesize the complex nature of many of the discovery files. The OSPD has a statutorily and constitutionally mandated responsibility to match the digital literacy and capability of the prosecution and law enforcement agencies, local, state, and federal. As these agencies increase their reliance on technology-based investigations and digital evidence processing systems, the OSPD must make similar investments to be able to provide effective assistance of counsel.

In conjunction with the OSPD’s request regarding the need for increased storage capabilities, the exponentially increasing amount of digital materials is now a fact of life in even low-level criminal cases. Managing the incredible growth in the amount and type of discovery materials in OSPD cases requires skilled paralegal staff who can process, organize, and review the information to help the attorney on the case work effectively and efficiently. As of the most recent analysis, OSPD staff are now downloading 4 terabytes of data each month that must be reviewed by the defense team. OSPD is seeking to maintain its ability to provide quality defense to its indigent clients in a two-phased approach in order to meet the demands of an ever-increasing amount of discovery review. OSPD is seeking to add 66 paralegal positions in FY 2022-23 as part of Phase I and 38 paralegal positions in FY 2023-24 as Phase II. OSPD is utilizing a 1:6 ratio to allocate paralegal FTE for large trial offices based upon the attorney resources allocated in each location. In addition, OSPD is seeking 10.0 paralegal FTE to staff our ten small trial offices. OSPD is seeking this as a cost-effective strategy to assist in managing the explosion of discovery, driven primarily by technology changes including the use of dash and body-worn cameras. Phase I will be rolled out for high level felony cases in FY 2022-23. Phase II will include all other cases

that are not considered high level felony cases to begin in FY 2023-24. While the increase in technology-related discovery is driving this request, paralegals can assist the defense team in a wide variety of tasks that, in the absence of paralegals, often falls to the lawyers already facing significant caseloads or other staff who may not have the necessary training and experience. The OSPD currently employs a small number of paralegals in trial offices and has been able to see the efficiency and success of using paralegal skills and the value if paralegal assistance is implemented across the agency.

Legislation

It remains the goal of this agency to support legislation that will increase fairness and effectiveness in our criminal legal system and our agency remains heavily involved in the work of CCJJ and other boards and commissions in Colorado. Our agency always engages, upon request, with legislators seeking support and information for bills that will protect the constitutional rights of persons, 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 and addiction.

2021 bills that impacted our work this year include:

SB21- 146 allocated OSPD funds to develop a Public Defender/DOC liaison program to assist in addressing multiple legal challenges related to offenders incarcerated in the department of corrections. This includes litigating the incompetency of incarcerated offenders, detainer resolution, special needs parole and commutation. Staff has been hired for the project – one attorney and one paralegal – and collaboration with DOC has commenced.

HB21-1142 required OSPD to engage with other criminal legal system stakeholders to develop new policies around eye witness show-up procedures for law enforcement agencies. This work has been substantially completed.

HB21-1214 clarified record sealing procedures and required automatic sealing for certain drug offenses as recommended by CCJJ. The bill also allowed OSPD to seek gifts, grants or donations to provide legal assistance to persons eligible for petition-based sealing. OSPD has applied for grant funding for this project but so far has not been able to secure funding. Legislation this session to increase automatic sealing for certain persons will limit the scope of any grant request and applications for funding are on hold pending the outcome of this session.

HB21-1280 mandates bail setting within 48 hours of arrest. Legal counsel is needed to implement this mandates of this bill across all of Colorado. OSPD continues to work with Judicial Districts and the State Court Administrators Office to develop the systems necessary to achieve the goals of this bill and to work within our agency to provide the necessary client contact/courtroom coverage with our current staff or through contract services.

SB21-271 significantly changed the misdemeanor sentencing scheme and reclassified certain felony offenses based on the recommendations of the CCJJ. OSPD continues to work with CCJJ to address felony sentencing reform/re-calibration as well to work to ensure that any missteps in SB21-271 are adequately addressed in the 2022 legislative session.

SMART ACT - Goals, Strategies and Performance Measures

In order to achieve our mission of providing high-quality, effective criminal defense representation for each of our clients, the OSPD ensured that our goals, strategies and measures addressed our people,

our process. To this end, we have developed three overarching goals, five strategies and nineteen measures, all focused on improving service to our clients.

Although we have multiple connections among our goals, strategies and measures, they all tie directly to our vision and our mission. Furthermore, as part of our organizational infrastructure planning, these components are continually reviewed and further refined.

Goals:

1. Hire and retain a sufficient number of high quality staff to effectively manage the assigned caseload.
2. Provide both a high quality and quantity of staff development, training, new technology and other resources to adapt our response to the ever-changing criminal justice system so that our legal services are commensurate with those available for non-indigent clients.
3. Provide effective legal representation in both the trial and appellate courts.

Strategies:

1. Hire a sufficient number of high quality staff and retain an adequate level of experienced staff in order to effectively manage the assigned caseload.
2. Track and analyze trends in caseloads and adjust staffing levels.
3. Provide trainings to address the changing legal climate and reach critical staff.
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 retaining a high quality of effective 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. Maintain established standard percentages for reasonable staff supervision, management and development.
10. Number of new appellate cases.
11. Number of active appellate cases.
12. Percent of appellate attorney staff allocated vs. total required for active appellate cases.

Output

13. Number of trial court cases closed.
14. Days of training provided.
15. Number of CLE credit hours provided.
16. Hours of ethics training provided, focusing on Colorado criminal law.
17. Number of administrative processes and organizational infrastructure evaluations performed.
18. Number of appellate cases for which an Opening Brief has been filed.
19. Number of backlogged appellate cases (cases awaiting filing of Opening Brief).

Performance Measures

		FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26
		(actual)	(actual)	(actual)	(actual)	(projected)	(projected)	(projected)	(projected)	(projected)
MEASURE 1:										
	Target	141,907	148,664	147,479	119,229	136,144	140,228	144,435	148,768	153,231
Number of new trial court cases.	Actual	143,552	144,219	124,586	113,453					
MEASURE 2:										
	Target	181,112	189,075	189,760	165,029	175,221	180,478	185,892	191,469	197,213
Number of active trial court cases.	Actual	183,078	185,762	168,512	159,292					
MEASURE 3:										
	Target	100%	100%	100%	100%	100%	100%	100%	100%	100%
Percent of trial court attorney staff allocated vs. total required for closed trial court cases.	Actual	80%	81%	82%	80%					
MEASURE 4:										
	Target	475	485	500	500	500	500	500	500	500
Number of attorney applications received.	Actual	521	520	524	500					
MEASURE 5:										
	Target	100%	100%	100%	100%	100%	100%	100%	100%	100%
Percent of total attorney staff allocated vs. total required for closed trial court cases and appellate cases.	Actual	81%	81%	82%	81%					
MEASURE 6:										
	Target	12%	12%	12%	12%	12%	12%	12%	12%	12%
Annual rates of attrition:										
Attorneys	Actual	18%	18%	12%	15%					
Investigators	Actual	8%	7%	7%	9%					
Administrative Assistants	Actual	24%	26%	22%	19%					
Total All Employees	Actual	16%	17%	12%	14%					
MEASURE 7:										
	Target	70%	70%	70%	70%	70%	70%	70%	70%	70%
Percent of experienced, fully capable staff (journey level or higher):										
Attorneys	Actual	43%	39%	37%	39%					
Investigators	Actual	49%	52%	56%	57%					
Administrative Assistants	Actual	43%	46%	43%	41%					
Total All Employees	Actual	46%	44%	43%	45%					
MEASURE 8:										
	Target	100%	100%	100%	100%	100%	100%	100%	100%	100%
Percent compliance with minimum standards for total staffing requirements.	Actual	81%	82%	83%	83%					

		FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26
		(actual)	(actual)	(actual)	(actual)	(projected)	(projected)	(projected)	(projected)	(projected)
MEASURE 9:	Target	12%	12%	12%	12%	12%	12%	12%	12%	12%
Maintain established standard percentages for reasonable staff supervision, management and development.	Actual	11%	9%	10%	10%					
MEASURE 10:	Target	535	528	574	524	450	535	552	568	585
Number of new appellate cases.	Actual	523	563	514	256					
MEASURE 11:	Target	2,001	1,887	1,938	1,870	1,627	1,704	1,726	1,761	1,808
Number of active appellate cases.	Actual	1,989	1,922	1,878	1,602					
MEASURE 12:	Target	100%	100%	100%	100%	100%	100%	100%	100%	100%
Percent of appellate attorney staff allocated vs. total required for appellate cases awaiting filing of initial brief.	Actual	85%	82%	81%	85%					
MEASURE 13:	Target	140,395	145,909	145,337	105,353	129,507	133,392	137,394	141,516	145,761
Number of trial court cases closed.	Actual	141,511	141,876	122,712	107,099					
MEASURE 14:	Target	130	133	144	132	132	132	132	132	132
Days of training provided.	Actual	135	179	144	69					
MEASURE 15:	Target	15	15	15	15	15	15	15	15	15
Number of CLE credits provided to all attorneys.	Actual	15	16	21	12					
MEASURE 16:	Target	3	3	3	3	3	3	3	3	3
Hours of ethics training provided, focusing on Colorado criminal law.	Actual	4	3	6	2.2					
MEASURE 17:	Target	15	15	15	15	15	15	15	15	15
Number of administrative processes and organizational infrastructure evaluations performed.	Actual	15	15	12	15					
MEASURE 18:	Target	468	451	447	447	358	394	394	394	394
Number of appellate cases for which an Opening Brief has been filed.	Actual	421	381	454	433					
MEASURE 19:	Target	531	486	592	490	271	283	307	343	392
Number of backlogged appellate cases.	Actual	539	603	530	287					