

**FISCAL YEAR 2011-12**

**BUDGET HEARING**

Before  
The Joint Budget Committee  
Of The Colorado General Assembly



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

Douglas D. Tracey  
Chief Administrative & Operations Officer

Thursday, November 18, 2010

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## Introductions and Opening Comments

### ROLE & MISSION

The Office of the Colorado State Public Defender (The Office) is appointed by the Court to represent indigent persons

**MISSION: The constitutions of Colorado and of the United States establish the right to counsel. The single overriding objective of the Office of the State Public Defender is to provide reasonable and effective criminal defense representation for our clients and fulfill this constitutional requirement.**

charged with crimes where there is a possibility of being jailed or imprisoned. The single overriding objective of the agency is to provide effective criminal defense counsel to all indigent persons requesting counsel. In fulfilling its mission, The Office's role is defined by the United States and Colorado constitutions, applicable statutes, court rules, American Bar Association standards, and the Colorado Rules of Professional Conduct.

### VISION

Our basic role and mission will not change. Providing representation to our indigent clients is a federal and state constitutional mandate and the purpose for which The Office was created. The State Public Defender System is the most

**VISION:**

- CONTINUE MEETING OUR CONSTITUTIONAL OBLIGATION TO PROVIDE QUALITY REPRESENTATION TO THE INDIGENT BY FOCUSING ON NEW TECHNOLOGY, STAFF DEVELOPMENT, TRAINING AND ACCESS TO INFORMATION TO ADAPT OUR RESPONSES TO INCREASING CASELOAD, INCREASING DIVERSITY OF CASES, AND THE CHANGING CRIMINAL JUSTICE ATMOSPHERE.
- MAINTAIN OUR COMMITMENT TO AND FOCUS OF PROVIDING SERVICE TO THE POOR.
- CONTINUE TO COMPLY WITH OUR CONSTITUTIONAL, STATUTORY AND ETHICAL OBLIGATIONS, ESPECIALLY BY MAINTAINING THE CRITICAL ATTORNEY-CLIENT RELATIONSHIP.

effective and efficient means of meeting that requirement.

While our primary function of providing criminal defense representation will not change, the criminal justice environment in which we operate is changing. Caseload continues to grow at a rate exceeding population growth and the cases that we handle are becoming more complex and reflect an increase in severity of charges.

The average annual 10-year growth rate, or compound rate of growth (CRG), for cases reflects a consistent pattern of growth with intermittent peaks. This growth has stabilized at near two and one-half times the state's general population growth rate. Workload associated with this growing caseload has increased at a rate one-and-one-half the rate of case growth and about 4 times the population growth rate.

Many other factors have compounded these case growth trends adding increasing complexity to the types of cases and the workload required to represent these cases. These changes compound existing workload conditions to make it more difficult and time consuming for attorneys to provide effective representation, including: changes in the court such as staffing, docket organization, new specialty courts, and other processes; changes in prosecutorial practice and procedure; newly enacted criminal offenses; changes in classes of criminal offenses; changes in criminal penalties; changes in the time it takes to process a case; and changes in the types, quality, complexity and quantity of evidence, history and documentation associated with a case. This changing environment presents a compounding challenge to The Office's need to achieve the staffing levels that are required to provide effective representation.

The Office adapts to its caseload, complexity and staffing deficit challenges by incorporating efficiencies gained through new technologies, staff development and training, and expanding access to specialized legal resources needed to support cases. In particular, communications and information technologies offer opportunities to better utilize our employees, to restructure our administrative processes, and to avoid duplication of resources in our regional offices. Taking advantage of these opportunities enables The Office to better utilize appropriated financial and staffing resources. During periods of difficult fiscal circumstances, these advances are crucial in the State's continued ability to meet its constitutional, statutory and ethical obligations to provide quality representation to the indigent, to maintain the critical attorney-client relationship, and to continue its commitment to providing service to the poor.

## **PROGRAM DESCRIPTION**

The Office of the State Public Defender is required to provide criminal defense representation to indigent persons charged with crimes except where there is a conflict of interest. The Court makes the appointment when a defendant qualifies for public defender services pursuant to applicable case law and Chief Justice Directives. In FY 2009-10, The Office received 95,621 new cases, closed 95,580 cases and carried a total of 120,816 active cases. The Office functions as a single program devoted to providing reasonable and effective criminal defense representation in these cases.

The Public Defender System is administered at the state level by the Colorado State Public Defender, Douglas K. Wilson. The State Administrative Office provides centralized, state-wide administrative services and coordinates all office support functions to assist our regional trial offices and appellate division in providing services to clients. The administrative functions delivered by the State Administrative Office include: all program direction, analysis, and planning, including statistical compilation and development; workforce development, training, personnel policy, compensation analysis and practice development, and payroll and benefits coordination and administration; legislative affairs and statutory analysis; intra-governmental and intergovernmental affairs; budget analysis, development, allocation and management; financial management,

analysis, tracking, transaction processing, purchasing, and accounting; grants management and development; facilities planning, development, and lease negotiating; contracts management; and development, distribution and maintenance of the agency's computer information and telecommunication systems.

### **CUSTOMER REQUIREMENTS**

Our customers are indigent people in Colorado whom we are appointed to represent in over 95,000 new cases each year. They require attorneys, investigators and the support staff needed to provide effective representation of counsel as required by the federal and state constitutions and other legal authority referenced above.

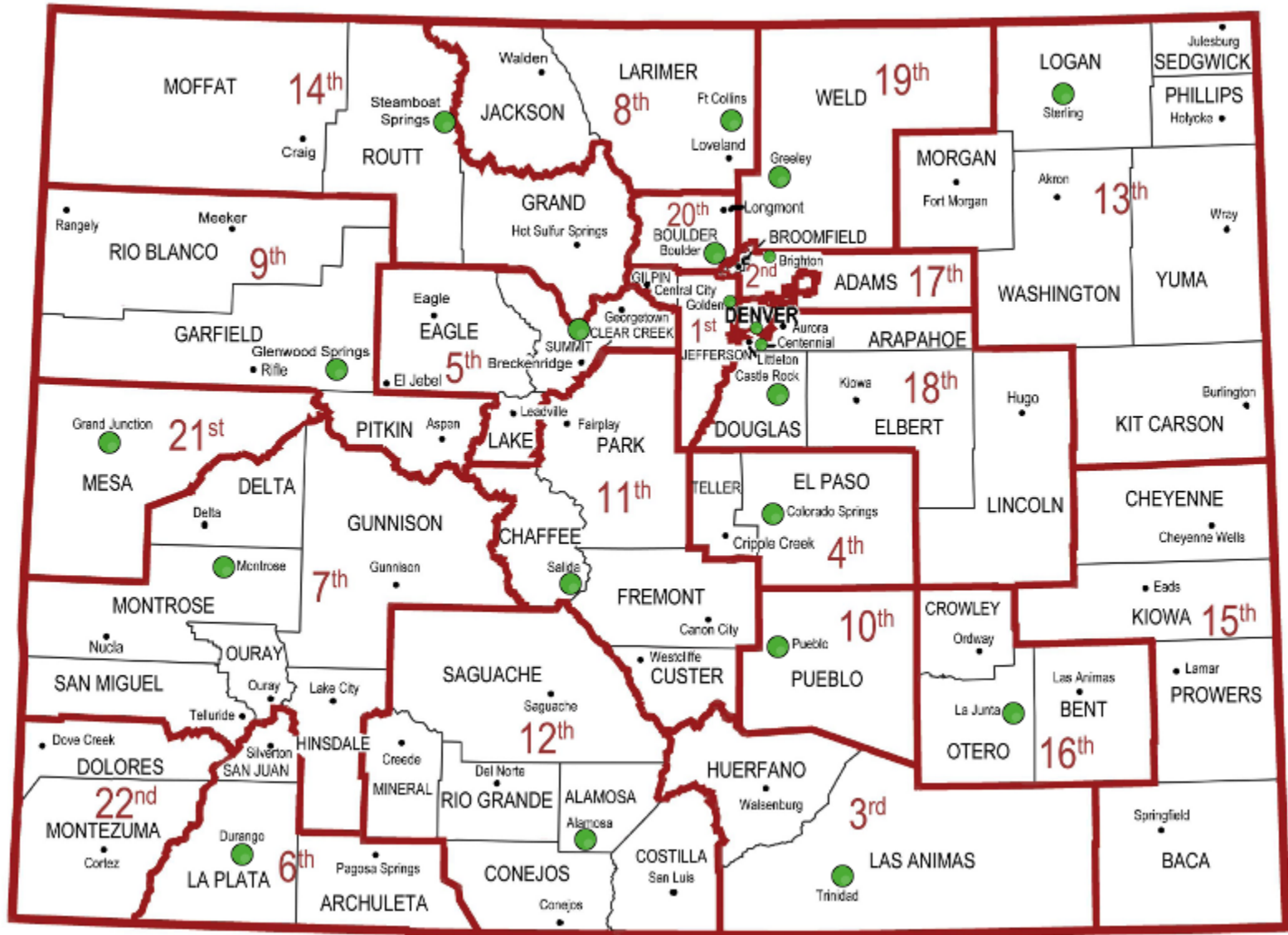
Our clients are indigent people who are faced with the possibility of incarceration. They are unable to afford private counsel and without counsel would otherwise be denied their constitutional right to a fair trial. A critical element in meeting these requirements is the need to maintain the attorney-client relationship. This need is incorporated into our Vision Statement.

### **SUMMARY OF PROGRAM RESOURCES**

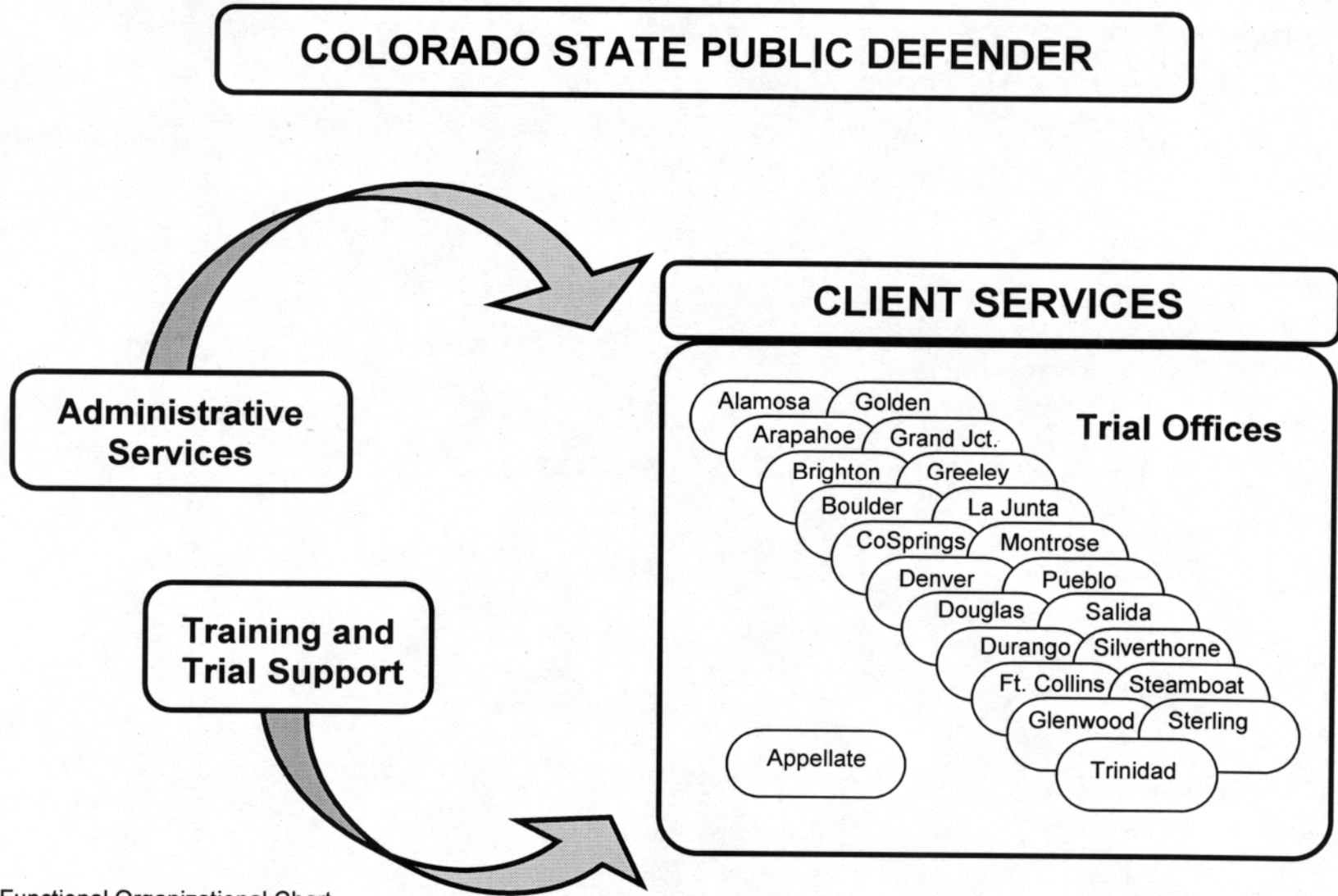
The Office of the State Public Defender is a single purpose program that provides criminal defense representation to indigent clients. It is an independent agency within the Judicial Branch of Colorado State Government. In order to fulfill our statutory responsibility in all proceedings mandated by the statutes, The Office maintains 21 regional trial offices and one appellate division which support the indigent criminal cases of the State's 22 judicial districts and 64 counties. The staff in these offices is entirely devoted to the processing of cases. All administrative and support functions for these offices are handled centrally by the State Administrative Office in Denver. This structure is represented by two graphic portrayals on the following pages.

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

### CO Public Defender Offices

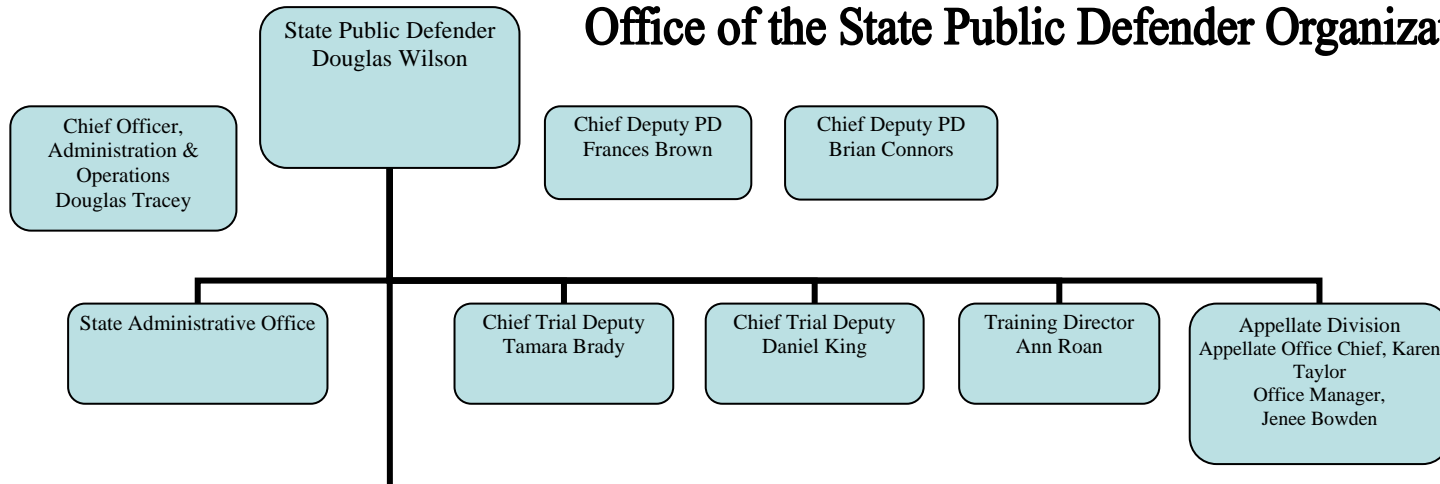


**ORGANIZATIONAL CHART:** The following chart illustrates the functional organizational structure of The Office.



Functional Organizational Chart  
of the  
Office of the State Public Defender

# Office of the State Public Defender Organizational Chart



## REGIONAL TRIAL OFFICES:

Alamosa Trial Office  
12<sup>th</sup> Judicial District  
Regional Trial Office Chief,  
Dan Walzl  
Office Manager, Angel Orin

Arapahoe Trial Office  
18<sup>th</sup> Judicial Districts  
Regional Trial Office Chief,  
James O'Connor  
Office Manager, Cheryl  
Healy

Boulder Trial Office  
20<sup>th</sup> Judicial District  
Regional Trial Office Chief,  
Seth Temin  
Office Manager, Karen  
Pereira

Brighton Trial Office  
17<sup>th</sup> Judicial Districts  
Regional Trial Office Chief,  
Scott Evans  
Office Manager, Kim  
Windholz

Colorado Springs Trial  
Office  
4<sup>th</sup> Judicial District  
Regional Trial Office Chief,  
Carrie Thompson  
Office Manager, Norie  
Spooner

Denver Trial Office  
2<sup>nd</sup> Judicial District  
Regional Trial Office  
Chief, Christopher  
Baumann  
Office Manager, Jeanie  
Vela

Dillon Trial Office  
5<sup>th</sup> Judicial District  
Regional Trial Office Chief,  
Dana Christiansen  
Office Manager, Sandy  
Tidwell

Douglas Trial Office  
18<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Kathy McGuire  
Office Manager, Amy  
Mendigorin

Durango Trial Office  
6<sup>th</sup> & 22<sup>nd</sup> Judicial Districts  
Regional Trial Office  
Chief, Justin Bogan  
Office Manager, Jennifer  
Stahl

Fort Collins Trial Office  
8<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Norm Townsend  
Office Manager, Karlee  
Lucero

Glenwood Springs Trial  
Office  
9<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Tina Fang  
Office Manager, Carol  
Vanica

Golden Trial Office  
1<sup>st</sup> Judicial District  
Regional Trial Office  
Chief, Mitch Ahnstedt  
Office Manager, Candace  
Gonzales

Grand Junction Trial  
Office  
21<sup>st</sup> Judicial District  
Regional Trial Office  
Chief, Steve Colvin  
Office Manager, Sheila  
Hurd

Greeley Trial Office  
19<sup>th</sup> Judicial District  
Regional Trial Office Chief,  
Kevin Strobel  
Office Manager, Terri Cook

La Junta Trial Office  
15<sup>th</sup> & 16<sup>th</sup> Judicial Districts  
Regional Trial Office Chief,  
Ray Torrez  
Office Manager, Joy Klein

Montrose Trial Office  
7<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Harvey Palefsky  
Office Manager, Val  
Barnica

Pueblo Trial Office  
10<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Kim Karn  
Office Manager, Cindy  
Pacheco

Salida Trial Office  
11<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Patrick Murphy  
Office Manager, Carol  
Mattson

Steamboat Springs Trial  
Office  
14<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Sheryl Uhlmann  
Office Manager, Janice  
Forcum

Sterling Trial Office  
13<sup>th</sup> Judicial District  
Regional Trial Office  
Chief, Brian Musell  
Office Manager, Julie  
Lenox

Trinidad Trial Office  
3<sup>rd</sup> Judicial District  
Regional Trial Office  
Chief, Patrick McCarville  
Office Manager, Juanita  
Gonzalez



## STATUTORY AND OTHER AUTHORITY

Colo. Rev. Stat. § 21-1-101 *et seq.*, (1998); U.S. CONST. Amend. VI; COLO. CONST. Art. II, § 16; ABA STANDARDS FOR CRIMINAL JUSTICE, *The Defense Function* (3d ed. 1993); Colo. Rules of Professional Conduct (Colo. RPC); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Alabama v. Shelton*, 535 U.S. 654 (2002); *Rothgery v. Gillespie County*, 554 U.S. \_\_\_\_ (6/23/08); *Nikander v. District Court*, 711 P.2d 1260 (Colo. 1986); *Allen v. People*, 157 Colo. 582, 404 P.2d 266 (1965).

The Office of the State Public Defender is established pursuant to C.R.S. § 21-1-101 *et seq.* as an independent entity within the Judicial Branch of Colorado State Government. By statute, The Office is required to “conduct the office in accordance with the Colorado Code of Professional Conduct<sup>1</sup> and with the American Bar Association standards relating to the administration of criminal justice, the defense function.” C.R.S. §21-1-101(1).

## OBJECTIVES

Priority	Objective
1.1	Provide effective legal representation in near 133,000 active cases that will be represented in FY 2012.
1.2	Ensure compliance with applicable constitutional and statutory mandates, the American Bar Association standards, the Colorado Rules of Professional Conduct and applicable court rules and case law.
1.3	Maintain a competitive work environment to be able to attract and retain qualified staff.
2.1	Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.
2.2	Continue to provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law.
3.1	Better utilize existing resources and new technologies to more efficiently handle increasing caseload and increasingly complex cases.
3.2	Continually evaluate and evolve key functions to ensure the Public Defender System adapts to the changing legal environment.

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

## PERFORMANCE MEASURES

<b>OBJECTIVE 1.1: Provide reasonable and effective legal representation.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> New cases received	Actual	96,339	95,621	100,353	105,936
<b>MEASURE:</b> Cases closed	Actual	94,421	95,580	100,148	105,496
<b>MEASURE:</b> Total cases represented	Actual	117,472	120,816	126,386	132,917
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	249 : 1	251 : 1	232 : 1	232 : 1
	Actual	395 : 1	360 : 1	353 : 1	371 : 1
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	57 %	55 %	52 %	60 %
<b>MEASURE:</b> Percent of compliance with staffing levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	71.2 %	75.6 %	76.8 %	76.3 %
<b>MEASURE:</b> Maintain established standards for reasonable Staff Supervision, Management, Development (staff Supervisor to employee Ratio)	Target	10%	10%	10%	10%
	Actual	4.5 %	5.5 %	5.5 %	5.5 %
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		

<b>MEASURE:</b> Provide 3 hours of ethics training focusing on Colorado criminal law each year	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
<b>MEASURE:</b> Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	9		
<b>MEASURE:</b> Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
	Attorneys	Actual	10.5 %	9.3 %	
	Investigators	Actual	8.4 %	12.5 %	
	Administrative	Actual	12.7 %	6.3 %	
	Total	Actual	9.9 %	9.4 %	
<b>MEASURE:</b> Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
	Attorneys	Actual	45.7 %	41.9 %	
	Investigators	Actual	25.0 %	41.7 %	
	Administrative	Actual	70.0 %	100 %	
	Total	Actual	47.2 %	47.9 %	

<b>Objective 1.2: Ensure compliance with applicable constitutional and statutory mandates, the American Bar Association standards, the Colorado Code of Professional Conduct and applicable court rules and case law.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	249 : 1	251 : 1	232 : 1	232 : 1
	Actual	395 : 1	360 : 1	353 : 1	371 : 1
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	57 %	55 %	52 %	60 %
<b>MEASURE:</b> Percent of compliance with staffing levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	71.2 %	75.6 %	76.8 %	76.3 %

<b>MEASURE:</b> Maintain established standards for reasonable staff supervision, management, development (staff supervisor to employee ratio)	Target	10%	10%	10%	10%
	Actual	4.5 %	5.5 %	5.5 %	5.5 %
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
<b>MEASURE:</b> Provide 3 hours of ethics training focusing on Colorado criminal law each year	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
<b>MEASURE:</b> Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	9		

<b>Objective 1.3: Maintain a competitive work environment to be able to attract and retain qualified staff.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
<b>MEASURE:</b> Percent of compliance with market pay practices	Target	100%	100%	100%	100%
	Actual	86 %	88 %		
<b>MEASURE:</b> Number of attorney applications received (CY)	Target	175	175	175	175
	Actual	361	418		
<b>MEASURE:</b> Maintain established standards for reasonable staff supervision, management, development (staff supv to employee ratio)	Target	10%	10%	10%	10%
	Actual	4.5 %	5.5 %	5.5 %	5.5 %

<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	249 : 1	251 : 1	232 : 1	232 : 1
	Actual	395 : 1	360 : 1	353 : 1	371 : 1
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	57 %	55 %	52 %	60 %
<b>MEASURE:</b> Percent of compliance with staffing levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	71.2 %	75.6 %	76.8 %	76.3 %
<b>MEASURE:</b> Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	10.5 %	9.3 %		
Investigators	Actual	8.4 %	12.5 %		
Administrative	Actual	12.7 %	6.3 %		
Total	Actual	9.9 %	9.4 %		
<b>MEASURE:</b> Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	45.7 %	41.9 %		
Investigators	Actual	25.0 %	41.7 %		
Administrative	Actual	70.0 %	100 %		
Total	Actual	47.2 %	47.9 %		

<b>Objective 2.1: Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Develop and test internet based administrative processes	Target	3	3	3	3
	Actual	7	5		

<b>Objective 2.2: Continue to provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		
<b>MEASURE:</b> Provide 3 hours of ethics training focusing on Colorado criminal law each year.	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		

<b>Objective 3.1: Better utilize existing resources and new technologies to more efficiently handle increasing caseload and increasingly complex cases.</b>					
<b>Objective 3.2: Continually evaluate and evolve key functions to ensure the Public Defender system adapts to the changing legal environment.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
<b>MEASURE:</b> Develop and test internet based administrative processes.	Target	3	3	3	3
	Actual	7	5		
<b>MEASURE:</b> Number of offices audited each year	Target	11	11	11	11
	Actual	9	9		
<b>MEASURE:</b> Number of focused evaluations	Target	2	2	2	2
	Actual	5	5		

**KEY TRENDS  
AND OTHER  
BASELINE INFORMATION**

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## REGIONAL TRIAL OFFICE CASELOAD

### OVERALL CASE TRENDS

***OSPD Case Portion of Total State-Wide Criminal Cases in the Courts.*** State Public Defender caseload accounts for about 60 percent of the Total Criminal Cases Terminated throughout the State's 22 District and 64 County courts. The Public Defender's share of the total State criminal caseload has been increasing steadily at a rate of 4.4 percent annually since FY 2000. This rate of growth exceeds the rate of the State's general population growth (1.7 percent annually since 2000) by two and one-half times. As the Public Defender's total cases closed has grown at a rate of 4.0 percent annually, the growth of all cases terminated by the Courts has stalled. By the end of FY 2010, the Public Defender's share of total state criminal cases terminated in the courts had grown by 47.6 percent cumulatively. This rate of growth of the Public Defender's portion of the overall State criminal caseload is significant to note, particularly when comparing relative changes in resource growth within the Courts, within offices of the Prosecution and local law enforcement, and within the Office of the State Public Defender during that same period.

***OSPD Portion of State Felony Cases.*** The Public Defender will represent 77 percent of all Felony cases expected to be terminated in the courts this year. The Office's share of the State's total Felony caseload terminated in the courts has been growing steadily each year from 65 percent of all State Felony cases and proceedings in FY 2000. Since FY 2000, The Office's portion of all state-wide Felony cases and proceedings grew by 3.2 percent annually. Total Public Defender Felony cases closed grew at a rate of 2.6 percent annually since FY 2000, near double the population growth rate.

***OSPD Portion of State Misdemeanor Cases.*** The Public Defender will represent 47 percent of all Misdemeanor cases expected to be terminated in the courts this year. The Office's share of the State's total Misdemeanor caseload terminated in the courts has been growing rapidly each year from 20 percent of all State Misdemeanor cases and proceedings in FY 2000, having more than doubled as a ratio of total State Misdemeanor caseload. Since FY 2000, The Office's portion of all state-wide Misdemeanor cases and proceedings grew by 8.6 percent annually. Total Public Defender Misdemeanor cases closed grew at a rate of 8.0 percent annually since FY 2000, near five times the population growth rate.

***OSPD Portion of State Juvenile Cases.*** The Public Defender will represent 67.5 percent of all Juvenile criminal offense cases expected to be terminated in the courts this year. The Office's share of the State's total Juvenile caseload terminated in the courts has been growing rapidly each year from 58 percent of all State Juvenile cases and proceedings in FY 2000. Since FY 2000, The Office's portion of all state-wide Juvenile cases and proceedings grew by 2.2 percent annually. However, total Public Defender Juvenile cases closed declined

at a rate of 1.5 percent annually since FY 2000, still 57% the rate of decline of Statewide Juvenile cases, which declined steadily at an annual rate of 2.5 percent during the most recent 10-year period of actual caseload. As Public Defender Juvenile cases have begun to stabilize and State-wide Juvenile cases continue to decline, the Office's proportionate share of all State-wide Juvenile cases will continue to increase.

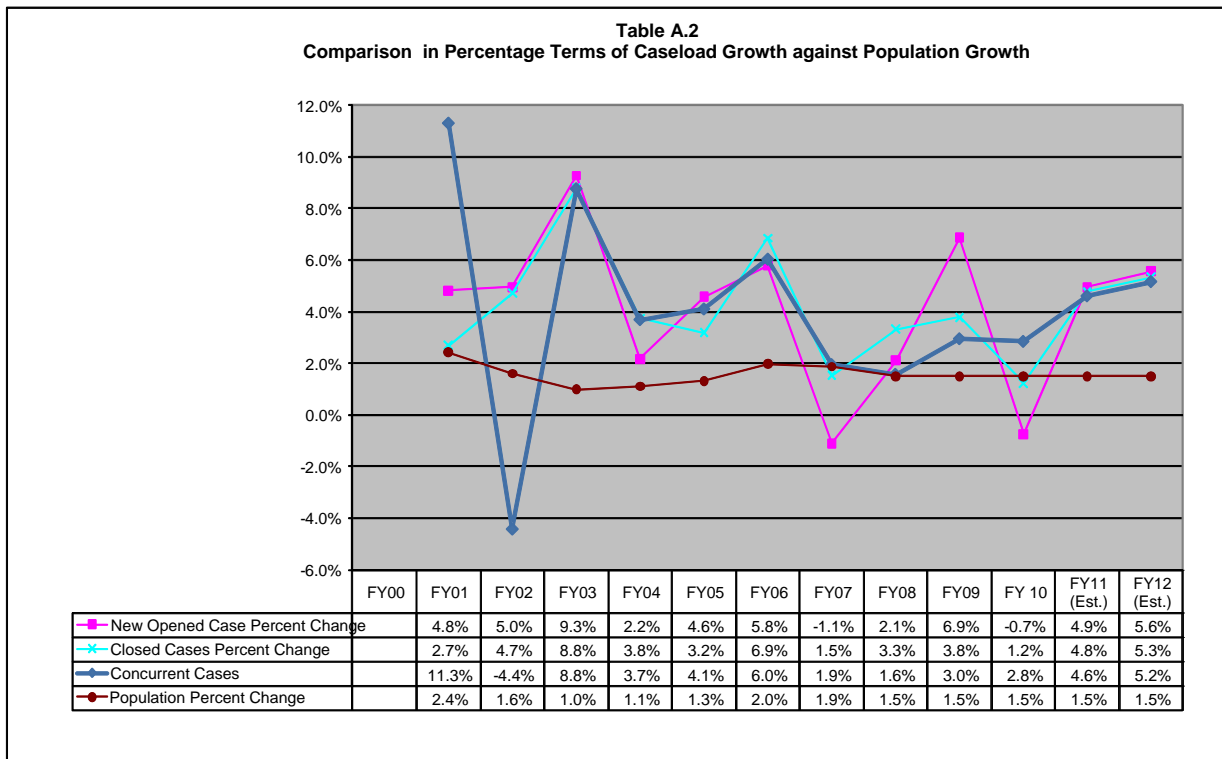
**Table A.1** below provides detail related to The OSPD's closed caseload in the context of Total State-wide cases terminated in the Courts.

**Table A.1 - OSPD Trial Office Cases Closed  
Compared to State Courts' Terminated Cases  
FY 2000 to FY 2012 Projected**

Comparisons of Closings By Case Type: Court Totals (DAs Cases) vs. OSPD, w/ Proportionate Shares	FY 2000	FY 2010	FY 2011 Proj.	FY 2012 Proj.	Cumulative Growth by 2010	Cumulative Growth by 2011	Cumulative Growth by 2012	Annual Compound Rate of Growth
<b>State Total</b>								
All Terminated Criminal Cases & Proceedings--No Traffic	164,497	164,810	167,106	169,516	0.19%	1.59%	3.05%	-0.13%
<b>OSPD Total</b>								
All Terminated Criminal Cases & Proceedings--No Traffic / Petty Off.	64,779	95,580	100,148	105,496	47.55%	54.60%	62.86%	3.97%
Ratio of OSPD Total Criminal Cases to State Total Criminal Cases	39.4%	58.0%	59.9%	62.2%	47.27%	52.19%	58.03%	4.41%
<b>State Total</b>								
Felony Terminated Cases & Proceedings	55,780	59,086	61,574	64,166	5.93%	10.39%	15.03%	4.21%
<b>OSPD Total</b>								
Felony Terminated Cases & Proceedings	35,999	46,580	47,472	48,523	29.39%	31.87%	34.79%	2.61%
Ratio of Total OSPD Felony Cases to Total State Felony Cases	64.5%	78.8%	77.1%	75.6%	22.15%	19.46%	17.17%	3.18%
<b>Misd. Terminated Cases of Court</b>	90,948	92,402	92,549	92,696	1.60%	1.76%	1.92%	0.16%
<b>OSPD Misdemeanor Cases</b>	18,535	40,147	43,913	48,252	116.60%	136.92%	160.33%	8.04%
Ratio of OSPD Misd Cases to Total All Court Misd Cases	20.38%	43.45%	47.45%	52.05%	113.19%	132.82%	155.42%	8.58%
<b>Juv Terminated Cases of Court</b>	17,769	13,321	12,983	12,653	-25.03%	-26.94%	-28.79%	-2.54%
<b>OSPD Juvenile</b>	10,245	8,853	8,763	8,721	-13.59%	-14.47%	-14.88%	-1.45%
Ratio of OSPD JUV Cases to Total All Court JUV Cases	57.66%	66.46%	67.50%	68.92%	21.90%	15.27%	17.07%	2.22%

**OSPD Caseload and State Population Trends.** Case Trends are changing over time. The Office’s caseload growth exceeds the state’s population growth. Between FY 2000 and FY 2010, total cases closed (terminations) increased cumulatively by 47.6% while estimates of state population growth increased cumulatively 19% during the same period. Comparatively, total new cases opened (filings) increased cumulatively by 45.6%. Furthermore, concurrently represented (active) cases increased cumulatively by 45.2%.

**Table A.2** below compares the annual percentage point change in population with that of the various case statistics and demonstrates how Public Defender caseload has continued to increase at rates greater than population growth.



**Total Case Trends.** Through FY 2005-06, Total cases in each category of Opened, Closed and Active caseload had been growing at a much faster rate than the years following that point, reaching peaks around 5 percent CRG that year. The rate of growth slowed beginning FY 2007 and has stabilized near 4 percent CRG annually since FY 2000 -- still at a rate near two and one-half times the Colorado general population growth rate. Meanwhile, workload associated with cases maintained growth of 6.3 percent CRG annually through FY 2010. This variance between higher workload growth rate as compared to the lower growth rate of actual number of cases is evidence of the increasing complexity of the Public Defender’s caseload as a result of changes in the greater criminal justice system and law. Such change increases the drain on existing staff resources by compounding the workload associated with an annually increasing number of cases.

***Felony Case Type Trends.*** The growth rate of Felony cases in each category of Opened, Closed and Active caseload progressed predictably until about FY 2005 when it peaked near 7 percent CRG annually since FY 2000 -- more than triple the Colorado general population growth rate. While growth has continued in this portion of caseload since FY 2000, the rate of growth of these cases slowed beginning in FY 2007 and has stabilized at about 2.6 percent annual CRG as of FY 2010. Meanwhile, the workload associated with these cases surpassed the rate of case growth at about 5.4 percent annual CRG through 2010. This variance between significant workload growth as compared to the relatively slower growth of actual number of cases is evidence of the increasing complexity of this portion of the caseload as a result of changes in the greater criminal justice system and law. Such change increases the drain on existing staff resources.

Felony cases require the greatest attorney effort and dedication of resources and time, cost the State the most money, and increasingly draw Public Defender resources away from Misdemeanant and Juvenile defendant cases. Many changes to criminal law since 2000 have resulted in a push to raise what were formerly Misdemeanor offenses to the Felony level and to increase the class and penalty of felony offenses, as well as to treat Juvenile Felony cases as Adult Felony cases. The growth in the number of Felony cases and accompanying changes in Law increasing the severity and complexity of cases combine to create a significant drain on Public Defender resources.

***Felony Case Class Trends.*** Looking purely at the changes in caseload at the Case Type Level (Felony, Misdemeanor, Juvenile) provides only part of the picture. It is particularly important to observe changes within the Felony case classes. As cases increase in severity of case type (Juvenile or Adult Misdemeanor to Adult Felony) or case class (M3 to M1 to Felony 6 up to Felony 1), the more severe the penalty for the offense becomes. Similarly, the discovery, mitigation, history, documentation, witness involvement, expert consultation, and evidence of the case also become more complex, more time consuming and more expensive. Similarly, with this increase in severity and complexity of a case comes an increase in the time and staff resources needed to adequately understand, prepare and represent a case. A look at the Felony case class changes in the last 10 years demonstrates the great variability in resources that a case draws due to the increasing class of an offense and due to changes in law, complexity and severity of penalty.

As follows, **Table B** provides the average number of days that closed cases were actively represented by The Office according to case class in 2009. While the number of days a case is active is not a reflection of workdays, it is evidence of relative duration and continuous draw on workload across case class and case types.

**Table B – FY 2010 Cases Closed  
with the Average Number of Days Active by Case Class**

<b>FY 2010</b>		
<b>Summary of OSPD Closed Cases</b>	<b>2010 CLOSED</b>	<b>AveDays Active/Case</b>
Felony 1	90	425
Felony 2	286	373
<i>Sex Assaults F2 - F4</i>	1,377	114
Felony 3	3,781	155
Felony 4	7,563	141
Felony 5	3,399	125
Felony 6	4,628	107
<b>Felony Trial &amp; PreTrial</b>	<b>21,124</b>	<b>136</b>
Misdemeanor 1	8,861	105
<i>Sex Assaults M1</i>	367	241
<i>Sex Assaults M2</i>	-	
Misdemeanor 2/3	5,523	94
Traffic/PO	12,763	108
<b>Misdemeanor Trial &amp; PreTrial</b>	<b>27,514</b>	<b>106</b>
Juvenile Felony	1,640	125
Juvenile Misdemeanor	2,200	104
<b>Juvenile Trial &amp; PreTrial</b>	<b>3,840</b>	<b>113</b>
<b>Total All</b>	<b>52,478</b>	<b>119</b>

In each category of caseload, Opened, Closed and Active cases, The Office has seen the most significant growth of Felony cases in Felony 1 (F1), Felony 6 (F6) and Felony 2 through 4 Sex Assault cases since 2000. These cases have significantly outpaced other classes of Felony cases both in number of cases and in workload required to represent each case. Felony 4 (F4) and Felony 5 (F5) cases have maintained case growth near the population growth rate, but increased complexity in those cases has resulted in workload growth at a much higher rate.

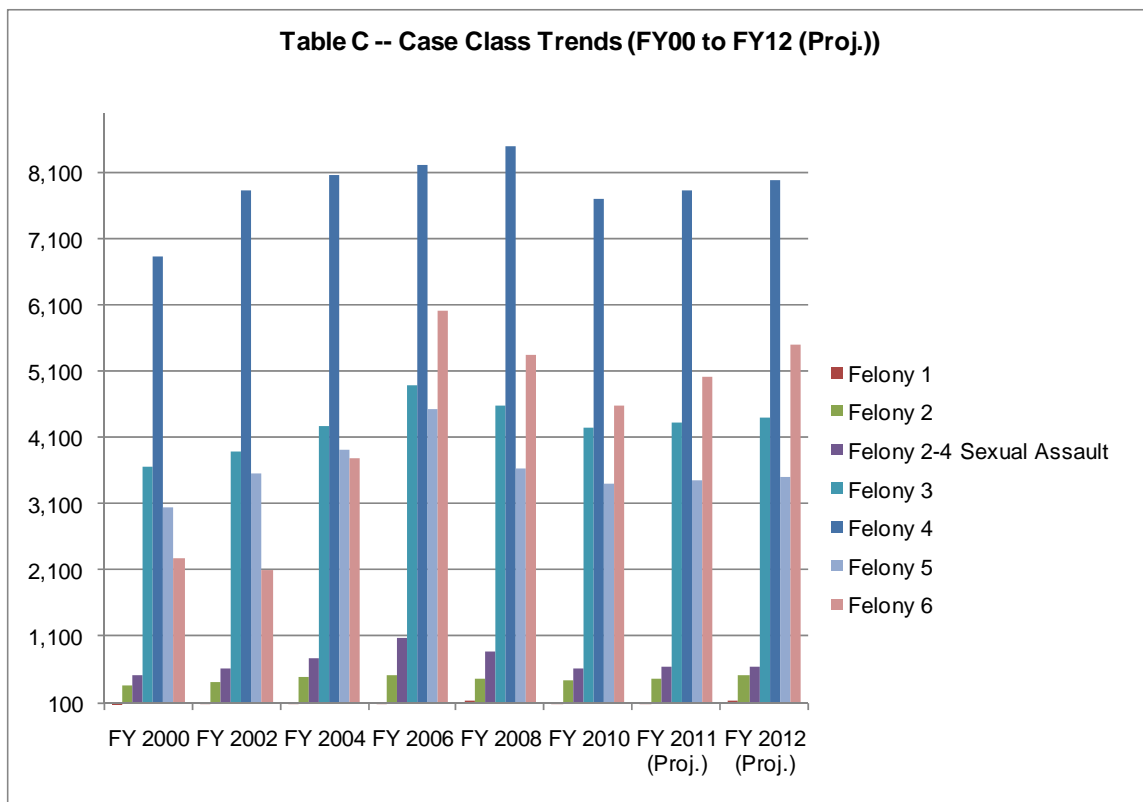
F1 cases opened in a year have grown at a rate of 3.8 percent annually, while the workload for these cases has increased at a rate of 6.2 percent annually. These (homicide) cases have grown at a rate of near four times the population growth rate since 2000, with workload near doubling the growth in cases. Similarly, F1 active cases have increased annually at rates of 4.3 percent and 6.7 percent for case numbers and workload growth respectively. The active case growth of F1s is predictably higher than the open case growth rate, since these

cases tend to be disposed of in a much less timely manner than any other case class, and on average, always carry over to the next year with an average active period of 425 days per case in 2010.

F6 cases opened in a year have grown at a rate of 9.7 percent annually, while the workload for these cases has increased at a rate of 15.1 percent annually, a case growth rate of near 6 times the population growth rate since 2000, with workload growing at a rate that is still over 50 percent greater than the growth in cases. Similarly, F6 active cases have increased at rates of 7.9 percent and 13.6 percent annually for case number and workload growth respectively. Unlike F1 cases, the active case growth of F6 cases is lower than the open case growth, because these cases tend to be disposed of in a much timelier manner, with less carryover occurring across years. These cases had an average active period of 107 days in 2010. The majority of these cases, therefore, do not tend to carry over to the next year.

While the growth in case numbers for Felony 4 (F4) and Felony 5 (F5) cases has tracked close to the population growth rate, the workload associated with these cases has also seen significant growth, like F1 and F6 cases. Both F4 and F5 cases have seen a growth rate in the workload associated with cases of about double the population growth rate.

**Table C**, below shows the variability in Felony case class trends over time.



***Misdemeanor Case Type Trends.*** Misdemeanor case growth in each category of Opened, Closed and Active caseload continued at a relatively predictable rate through about FY 2006, hovering around 5 to 6 percent annual CRG. However, since then has reached a peak rate near 8 percent annually in FY 2010. Similarly, the workload associated with these cases maintained annual growth of near 12 percent through FY 2010. Like felony cases, the comparable growth of the number of these cases and the workload associated with them is evidence of increasing complexity of this portion of Public Defender caseload as a result of changes in the greater criminal justice system and law. Also, similarly, such changes increase the drain on existing staff resources. As resources are increasingly drawn to growing Felony case numbers, Felony workload and complexity of Felony cases, this competing growth of Misdemeanor cases and workload becomes increasingly challenging to effectively represent.

***Juvenile Case Type Trends.*** Since FY 2000, Juvenile cases have continued to gradually decline. However, this decline has slowed since FY2005, falling from about -4 percent annual CRG through FY 2005 to -1.6 percent annual CRG through 2010. In short, juvenile cases are stabilizing again. Meanwhile, the growth of the workload associated with Juvenile cases has continually risen - despite the rate of decline – increasing from about +2 percent growth annually through FY 2010. Like Felony and Misdemeanor cases, the comparable growth of the number of these cases and the workload associated with them is evidence of increasing complexity of this portion of Public Defender caseload as a result of changes in the greater criminal justice system and law. Also, similarly, such change increases the drain on existing staff resources. As resources are increasingly drawn to growing Felony case numbers, Felony workload and complexity of Felony cases, this competing growth of Juvenile cases and workload becomes increasingly challenging to effectively represent.

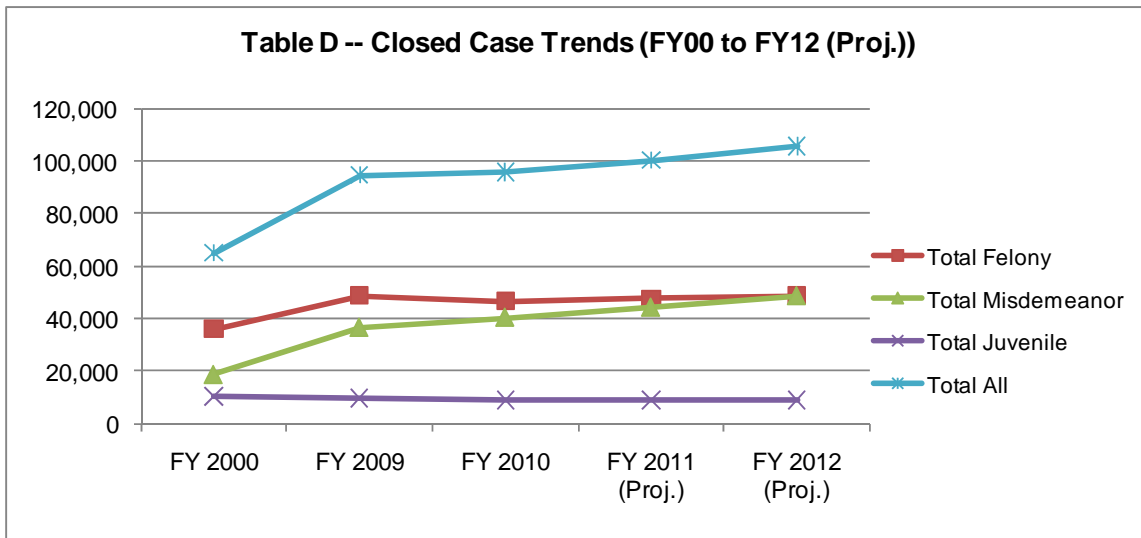




## CLOSED CASE TRENDS

**Total Closed Cases.** Closed Cases grew rapidly through FY 2005-06 and have since stabilized an annual CRG double the Colorado general population growth rate. The Closed Cases CRG over the past ten years (FY2000 to FY2010) is 4.0%. Meanwhile, workload associated with cases has maintained growth of near 4 times the population growth rate at 6.3 percent annually since 2000.

A more detailed discussion of individual classes of Closed Cases is provided at the start of this section as part of the discussion of Public Defender's portion of all State criminal cases in the courts and comparable population trends.



**Table D** above shows the variability of case types graphically.

**Table E - OSPD Trial Offices Cases Closed - FY 2000 to FY 2012 Projected**

Office of the State Public Defender	FY 2000	FY 2009	FY 2010	FY 2011 (Proj.)	FY 2012 (Proj.)	Annual Compound Rate of Growth
Total Felony	35,999	48,487	46,580	47,472	48,523	2.61%
Total Misdemeanor	18,535	36,328	40,147	43,913	48,252	8.04%
Total Juvenile	10,245	9,606	8,853	8,763	8,721	-1.45%
<b>Total All</b>	<b>64,779</b>	<b>94,421</b>	<b>95,580</b>	<b>100,148</b>	<b>105,496</b>	<b>3.97%</b>

**Table E** above details the total cases closed by case type since FY 2000 through FY 2009 and 2010 and projected forward with CRG for each type.

**Table F - OSPD Trial Office Cases Closed By Type of Case  
& Total Trial Office Cases Closed  
FY 2000 to FY 2012 Projected**

All OSPD Closed Case Ratios by Type of Case to Total OSPD Cases	FY2000	FY2010	FY2011 Proj.	FY2012 Proj.	Cumulative Growth by 2010	Cumulative Growth by 2011	Cumulative Growth by 2012	Annual Compound Rate of Growth
OSPD Total Closed Cases	64,779	95,580	100,148	105,466	47.53%	54.60%	62.88%	3.97%
OSPD Total Felony Terminated Cases & Proceedings	35,999	46,580	47,472	48,523	29.39%	31.87%	34.79%	2.61%
Ratio of OSPD Felony Cases to Total All OSPD Cases	55.57%	48.73%	47.40%	46.00%	-12.30%	-14.70%	-17.23%	-1.33%
OSPD Total MSD Terminated Cases & Proceedings	18,535	40,147	43,913	48,252	116.60%	136.92%	160.33%	8.04%
Ratio of OSPD MSD Cases to Total All OSPD Cases	28.61%	42.00%	43.85%	45.74%	46.80%	53.23%	59.85%	3.91%
OSPD Total JUV Terminated Cases & Proceedings	10,245	8,853	8,763	8,721	-13.59%	-14.47%	-14.88%	-1.45%
Ratio of OSPD JUV Cases to Total All OSPD Cases	15.82%	9.28%	8.75%	8.27%	-41.43%	-41.67%	-47.73%	-5.21%

## TRIAL AND PRETRIAL CASES

**Total Trial and Pretrial Case Trends.** Trial and pretrial closings reflect cases that are brought to a final disposition. The increase in trial and pretrial closings is the primary factor that drives attorney staffing needs, since these cases account for the greatest draw on attorney resources and time. To demonstrate, the average Trial/Pretrial case takes 119 days to bring to disposition from the day it is opened, while other proceedings generally take only a day or so. For this reason, OSPD case weights are applied to trial and pretrial cases only—excepting probation revocations beginning with FY 2010 case statistics. The weights capture the time associated with all other proceedings. Assuming that the proportionate share of Trial/Pretrial versus other proceedings caseloads remain relatively constant through time, these weights will remain accurate. As the number of other proceedings per Trial/Pretrial cases increases, it will be necessary to account for this increase in workload and resource requirements. This is the case with specialty courts and probation revocation cases. These cases require multiple other proceedings per case, which adds to the amount of time an attorney would normally dedicate to a specific case class.

The annual CRG for Trial and Pretrial Cases Closed has grown consistently at a rate of 4.5% over the past ten years (FY 2000 to FY 2010). This number outweighs the rate of total cases closed in a year (4.0 percent). The case data in **Table G** below reflects a gradual change in this case type's proportionate share of total caseload, which has been increasing at an annual rate of 0.5 percent since 2000.

**Table G - OSPD Trial Office Trial and Pre-trial Cases Closed  
& Other Proceedings Cases Closed  
FY 2000 to FY 2012 Projected**

OSPD Trial & Pretrial Caseload vs. Other Proceedings and Total	FY 2000	FY 2010	FY 2011 Proj.	FY 2012 Proj.	Cumulative Growth by 2010	Cumulative Growth by 2011	Cumulative Growth by 2012	Annual Compound Rate of Growth
All Closed OSPD Cases (Tr/Prtri+Other)	64,779	95,580	100,148	105,496	47.55%	54.60%	62.86%	3.97%
All Tr/Pretrial Cases	33,824	52,467	56,162	60,408	55.12%	66.04%	78.60%	4.49%
Tr./PreTri. Portion of Total Caseload	52.2%	54.9%	56.1%	57.3%	5.13%	7.40%	9.66%	0.50%
Other Proceedings Only	30,955	43,113	43,986	45,088	39.28%	42.10%	45.66%	3.37%
Other Procs. Portion of Total Caseload	47.8%	45.1%	43.9%	42.7%	-5.61%	-8.09%	-10.56%	-0.58%

The case data in **Table H**, which follows on the next page, provides data demonstrating that Trial/Pretrial Cases have been progressing along similar trends to overall case trends detailed earlier in this section. Specifically, Felony Trial/Pretrial cases are growing at a rate of 2.4 percent annually and greater than the population growth rate; Misdemeanor Trial/Pretrial cases are growing at a rate of 8.2 percent annually, near five times the population growth rate; Juvenile Trial/Pretrial cases are declining annually, a rate of -1.7 percent annually since 2000. Other Proceedings is the only portion of the Juvenile caseload that has exceeded its previous peak of FY 2000. Therefore, it is likely that the time it takes to represent a Juvenile Case will continue to increase, as the time dedicated to the increasing number of Other Proceedings increasingly outweighs

the current estimated case time measurements (case weights) for Juvenile Trial/Pretrial Cases.

**Table H- OSPD Trial Offices Closed Trial and Pre-trial Cases  
FY 2000 to FY 2012 Projected**

All Closed OSPD Trial/Pretrial Cases by Case Type w/ Ratio to All Trl/Prtrl	FY 2000	FY 2010	FY 2011 Proj.	FY 2012 Proj.	Cumulative Growth by 2010	Cumulative Growth by 2011	Cumulative Growth by 2012	Annual Compound Rate of Growth
OSPD Total Closed Cases	64,779	95,580	100,148	105,496	47.55%	54.60%	62.86%	3.97%
Total Trial & Pretrial Closings	33,824	52,467	56,162	60,408	55.12%	66.04%	78.60%	4.49%
Ttl Trl/Prtrl Ratio of All Cases	52.2%	54.9%	56.1%	57.3%	5.13%	7.40%	9.66%	0.50%
OSPD Felony Trl/Pretrl	16,726	21,124	21,921	22,825	26.29%	31.06%	36.46%	2.36%
OSPD Felony Trl/Pretrl ratio to All Trl/Prtrl	49.45%	40.26%	39.03%	37.78%	-18.58%	-21.07%	-23.59%	-2.03%
OSPD Misdemeanor Trl/Pretrl	12,544	27,503	30,400	33,727	119.25%	142.35%	168.87%	8.17%
OSPD Misdemeanor Trl/Pretrl Ratio to All Trl/Prtrl	37.09%	52.42%	54.13%	55.83%	41.35%	45.96%	50.55%	3.52%
OSPD Juvenile Trl/Pretrl	4,554	3,840	3,841	3,856	-15.68%	-15.66%	-15.33%	-1.69%
OSPD Juvenile Trl/Pretrl Ratio to All Trl/Prtrl	13.46%	7.32%	6.84%	6.38%	-42.12%	-45.64%	-49.20%	-5.91%

**Trial Trends.** Trial Cases have continued to grow at a rate of 4.5 percent annually since 2000. Within this case type, Trials by Jury, have increased annually at a rate of 6.6 percent, while Trials by Court have declined at a rate of 3.5 percent annually. Meanwhile, the overall Trial portion of the caseload has remained relatively stable as a portion of total Trial and Pretrial cases, consistently accounting for about 2.4 percent of total Trial/Pretrial cases. This rate of growth is slightly higher than the general trends of overall closed cases in the last 10 years, which was about 4.0 percent annually for all cases closed since 2000. This is significant to note, since Trials by Jury are the most labor intensive, time intensive and staffing intensive share of Public Defender caseload.

**Table I,** as follows, provides additional data that demonstrates the added complexity of Trial cases to general Trial/Pretrial cases on the whole. Trial cases require more than double the amount of time to process a case from the date it is opened to the date it is closed as compared to the average of the whole of Trial/Pretrial cases. It takes 269 days for trial cases, or 2.3 times greater than the 119 days for general Trial/Pretrial cases. Therefore, while Trial cases are growing at a rate equal to that of total Trial/Pretrial Case growth trend (4.5 percent) and near 3 times higher than the population growth rate, the increased complexity of these cases increases the time and workload standard required to represent them to an equivalent case growth rate of 10.4 percent annually when compared to the overall Trial/Pretrial Case growth rate.

**Table I - OSPD Trial Offices Court and Jury Trial Cases  
FY 2000 to FY 2010**

Average Number of Days Required to Try A Case	FY 2010			FY 2000		
	Trial Cases Closed	Days	Ave/Case	Trial Cases Closed	Days	Ave/Case
Felony 1	38	20,264	533	28	11,003	393
Felony 2	51	25,612	502	31	10,918	352
Felony 3	134	48,695	363	109	37,551	345
Felony 4	126	38,626	307	114	34,792	305
Felony 5	77	19,780	257	40	10,636	266
Felony 6	59	14,482	245	23	6,854	298
<b>Subtotal Felony Trials</b>	<b>485</b>	<b>167,459</b>	<b>345</b>	<b>345</b>	<b>111,754</b>	<b>324</b>
Misdemeanor 1	301	67,284	224	132	24,309	184
Misdemeanor 2/3	136	26,601	196	87	15,274	176
Traffic/PO	211	56,175	266	93	25,684	276
<b>Misdemeanor Trials</b>	<b>648</b>	<b>150,060</b>	<b>232</b>	<b>312</b>	<b>65,267</b>	<b>209</b>
Juvenile Felony	73	14,341	196	84	12,266	146
Juvenile Misdemeanor	64	10,400	163	114	13,384	117
<b>Juvenile Trials</b>	<b>137</b>	<b>24,741</b>	<b>181</b>	<b>198</b>	<b>25,650</b>	<b>130</b>
<b>Total All</b>	<b>1,270</b>	<b>342,260</b>	<b>269</b>	<b>855</b>	<b>202,671</b>	<b>237</b>
<b>Cumulative Growth in Av. # Trial Days Per Case</b>			<b>13.7%</b>			
<b>CRG in # Trial Days Per Case</b>			<b>1.3%</b>			

## APPELLATE DIVISION CASELOAD

**Overall Appellate Case Trends.** The Public Defender maintains a centralized Appellate Division that represents Felony appeals from every jurisdiction in the state. The Office's Appellate Division (The Division) will carry 1,237 cases this year (FY 2011), including 663 New cases and 574 backlog cases carried over from previous years. While the Appellate caseload only accounts for 1 percent of the total active cases the Public Defender will represent this year, including Active Trial Cases and Active Appellate Cases, the Appellate workload accounts for 8.8 percent of the entire Public Defender workload measurement and staffing requirement. While total Trial office cases and requirements are measured using Closed cases, Total Appellate cases include both new cases opened in the current year, plus backlog cases opened in prior years and carried into the current year.

Since FY 2000, **Total Appellate Cases** have grown at an annual rate of 5 percent, equal to three times the rate of population growth, and higher than the annual growth of trial case closings. This rapid rate of growth has occurred even as The Division has maintained an even greater annual growth rate in its **Appellate Case Closings** of 5.4 percent.

The primary reason for these circumstances is that The Division maintained an **Excess Case Backlog** beginning in 2000, equivalent to a case overload of 22 percent in backlog cases alone. Additionally, the Division received an overload of New Cases equivalent to 26 percent of the total cases it was able to close that year. As a result, by 2001, the Division increased its FY 2000 Excess Backlog from 49 cases (22 percent overload of Total Backlog Cases) to 144 cases in FY 2001, an Excess Backlog equal to 69 percent of the total feasible Backlog Cases the Division could carry that year effectively. This Excessive Backlog has continued to grow each year, and is expected to reach 195 cases this year. The 2011 Excess Backlog is equivalent to a case overload of 18.7 percent,

This growing excess backlog has also prevented The Division from meeting the demand of its annual **New Appellate Case** growth, which increases at a rate of 2.8 percent annually, higher than the rate of population growth. This growth of New Cases has further compounded the case overload created by existing Excess Backlog cases. The **Net Case Overload** for 2012 is estimated at 15.5 percent of total cases carried.

At this point in time, Division attorneys are carrying 39 appellate cases annually per attorney (closing 21), plus 1 potential capital punishment case division-wide. The accepted performance standard for Appellate cases per attorney is about 20 cases per year per attorney (NLADA). Even as the Division's attorneys are effectively carrying an overload of cases that is significantly higher than the accepted national standard, the excess backlog of cases has continued to grow from 49 cases in 2000 to 280 this year.

Since FY 2000, **Attorney staffing** has increased at a rate of 2.4 percent

annually, half the rate of Total Appellate Case Growth, including staff provided for special bills that are not specifically caseload related. As a result of this cycle of case growth and relatively inadequate growth of attorney resources, the growing backlog of cases has continued to grow at a rate of 4.5 percent annually, while the total backlog that the Division can represent efficiently in addition to its annual closed cases has grown at a rate of 2.9%. That leaves a compounding **Annual Appellate Case growth gap** of 1.6 percent since FY 2000.

The extent to which The Division’s attorneys cannot meet caseload demands has direct impact on the ability of the Appellate Court to maintain effective processing of its cases. In fact, at this point in time, most appellate cases involve at least one if not multiple requests for extension of the deadline to file a brief, which frequently result in cases being delayed for more than a year. This level of performance threatens costly claims of ineffective assistance of counsel.

**Table J**, as follows, provides data discussed in this section related to Appellate Division New Cases, Cases Closed, Total Caseload, Growing Backlog, and Staff growth and Requirements.

**Table J – 2016 OSPD Appellate Caseload and Staffing**

OSPD APPELLATE DIVISION														
NEW CASES, BACKLOG & STAFFING: FY 2000-2015 (Projected)														
Year	Total Active Caseload	Net Caseload Carried By Current Staff	Net Case Overload	New Cases	Closed Cases @ Current Staffing Level	Growing B/L w/out Added Staff	Excess B/L	Total Attorneys Allocated	Cases Carried per Staff Attorney	Attorneys Rqrd for New Cases	Attorneys Required Excess B/L	Ttl Attorney Rqt for Current Caseload and Excess Backlog	Ttl Att. Deficit	Ttl % Att. Deficit
2016	1,268	1,042	21.7%	763	716	553	179	34.8	38.3	45.2	2.4	47.6	(12.8)	-26.9%
2012	1,203	1,042	15.5%	682	716	488	195	34.8	38.3	40.8	(4.8)	36.0	(1.3)	-3.5%
2011	1,237	1,042	18.7%	663	716	521	248	34.8	38.3	39.8	(3.8)	36.0	(1.2)	-3.4%
2010	1,228	948	29.6%	645	654	574	289	31.8	38.7	38.8	(0.3)	38.6	(6.8)	-17.7%
2009	1,213	948	28.0%	627	654	583	292	31.8	38.7	37.9	6.4	44.3	(12.5)	-28.3%
2000	756	607	24.6%	487	387	369	49	25.0	33.1	39.0	4.5	43.5	(18.5)	-42.5%
	5.0%	4.6%	1.9%	2.8%	5.4%	4.5%	19.5%	2.4%	0.0	-0.1%	4.0%	-1.2%	-9.5%	-8.4%

## COMPLEXITY OF CASES

As previously mentioned, the two primary factors defining the nature and scope of our work are caseload and complexity. Caseload is easy to measure, as indicated in the preceding section discussions. Complexity is more difficult to quantify. Many factors compound workload conditions to make it more difficult and time consuming for attorneys to provide effective representation, including: changes in court staffing, docket organization, and processes; changes in prosecutorial practice and procedure; newly enacted criminal offenses; changes in classes of criminal offenses; changes in criminal penalties; changes in the time it takes to process a case; changes in the types, quality, complexity and quantity of evidence, history and documentation associated with a case.

***Changes in Colorado Criminal Laws.*** Changes in criminal laws over the past years have significantly increased the complexity of handling criminal cases. Changes in the laws, particularly relating to sentencing and parole, create significant adverse potential consequences for clients. Juveniles are being treated as adults. Cases once charged as misdemeanors are being filed as felonies. Felony sexual assault cases now amount to a life sentence. These changes include: a major increase in the length of sentences; changes in the state's death penalty statutes; the imposition of life sentences in an increasing number of cases; no possibility of parole in life sentences for first degree homicide convictions; aggravated and mandatory sentencing provisions that apply to a broad category of crimes; the habitual criminal statutes; special sentencing enhancements; mandatory parole; new post-parole supervision requirements; and, life sentences and lifetime supervision of sex offenders – felony sex offenses now amount to a life sentence with the discretion for release left up to the State's Parole Board and mandatory life-time registration and supervision for those offenders who are released.

***Treating Juveniles as Adults.*** There is also a trend toward treating juveniles as adults over the last decade. District Attorneys have broad discretion in direct filing of cases against juveniles as adults. The age for direct filing was lowered from 16 to 14 in 1993<sup>2</sup>. Additionally, juveniles may be transferred to adult court in some instances at 12 years of age. The scope of situations allowed for direct filing has been greatly expanded to include any felony crime of violence or any felony involving the use or threatened use of a deadly weapon. This increasing reliance on the discretion of District Attorneys in determining whether a juvenile should be treated as an adult has contributed to the increasing felony caseload handled by The Office.

Even where juveniles are still adjudicated under the juvenile code, the less forgiving trend seen in the adult criminal justice system is now flowing into the juvenile system. A juvenile record is not necessarily expunged when the juvenile becomes an adult. The right to a jury trial has been eliminated in juvenile court

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<sup>2</sup> The 2010 Legislative Session passed a law that restricted direct file age on 14 and 15 year olds to certain violent offenses.



completely. Prior juvenile convictions may now be used to aggravate sentences for subsequent crimes committed as an adult.

***Imposition of Higher Levels of Punishment.*** All these changes, adult and juvenile, impose a higher level of punishment and create serious potential implications for the future if an offender is ever charged with a subsequent crime. Because of this, defendants are less likely to enter pleas to charges they once may have been willing to plead guilty to. Charges are more vigorously and more frequently contested. Defendants are less willing to accept sentences they once would have agreed to because of the mandatory parole and post-parole supervision statutes. These statutory changes can result in a defendant serving a prison term actually longer than the original sentence. Representation of defendants has been made more difficult.

***Collateral Consequences.*** Attorneys are required to be aware of future consequences of convictions or pleas that are made today. For example, as a result of increased federal enforcement of immigration issues, our attorneys are mandated to advise each immigrant charged with a state crime of the immigration consequences of a conviction. This demands thorough consideration and knowledge of a complex web of interrelated statutes. The current statutory scheme dealing with the consequences of a criminal act has become so complicated that the statutes have become inconsistent and contradictory. The defense attorney, however, is held responsible under threat of disciplinary action for understanding the law and giving competent and accurate advice to clients.

***Other Factors.*** Several other factors may be cited to illustrate the increasing complexity of criminal law.

- ◆ ***Discovery Documentation.*** Discovery documentation volume and cost have increased dramatically in recent years. Discovery entails the police reports and other prosecution documents that the District Attorney is required to turn over to the defense. In 2010, The Office received 3.9 million pages of printed and scanned discovery, plus near 60,000 pieces of audio and video recording media containing discovery documentation – a 75 percent cumulative increase in all media types since 2008. The CRG since 2008 is 3.2 percent.
- ◆ ***Length of Trials.*** The average length of trials has cumulatively increased 13.7 percent from 2000 to 2010, an average annual increase of 1.3 percent.
- ◆ ***Length of Active Case Period.*** Increases in the time it takes to open and close a case indicate that more witnesses are being called, there is more complexity in the evidence that must be introduced or contested, and more counts to be contested.
- ◆ ***Counts.*** More counts are being filed per case and each case has gone up as a result of more aggressive prosecution. For example, in FY 2001-02, among

all case types, the average number of counts filed by the prosecution per case was 2.7. In FY 2009-10, that average climbed to near 3 counts per case. Since 2000, the average number of counts increased by 8.1 percent cumulatively.

***Death Penalty.*** Changes in the statutes dealing with the death penalty have also increased the complexity of capital litigation, an already difficult and complex area of the law. In 1995, the legislature enacted a scheme of three-judge sentencing panels to determine whether to impose the death penalty in capital cases. The statutory change removed the difficult decision of imposing the death penalty from a jury of one's peers to the new three judge panels. In 2002, the US Supreme Court held that this scheme was unconstitutional, as was suggested in Public Defender testimony when the statute was first debated. Colorado's early death penalty statute was reenacted effective October 2002.

In 2008, our office tried two death penalty cases. There were five declared death penalty cases in Colorado that year. Four of those cases were in the 18<sup>th</sup> Judicial District. The Office represented defendants in three of the death penalty cases. In 2009, The Office represented one declared death penalty case and one that was plead to a guilty verdict prior to declaration for life sentences without parole in lieu of death penalty trials. Additionally, The office is currently involved in the post-conviction cases for one case in which the client was sentenced to death and one in which the client received a life sentence. Both of these cases were tried by The Office. One case is now represented by the Alternate Defense Counsel, while the other case is still represented by the Office. In the latter case, The Office is representing the client in a request for a re-trial, as it was found that the 18<sup>th</sup> Judicial District prosecution withheld pertinent evidence and discovery for the length of the case, which was only made available to The Office after conviction. Additionally, the Alternate Defense Counsel is currently representing another post-conviction declared death penalty case, which it represented prior to conviction.

Another major change in death penalty legislation has been the unitary appeal statute. This statute mandates that all appeals and post-conviction proceedings pertaining to a death penalty case be completed within two years. This time frame includes the time required to complete the trial court transcript, the time in which a defendant has the opportunity to seek post-conviction relief, the direct appeal of the conviction and sentence, and all state level (as opposed to trial-court level) post-conviction relief. In order to shorten the appellate level time frame both the direct appeal and the post-conviction relief processes parallel each other. The limited time available to handle the defense portions of the appeals, which will be less than two years, and the parallel appeals process both directly impact the resources needed to provide effective representation to defendants.

# Hearing Questions from the Committee

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**Question 1: Please describe how the OSPD evaluates the effectiveness of its programs and services. Further, if the OSPD is currently statutorily required to administer one or more programs that are no longer effective or appropriate, please identify such programs and the associated statutory provisions.**

The Office of the State Public Defender is a single-purpose, singular program, constitutionally mandated independent agency of the Judicial Branch of Colorado State Government. As such, unlike larger departments with multiple divisions and programs, the Office is not comprised of programs that can be assessed and reprioritized in relation to one another. There are no programs that are obsolete, ineffective or appropriate for consideration of elimination.

The Office looks to its enabling statute; the Constitutions of the United States and the State of Colorado; the Colorado Revised Statutes; standards and guidelines of performance provided through the leadership of certain justice policy organizations at the state and national level; and periodic empirical studies of its caseload, workload and resource requirements to identify its performance requirements and to evaluate its effectiveness.

**OSPD Measures of Effective Performance**

In its annual budget request submission, The Office has provided a set of objectives and measures that allow it to assess the effectiveness of its annual performance. These objectives and measures are derived from the goals set by the previously mentioned sets of law and the standards set by national and state justice policy leadership organizations.

The central objective of The Office includes:

- Objective 1.1: ***Provide effective legal representation*** in near 133,000 active cases that will be represented in FY 2012.

Objective 1.1, the central objective of The Office, to “***Provide effective legal representation***” is specifically guided by standards related to caseload/workload/attorney staffing; support staff levels; management and supervision of staff; staff legal expertise; adherence to ethical practice of law; ability to recruit and retain knowledgeable and skilled staff; and the ability to simultaneously increase operational efficiency and minimize the strain of indirect administrative processes on program staff.

The Office’s stated central objective is directly supported by the following relevant objectives:

- Objective 1.2: Ensure compliance with applicable constitutional and statutory mandates, the American Bar Association standards, the

Colorado Rules of Professional Conduct and applicable court rules and case law.

- Objective 1.3: Maintain a competitive work environment to be able to attract and retain qualified staff.
- Objective 2.1: Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.
- Objective 2.2: Provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law.
- Objective 3.1: Better utilize existing resources and new technologies to more efficiently handle increasing caseload and increasingly complex cases.
- Objective 3.2: Continually evaluate and evolve key functions to ensure the Public Defender System adapts to the changing legal environment.

Based upon the standards set by leading justice policy organizations, it is clear that the most significant factor that The Office must evaluate to measure its effectiveness in achieving its core objective, “providing effective legal representation,” is the caseload and workload of attorneys. The significance of this measure is derived directly from standards established by leading justice policy organizations, including The Colorado Office of Attorney Regulation Counsel, The American Bar Association, The U.S. Department of Justice and the National Legal Aid and Defender Association. These organizations unanimously assert that defender organizations must establish and uphold limits of maximum caseload levels for attorneys in order to ensure effective assistance of counsel is being provided to indigent clients. They have stated that if an attorney’s caseload is too high, s/he cannot possibly provide assurance that they are acting professionally responsible in providing effective representation in every one of their cases, and that taking on too high of a caseload is unethical and is therefore a violation of professional rules of conduct that bind an attorney in her/his daily job performance.

Recognizing the importance of this standard, The Office periodically enlists the assistance of The Spangenberg Group (TSG), an independent consulting practice that specializes in assessments of indigent defense systems, to perform studies of The Office’s evolving caseload, workload and staffing requirements. The first study was performed in 1997, and was subsequently updated in 2002 and most recently in 2008.

## Goals Set By Specific Statutory Requirements

The statutory mandate of The Office is to “***provide legal services to indigent persons accused of crimes that are commensurate with those available to non-indigents, 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]

This mandate to provide legal services is required by the constitutions of Colorado and of the United States. Forty-six years ago in *Gideon v. Wainwright*, the United States Supreme Court held that the Sixth Amendment’s guarantee of counsel is a fundamental constitutional right, essential to a fair trial and required appointment of counsel for indigent defendants in both state and federal courts.

The Office’s enabling statute, and the Constitutions of the United States and the State of Colorado define the specific goals that the State of Colorado, acting by and through the Office of the State Public Defender, must achieve in order to be deemed “effective” and successful in delivery of this mandate. These goals are as follows:

- In Accord with both the United States and the Colorado Constitutions, the State of Colorado must ensure that all people accused of a crime in Colorado are provided a fair trial.
- The State of Colorado must ensure that the fundamental right to counsel defined by the Sixth Amendment to the United States Constitution is upheld for all indigent people accused of a crime.
- In the Colorado Revised Statutes, the people of the State of Colorado have solely tasked The Office of the State Public Defender with the unique mission to provide legal services to indigent persons accused of a crime in all cases referred to it by Colorado Courts.
- In accord with The Colorado Revised Statutes, these services must be commensurate with the same services available to non-indigent persons who can afford pay for counsel of their choosing.
- In accord with The Colorado Revised Statutes, these services must be provided in accordance with the Colorado Rules of Professional Conduct.
- In accord with The Colorado Revised Statutes, these services must be provided in accordance with the American Bar Association standards relating to the administration of criminal justice, the defense function.

Only upon accomplishment of all of the above specified goals set in law can The State of Colorado, acting by and through The Office of the State Public Defender, assert that it has successfully ensured the delivery of effective assistance of counsel in all of the indigent criminal cases it supports each year.

## **Goals Set By Standards And Guidelines of Leading Justice Organizations**

In defining the components of effective assistance of counsel, the Office looks to national and state justice-policy organizations that provide leadership in identifying the core requirements of indigent defense systems. These organizations have developed standards and goals for indigent defense systems to guide them toward success. These organizations include: The U.S. Department of Justice, The American Bar Association, The National Legal Aid and Defender Association, The Colorado Bar Association, and The Colorado Office of Attorney Regulation Counsel which ensures attorney compliance with the Colorado Rules of Professional Conduct.

Standards and goals developed by these leaders in justice policy ensure that obligations of attorneys are achieved in the context of professional guidelines and ethical considerations. These standards and goals focus on many key areas of performance, to name a few core areas, these include:

- Workload and Caseload
- Staffing
- Adequate Pay
- Relative equity of resources for the Defense in comparison to the Prosecution to ensure a balanced justice system
- Recruitment and Retention of Qualified Staff
- Employee Training and Development
- Effective Integration of Technology

### **Caseload And Staffing Standards**

Workload, caseload and staffing are perhaps the most dominant themes referenced in the standards identified by national and Colorado justice leadership organizations.

Several American Bar Association standards specifically address the ethical and professional obligations of public defenders in relation to managing the impacts of workload, caseload and staffing to ensure effective assistance of counsel. They include:

- “Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client’s interest in the speedy disposition of charges, or may lead to the breach of professional obligations.”<sup>3</sup>
- “Defense counsel’s workload is controlled to permit the rendering of quality representation.”<sup>4</sup>
- “Whenever defender organizations, individual defenders, assigned

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<sup>3</sup> American Bar Association, *Standards for Criminal Justice, Prosecution Function and Defense Function, Third Edition* (1993), Standard 4-1.3(e)

<sup>4</sup> American Bar Association, *Ten Principles of a Public Defense Delivery System*, Principle 5



counsel or contractors for services determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.”<sup>5</sup>

- “All lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently. If a lawyer's workload is such that the lawyer is unable to provide competent and diligent representation to existing or potential clients, the lawyer should not accept new clients.”<sup>6</sup> This statement comes from a recent ABA ethical opinion which goes further to require defenders with excessive caseloads who cannot obtain relief from within their own agency to seek permission from a judge to withdraw. Failure to do so could constitute a violation of the rules of professional conduct and their ethical requirements as members of the bar. In addition, the opinion requires that the head of a defender agency and any supervisors have a duty to assure that staff counsel do not have excessive caseloads. If staff counsel do have excessive caseloads and the chief public defender and/or supervisors fail to take steps to remedy this, they are also committing disciplinary violations.

The above workload-related ABA standards echo those developed by the National Legal Aid and Defender Association (NLADA). Under grant from the United States Department of Justice, the NLADA performed a two-year study through the National Study Commission and published *Guidelines for Legal Defense Systems in the United States*. In the publication, the NLADA addresses the need to identify maximum caseload levels for individual attorneys to prevent high caseload levels which would result in inadequate representation of clients (ineffective assistance of counsel). The report goes further to provide recommendations for Chief Defenders to pursue to decrease caseloads to ensure effective assistance of counsel in all cases, including declining receipt of additional cases.<sup>7</sup>

Recognizing the need to measure caseload and workload of public defenders, In

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<sup>5</sup> American Bar Association, *Standards for Criminal Justice, Providing Defense Services*, Third Edition (1992), at 68. Standard 5-5.3(b)

<sup>6</sup> American Bar Association: Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation* (May 13, 2006).

<sup>7</sup> National Legal Aid and Defender Association, *Guidelines for Legal Defense Systems in the United States*, Report of the National Study Commission on Defense Services (Washington, D.C.: NLADA, 1976), at 411.

1971, the Law Enforcement Assistance Administration, a federal agency within the United States Department of Justice, commissioned the National Advisory Commission on Criminal Justice Standards and Goals (hereinafter “NAC”). One of six reports issued by the NAC, the *Report on Courts*, published in 1973, has had substantial impact because it is the only national source that has attempted to quantify a maximum annual public defender caseload.<sup>8</sup> The NAC *Report on Courts* articulated express standards for indigent defense services with the goals of expanding resources for professional and support staff; increasing the amount of state versus county funding of indigent defense services; and representing all eligible defendants during all stages of criminal proceedings. The NAC standards also called for: developing specific criteria for initial client contact; parity of pay with attorney associates at local law firms; and numerical caseload levels that limit the number of cases an attorney may handle per year based upon case type (Felony, Misdemeanor, Juvenile, etc).<sup>9</sup>

In 1973, the ABA adopted recommendations of the NAC report and developed a set of numerical caseload standards for indigent defense attorneys based upon a Felony Equivalent System of measurement. Since the adoption of the ABA standards in 1973, there have been many significant changes in the criminal law that require a reassessment of caseload and staffing measurement methodology. The Colorado Office of Attorney Regulation Counsel has indicated that the ABA caseload standards, if anything, should be seen as a ceiling on the number of cases an attorney can handle. For these reasons, the old ABA standards are considerably out-dated and more sophisticated measurement and standards are called for.

### **OSPD Contemporary Case Study**

To address the deficiencies of the out-dated ABA standards, in 2008 The Office contracted with The Spangenberg Group<sup>10</sup> (TSG) to conduct an update to a study performed by TSG in 2002 which was itself an update to a prior study performed in 1996. The study was initiated in each year as an objective assessment of evolving attorney workload. The purpose of the study was to develop a case weighting standard that would accomplish more than a measure of the raw number of cases and would specifically take into account the severity of the cases handled by the System. It was intended to provide a statistically valid assessment tool that could be used in determining the allocation of resources, specifically attorneys, in handling a high volume of cases in different jurisdictions throughout the State. In 1996, TSG conducted an initial study that had been

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<sup>8</sup> *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., 43, 265 (Jan. 1973).

<sup>9</sup> *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., Standard 13.12 (Jan. 1973). For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post-judgment review is a separate case. *Id.* at 276.

<sup>10</sup> The Spangenberg Group (TSG) is a private consulting firm located in West Newton, Massachusetts that specializes in the study of indigent defense delivery systems. It has conducted similar studies in California, Minnesota, Tennessee, Wisconsin, King County, Washington (Seattle), New York City and two jurisdictions in Arizona (Phoenix and Tucson).

used for the next six years. The 2002 study was an update to that initial study. The 2008 study reflects the current state of attorney workload required to represent clients under today's criminal justice system's circumstances.

The ability to update weights of cases and thus consider not just the raw numbers of cases assigned to a public defender program annually, but also the overall severity of cases handled by the program as time progresses, is particularly valuable in light of numerous factors affecting indigent defense caseloads nationally and locally. Important factors affecting public defender caseload and/or workload include the following:

- changes in the economy, resulting in increased claims of indigence;
- changes in statutes, case law, or court rules in individual states that increase the types of cases or proceedings for which counsel is required;
- changes in public or office policy requiring the performance of additional tasks, e.g., preparation of sentencing reports and diversion recommendations, indigence screening, and appellate review;
- changes in prosecutorial practices such as the institution of career criminal prosecution programs or policies limiting plea bargaining in certain types of cases;
- changes in the method of case disposition or the stage at which cases are disposed, e.g., increase in trials, more frequent use of juries, fewer dismissals, less plea bargaining at early stages of the case;
- changes in the case mix for public defenders with an increased percentage of more serious felony cases, and, in some programs, many more dependency cases;
- adoption of performance standards for indigent defense lawyers;
- addition of new courts and/or judgeships;
- reductions in court processing time or other increases in court efficiency;
- and
- changes in statutes or court rules mandating procedural alterations such as speedier trials or preliminary hearings for certain classes of offenses.

Updates of the 1996 and 2002 studies were deemed necessary to provide current and objective data for management decision making and because of changes in the criminal laws and practice. Many changes to criminal law and criminal practice in Colorado have occurred since the 1996 study, including: the addition of more district court judges' courtrooms public defenders must cover; changes in sentencing laws for habitual offenders and sex crime cases; and increased burdens in what criminal defense lawyers must present if their client's mental health is at issue, to name a few.

### ***2008 Update To OSPD Case Weighted Standards***

Updated caseload standards resulting from this study are summarized in **Table K**, as follows. Table K presents an averaged figure for both urban and rural offices respectively and combined, and establishes the number of cases of a given type that an attorney can be expected to handle in a year.

These standards for attorney workload indicate the average annual caseload for the nine case types identified in the table. The standards are set forth in terms of an average annual caseload based upon a particular type of case, and not a mix of cases, using average numbers an attorney can reasonably handle in a given year and the number of cases given for the particular case type. Typically attorneys have mixed caseloads and cases are assigned without regard to the particular class of case being handled. Thus the standards are applied to the total number of cases handled by an office during a year. By applying the standards to the closed cases during the preceding year, the attorney staffing needs of that office is identified.

Broad-based averages, as provided in these standards, are appropriate for developing estimates of staffing needs. It would not be appropriate to apply them in individual cases. Among the variables that need to be considered in an individual case are the complexity of the case, the number of witnesses, the number of charges, the background of the defendant, the defendant's prior criminal history, the seriousness of the crime, and the complexity of the law.

The bottom portion of **Table K** reflects the percent change in attorney time required in 2008 as compared to the 2002 study time to represent each case of a certain class. A positive percentage means that it takes a shorter time to represent a certain case class as a result of changes that have occurred in state-wide criminal justice code and practices, and therefore, a higher percentage of cases can be represented. Therefore, fewer attorney resources are required to represent the same number of cases.

**Table K – 2008 Weighted Case Standards and Workload Changes Since 2002 Study**

<b>State Public Defender 2002 Case Weighting Study Results (Standards)</b>						
	<b>Urban Offices</b>		<b>Rural Offices</b>		<b>Average</b>	
	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>
<b>Trial &amp; Pretrial Cases by Case Class</b>						
Class 1	285.3	6.0	285.3	6.0	285.2	6.0
Class 2 & Felony Sex Assault	56.3	30.20	44.0	38.90	52.3	32.60
Class 3	15.7	109.3	17.7	96.8	16.1	105.5
Class 4-5	8.6	198.3	8.4	205.0	8.3	200.2
Class 6	4.7	361.7	4.1	417.6	4.3	386.2
Class 1 Misdemeanor & Sex Assault	10.1	169.5	6.0	287.7	8.4	196.4
Class 2-3 Misdemeanor & Traffic/Other	4.2	407.6	3.6	471.2	3.6	429.8
All Juvenile	6.7	254.9	8.3	206.3	6.5	248.7
<b>State Public Defender 2008 Case Weighting Study Results (Standards) Based Upon VALIDATED Data</b>						
	<b>Urban Offices</b>		<b>Rural Offices</b>		<b>Average</b>	
	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>
<b>Trial &amp; Pretrial Cases by Case Class</b>						
Class 1	358:23	5	471:37	4	369:10	5
Class 2 & Felony Sex Assault	51:54	33	67:03	26	53:01	32
Class 3	17:37	97	16:36	103	17:34	97
Class 4-5	11:28	149	10:47	159	11:25	150
Class 6	7:17	235	7:18	234	7:16	235
Class 1 Misdemeanor & Sex Assault	10:46	159	6:15	273	9:51	174
Class 2-3 Misdemeanor & Traffic/Other	5:54	290	3:48	449	5:24	316
All Juvenile	9:04	189	6:27	265	8:51	193
Probation Violation	1:53	907	1:31	1,123	1:50	927
<b>Net Change</b>						
	<b>Urban Offices</b>		<b>Rural Offices</b>		<b>Average</b>	
	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>	<b>Estimated Hours/Case</b>	<b>Equivalent Cases per Yr/FTE</b>
<b>Trial &amp; Pretrial Cases by Case Class</b>						
Class 1		-16.7%		-33.3%		-16.7%
Class 2 & Felony Sex Assault		9.3%		-33.2%		-1.8%
Class 3		-11.3%		6.4%		-8.1%
Class 4-5		-24.9%		-22.4%		-25.1%
Class 6		-35.0%		-43.9%		-39.2%
Class 1 Misdemeanor & Sex Assault		-6.2%		-5.1%		-11.4%
Class 2-3 Misdemeanor & Traffic/Other		-28.9%		-4.7%		-26.5%
All Juvenile		-25.9%		28.5%		-22.4%
Probation Violations		-39.5%		-25.1%		-38.2%

**Question 2: Please identify the OSPD's three most effective programs or services and the three least effective programs, and explain why you identified them as such. How do your most effective programs further the OSPD's goals? What recommendations would you make to increase the effectiveness of the three least effective programs?**

Since the Office is a singular program, independent agency, we are not able to identify comparative performance levels of multiple programs. In lieu of this approach, we provide a review of performance levels for specific program requirements that are critical to successful accomplishment of The Office's core objective, "providing effective legal representation." These key performance areas are as follows:

- Operational Efficiency
- Attorney Recruitment and Development
- Caseload and Staffing
- Pay Parity
- Equity of Defense and Prosecutorial Resources

**Operational Efficiency**

Unlike many of its State Government counterparts, The Office is not a multiple program-based department or agency. Rather, The Office is itself a unilateral central mission-specific program. Therefore, The Office is unable to address the State's difficult fiscal circumstances by cutting discretionary program areas in the interest of cost reduction without decreasing the level of effective performance of The Office's mission.

However, the Colorado Public Defender system is a model of efficiency when compared to other state public defender systems across the country. This is primarily due to funding being centrally appropriated and managed through a single state agency.

In other states (the majority) that have decentralized county-based or judicial district-based public defender systems, public defenders are paid on a contract basis. While costs can be managed by fixed hourly or per-case rates under this system, the lack of uniform oversight, management and evaluation suffers from a loss of insight as to whether the client is receiving uniformly good representation for the funding paid out. For example, an attorney paid a per-case rate equivalent for a certain (average) number of hours, may not commit the expected time toward the case. Anecdotally, a cost comparison can be made using the costs associated with the Colorado Alternate Defense Counsel, a contract-based system with similarities to a devolved county-based system.

**Private Counsel Comparison.** In FY 2008-09, the Alternate Defense Counsel system completed 12,474 cases at a total cost of \$23,176,960<sup>11</sup> (according to a Joint Budget Committee FY 2010-11 Staff Figure Setting Document). This equates to an average per-case cost of \$1,858. In FY 2008-09, the State Public Defender closed 94,421 cases while expending \$50,361,355, for an overall per-case cost of \$533.

If Colorado were a county-based or judicial district-based system in which public defense attorneys were paid similarly to Alternate Defense Counsel, the cost to Colorado citizens (in this case, at the local government level) would have been (including all publicly funded defense services) approximately \$175.4 million, which is nearly three and one-half times the actual cost of services provided at the state level by the Public Defender for FY 2008-09.

### **Attorney Recruitment and Development**

The Office maintains a rigorous process for recruitment and development of its attorneys. This process is renowned among law schools and law school candidates and is seen as an attractive incentive for employment with The Office as well as an effective means of ensuring our attorneys all over the state are equally prepared to effectively represent clients.

Attorneys go through an extensive screening and interview process before they are deemed eligible for hire as entry level attorneys. In many cases, attorney candidates have participated in either paid or unpaid internships in the summer before they take the bar exam.

Once hired, all new attorneys must undergo a six-month probationary period where they are evaluated further to determine their longevity with The Office. At the end of the first year of employment, The Office provides a boot camp that puts new attorneys through the rigors of court room fundamentals. Attorneys who do not pass boot camp are let go. Ultimately, attorneys only proceed to more complex trial work incrementally. It takes up to 5 ½ years for an attorney to be deemed an intermediate level, fully independent performing attorney, skilled in all levels of criminal litigation: juvenile, county, and felony cases, with the exception of the highest level violent crimes. Throughout their career with The Office, attorneys receive continual training and mentoring in advanced litigation techniques.

### **Caseload And Staffing**

Regardless of the method used to assess attorney staffing needs, it is clear that The Office maintains a serious and growing deficit of attorneys and other program-specific support staff. This shortage exists under its own staffing and resource allocation model, under the national American Bar Association standards, and even simply by calculating the relative ratio of caseload growth to

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<sup>11</sup> JBC Figure Setting Document, February 11, 2010, Pages 23 (Expenditures) and 120 (Total Cases)

the FTE resource growth during the last decade. In the face of continual case growth, difficult government-wide fiscal circumstances that necessarily limit available resources, and high rates of attrition among all classes of employees, The Office exceeds maximum caseload standards and maintains an increasingly critical inability to provide reasonable and adequate representation to its clients.

By the end of FY 2010-11, The Office will have 358.9 appropriated trial attorneys, one of which is included in its Grants appropriation. Under any of these formulas The Office is understaffed. The primary reason for this attorney shortage is caseload growth.

Caseload growth over the past ten years has placed The Office in a difficult situation. We are exceeding not only our internal case standards but national standards relating to the number of cases an attorney can effectively handle without impairing quality or breaching professional obligations.

There are serious implications to overly high caseloads per attorney. The attorney may be subject to disciplinary action for accepting more cases than can be competently handled. Equally or more serious, overly high caseloads might result in ineffective representation for Public Defender clients. If ineffective representation is found, that case could result in a new trial being ordered. If this happens, the courts would be inundated with similar cases. As already mentioned, the ABA and other national standards suggest that at some point The Office needs to consider declining appointment to cases if caseloads become excessive.

**Table L** (Page 49) details staffing requirements based upon cases closed each year. It shows that on average, projected for the current fiscal year, The Office maintains a 15.4 percent deficit of the trial attorneys needed to adequately support cases that will be closed this year. The total 2011 case ratio for all offices would be only 236 cases closed to 1 attorney if The Office were at full staffing levels. However, the current average state-wide case ratio (279 : 1) demonstrates that The Office is stretched far beyond that established maximum case level by a significant factor, with the average attorney taking on 18.2 percent (43) more closed cases this year than is ethically or professionally responsible.



**Table L – Staffing Requirements Based on Closed Cases FY06 to FY15**

Office of the State Public Defender Staffing and Closed Caseload Summary										
	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
							Request			
	Actual	Actual	Actual	Actual	Actual	(Est.)	(Est.)	(Est.)	(Est.)	(Est.)
<b>Total Closed Cases<sup>a</sup></b>	<b>86,719</b>	<b>88,047</b>	<b>90,969</b>	<b>94,421</b>	<b>95,580</b>	<b>100,148</b>	<b>105,496</b>	<b>111,740</b>	<b>119,021</b>	<b>127,513</b>
<b>Trial Attorney Appropriation</b>	<b>218.0</b>	<b>236.0</b>	<b>289.0</b>	<b>298.0</b>	<b>336.2</b>	<b>358.9</b>	<b>377.45</b>	<b>377.5</b>	<b>377.5</b>	<b>377.5</b>
<i>New Attorney Positions Received (included above)</i>	<i>9.0</i>	<i>18.0</i>	<i>53.0</i>	<i>9.0</i>	<i>38.2</i>	<i>22.7</i>	<i>18.6</i>			
<b>Cases / Trial Attorney<sup>b</sup></b> (row 1 / row 2)	<b>397.8</b>	<b>373.1</b>	<b>314.8</b>	<b>316.8</b>	<b>284.3</b>	<b>279.1</b>	<b>279.5</b>	<b>296.0</b>	<b>315.3</b>	<b>337.8</b>
Trial Attorney Need for Full Staffing Based on Caseload Model	313.6	319.7	317.9	384.2	398.7	424.2	453.4	486.8	525.2	570.6
<i>Cases / Trial Attorney with Full Staffing</i> (row 1 / row 5)	<i>277</i>	<i>275</i>	<i>286</i>	<i>246</i>	<i>240</i>	<i>236</i>	<i>233</i>	<i>230</i>	<i>227</i>	<i>223</i>
<b>Trial Attorney Deficit<sup>c</sup></b> (row 2 - row 5)	<b>(95.6)</b>	<b>(83.7)</b>	<b>(28.9)</b>	<b>(86.2)</b>	<b>(62.6)</b>	<b>(65.4)</b>	<b>(76.0)</b>	<b>(109.4)</b>	<b>(147.8)</b>	<b>(193.2)</b>
<b>% Trial Attorney Deficit</b> (row 7 / row 5)	<b>-30.5%</b>	<b>-26.2%</b>	<b>-9.1%</b>	<b>-22.4%</b>	<b>-15.7%</b>	<b>-15.4%</b>	<b>-16.8%</b>	<b>-22.5%</b>	<b>-28.1%</b>	<b>-33.9%</b>
% of Trial Attorney Need Met (row 2 / row 4)	69.5%	73.8%	90.9%	77.6%	84.3%	84.6%	83.2%	77.5%	71.9%	66.1%
General Attorney staffing Level	68.3%	71.4%	87.2%	77.0%	84.8%	85.5%	84.4%	78.6%	72.9%	67.2%
Appellate Attorney Appropriation	29.0	29.0	32.0	32.0	34.8	34.8	35.75	35.75	35.75	35.75
Appellate Attorney Total Need Estimate	48.2	51.7	50.3	44.3	38.6	36.0	36.0	38.8	41.6	44.5
Support Staff Appropriation	140.9	158.9	196.0	204.1	207.4	224.3	239.1	239.1	239.1	239.1
<i>Support Staff Need for Full Staffing Based on Caseload Model</i> (row 4+row9) * .92 <sup>d</sup>	<i>273.1</i>	<i>280.1</i>	<i>277.8</i>	<i>321.7</i>	<i>328.1</i>	<i>344.8</i>	<i>366.0</i>	<i>392.4</i>	<i>422.4</i>	<i>457.5</i>
Total Appropriation	387.9	423.9	517.0	534.1	578.3	618	652.3	652.3	652.3	652.3
Total Staffing Requirement	634.9	651.5	646.0	750.2	765.4	805.0	855.4	918.0	989.2	1,072.6
Total Staffing Need	247.0	227.6	129.0	216.1	187.1	187.1	203.1	265.7	336.9	420.3
Percent of Staffing Deficit	38.9%	34.9%	20.0%	28.8%	24.4%	23.2%	23.7%	28.9%	34.1%	39.2%
Percent Appropriated Staff	61.1%	65.1%	80.0%	71.2%	75.6%	76.8%	76.3%	71.1%	65.9%	60.8%

<sup>a</sup> Trial and pretrial closings are the most labor intensive for the PDO. They are cases brought to a final disposition and will comprise an estimated 54.6 percent of total caseload in FY 2011. The remaining closings include probation revocations, original proceedings, etc.

<sup>b</sup> This figure is intended to give a general sense of average trial attorney caseloads. In practice, the caseload carried by an attorney is affected by the types of cases of which it is comprised. An attorney with all misdemeanor cases can carry more cases than an attorney carrying mostly Felony cases.

<sup>c</sup> The attorney deficit does not represent entire staffing need, as caseload increases also drive a need for additional investigators, secretaries, and administrative staff. Deficit shown in FY10 does not account for 39.8 appropriated attorney FTE that were not hired until June 1, 2010 to bring agency expenditures in line with reduced State revenues.

<sup>d</sup> The Public Defender's Weight Caseload Model indicates that 0.92 support staff are needed per attorney. These support staff include investigators, trial secretaries, and administrative staff. Without sufficient support staff, attorneys spend approximately 64 percent of their time fulfilling these requirements, in lieu of attending their own case obligations. This ration has been decreased and is reflected at .84 support staff level. As presented in the FY 2009-10 budget submission, full staffing levels for support staff will not be addressed until FY 2015-16 to FY 2016-17.

## Attorney Pay Parity

The Office recently completed an attorney salary survey to assess the parity of the State's compensation of public defenders as of July 2010 compared to corresponding public (government) attorneys employed across the state.

The survey was independently performed by Fox Lawson & Associates (FLA), a private compensation practices consulting firm. FLA surveyed 34 participant organizations, including: the Department of Law, District Attorney offices, and city and county governments.

The findings of the survey demonstrate that, overall, the Public Defender's salary ranges and actual base salaries are not within a competitive position with the market. Public defenders are paid 9.5 percent below what the market currently pays public attorneys in corresponding positions within the participant organizations -- 12 percent below market when accounting for the recent pay reduction of 2.5 percent to cover a portion of the state's contribution to PERA. To be absolutely clear, the survey does not include data from non-government or private attorney offices.

This disparity of pay practices further compounds the difficult task The Office must tackle to effectively deliver its mission in the face of already high deficits of staff, irresponsible case overload, an imbalance in resources that favors the prosecution in the courts, and high staff attrition levels that drain the agency of expertise. While pay is not the only cause of attrition, it is clear that the increases in staff alone in recent years is not sufficient to retain qualified, effective staff after The Office has completed its grooming of these highly skilled trial and appellate attorneys.

The following specific findings were drawn from FLA's analysis of the Public Defender's pay information and survey results, in comparison to the Overall Market.

- The Public Defender's overall average actual base salaries and salary range minimums, midpoints and maximums in relation to the Overall Market are shown in the table below. The percentage differences represent all Attorney benchmarks combined, in terms of the Public Defender. A positive figure means that the Public Defender is above the market by this amount and a negative figure means that the Public Defender is below the market by this amount.

<b>Salary Comparison</b>	<b>Overall Market Average</b>
<b>Actual Salaries</b>	-9.5%*
<b>Salary Range Minimums</b>	-11.6%
<b>Salary Range Midpoints</b>	-15.0%
<b>Salary Range Maximums</b>	-17.0%

- The following table shows a comparison of Public Defender actual salaries for each benchmark attorney position as compared to the same positions in the overall market. The pay disparity by benchmark varies from 1 percent below market for the smallest class of public defender staff attorneys (non-supervisory, career-level, Senior Attorneys) to as much as 25.3 percent for Managing Attorneys, the equivalent position of elected district attorneys.

<b>Bench No.</b>	<b>Benchmark Title</b>	<b>Public Defender Avg. Actual</b>	<b>Overall Market Avg Actual</b>	<b>% Diff.</b>
<b>1</b>	Deputy PD Managing Attorney/Office Head	\$110,052	\$137,864	-25.3%
<b>2</b>	Deputy PD Supervising Attorney	\$103,339	\$108,530	-5.0%
<b>3</b>	Deputy PD Senior Attorney	\$92,563	\$93,459	-1.0%
<b>4</b>	Deputy PD Intermediate Staff Attorney	\$68,477	\$73,413	-7.2%
<b>5</b>	Deputy PD Entry-level Staff Attorney	\$55,135	\$57,065	-3.5%
<b>Average</b>				<b>-9.5%</b>

- Based on the above comparisons, overall, the Public Defender's current salary ranges and actual salaries are not within a competitive position with current market averages. As already described herein, the actual salary market difference is more negative by a compounding 2.5% than the -9.5% overall average actual salary difference identified above. Likewise, it is 2.5% more to the negative for each actual salary market difference identified above at the specific benchmark level (the -1% through -25.3%). This reflects the current practice in which the State requires employees to contribute an additional 2.5% of gross salary to their retirement in lieu of a previously 2.5% higher contribution made by the state.

The results of this year's market survey are to provide recommendations for the next fiscal year 2011-2012 adjustments to the Public Defender's salaries and salary ranges, and that the data comparisons provide a current snapshot in time. They do not reflect further market adjustments anticipated over the course of the next year, to be additionally implemented after July 1, 2010. Under normal pay cycles, pay ranges are updated to the time in which those ranges will be effective, in the case of the Public Defender's Office, new pay ranges would be further developed for July 1, 2011 to incorporate additional changes proposed in this year's Governor's compensation survey. However, current market data obtained during this survey indicates that very small market movement will occur in 2011.

## **Equity of Defense and Prosecutorial Resources**

In its 2008 Case Weighting Study report, TSG explained that an additional threat to effective assistance of counsel provided by public defender offices is an imbalance in criminal justice resources favoring the prosecution. This discussion measures the effectiveness of the State's ability to equitably fund the OSPD in relation to the relative resources provided to the Prosecution through a combination of federal, state, and county resources.

**Table M**, page 53, compares funding available statewide to district level prosecutorial efforts and Executive Branch support of prosecutorial efforts in criminal justice cases as compared to funding available to the State Public Defender. While The Office largely has a single stream of funding – State General Fund – the district attorney offices have both county funding and State General Fund dollars. In addition, district attorney offices have access to federal grant funding. Complementing the district attorney funding are \$144,000 available to district attorneys to prosecute capital cases in prison; and, \$2.2 million appropriated in the Judicial Department to offset mandated costs of district attorneys offices.

When solely district attorney funding (state, local and available grant funding) is proportionately adjusted to account for only the Public Defender's reduced share of caseload, funding and staffing for DA's still exceeded that of the Public Defender's Office by approximately \$31.6 million and 395.3 FTE.

Furthermore, prosecutorial efforts are further enhanced, since they also enjoy direct support from Executive Branch agencies such as the Department of Public Safety (CBI) and Department of Law (Criminal Division). In 2008-09, total prosecution resources including these entities exceeded OSPD resources by about \$122.2 million including state, local and federal funds. When state agency prosecutorial support funding and FTE is adjusted to The Office's share of caseload and added to the district attorney funding noted above, funding and staffing all together still exceeds that available to the Public Defender's Office by \$74.7 million and 757.3 FTE.

**Table M – Comparison of Criminal Justice Funding vs. OSPD FY 2008-09 Funding**

<b>State Agency/Dept Support of County Prosecution of Criminal Caseload</b>					
	CBI	30,810,080	216.5	-	30,810,080
	Dept of Law (criminal)	12,280,757	97.2	-	12,280,757
<b>Total Prosecution and State Crim. Investigation incl. DAs</b>		<b>164,205,689</b>	<b>1,782.4</b>	<b>8,402,625</b>	<b>172,608,314</b>
Proportionate case share adjustment		118,989,630	1,291.6	6,088,859	125,078,488
<b>FY 2009 OSPD Budget</b>		<b>50,361,354</b>	<b>534.3</b>	<b>-</b>	<b>50,361,354</b>
<b>Proportionate Deficit of PD Resources</b>		<b>(68,628,276)</b>	<b>(757.3)</b>	<b>(6,088,859)</b>	<b>(74,717,134)</b>
<b>% Deficit</b>		<b>-57.7%</b>	<b>-58.6%</b>	<b>-100.0%</b>	<b>-59.7%</b>

**Comparison of Colorado DA Funding and Staffing and OSPD**

District	Name	2009 Budget	FTE	Federal Grants*	Total Funds
1st	Jefferson	17,751,981	168.2	552,433	18,304,414
2nd	Denver	17,830,300	200.2	2,772,706	20,603,006
3rd	Las Animas	523,875	12.5	87,200	611,075
4th	El Paso	10,100,472	200.0	881,679	10,982,151
5th	Summit	2,661,741	32.6	388,276	3,050,017
6th	La Plata	1,662,270	25.1	634,887	2,297,157
7th	Montrose	1,460,397	39.4	270,597	1,730,994
8th	Larimer	6,371,440	79.5	255,565	6,627,005
9th	Garfield	3,126,771	30.0	33,890	3,160,661
10th	Pueblo	3,152,194	63.0	469,703	3,621,897
11th	Park	1,412,866	23.0	120,899	1,533,765
12th	Alamosa	602,199	16.7	74,118	676,317
13th	Morgan	1,413,397	27.0	411,025	1,824,422
14th	Routt	1,579,731	20.0	125,688	1,705,419
15th	Prowers	361,221	5.6	14,000	375,221
16th	Otero	616,193	8.0	124,877	741,070
17th	Adams	15,801,087	151.0	98,045	15,899,132
18th	Arapahoe	19,011,268	190.0	257,961	19,269,229
19th	Weld	4,624,410	58.4	103,732	4,728,142
20th	Boulder	4,448,251	63.0	-	4,448,251
21st	Mesa	3,657,391	46.5	348,700	4,006,091
22nd	Montezuma	575,237	9.0	46,594	621,831
DOC payments to DAs for capital cases in prisons		144,108	-	-	144,108
Judicial Department Mandated Cost Reimbursements to		2,226,052	-	-	2,226,052
<b>Total DA Funds</b>		<b>121,114,852</b>	<b>1,468.7</b>	<b>8,072,575</b>	<b>129,187,427</b>
1.58 DAs to 1.0 PD adjust for prop. case share		76,654,970	929.6	5,109,225	81,764,194
<b>FY 2009 OSPD Budget</b>		<b>50,361,354</b>	<b>534.3</b>	<b>-</b>	<b>50,361,354</b>
<b>Proportionate Deficit of PD Resources</b>		<b>(26,293,616)</b>	<b>(395.3)</b>	<b>(5,109,225)</b>	<b>(31,402,840)</b>
<b>% Deficit</b>		<b>-34.3%</b>	<b>-42.5%</b>	<b>-100.0%</b>	<b>-38.4%</b>

The most recent comparative staffing data for prosecutors as compared to public defenders is shown in **Table N** below as of County Fiscal Year 2009.

**Table N – 2009 OSPD Attorney Staffing Compared to Prosecution**

PD Trial Offices	Judicial District(s)	PD Atty's	DA Atty's	PD Shortfall
Alamosa	12th DA	4	6	-2
Arapahoe/Douglas	18th DA	38	67	-30
Boulder	20th DA	13	27	-14
Brighton	17th DA	30	60	-30
Colorado Springs	4th DA	45	57	-12
Denver	2nd DA	49	78	-29
Dillon	5th DA	4	13	-9
Durango	22nd/6th DA	6	13	-7
Ft. Collins	8th DA	12	27	-15
Glenwood Springs	9th DA	4	14	-10
Golden	1st DA	24	62	-38
Grand Junction	21st DA	11	18	-7
Greeley	19th DA	18	24	-6
La Junta	15th, 16th DA	5	11	-6
Montrose	7th DA	5	11	-6
Pueblo	10th DA	20	21	-1
Salida	11th DA	5	9	-4
Steamboat Springs	14th DA	4	10	-6
Sterling	13th DA	3	12	-9
Trinidad	3rd DA	3	4	-1
<b>Total Resources PD / DA's</b>		<b>302.1</b>	<b>544.1</b>	<b>-242</b>
Ratio of DA to PD Attorneys		<b>1.8</b>		

By June 2009, the State Public Defender represented 58% of all criminal cases terminated in the Court. In 2009, there were approximately 544<sup>12</sup> prosecutors (District Attorneys) supporting the Court's total criminal caseload of over 162 thousand terminated cases excluding traffic cases. **Assuming that the 544 prosecutors handled all 162,623 Court terminated criminal cases, the 2009 caseload per prosecutor was 299 to 1. In the same year, 300 public defenders carried an average 313 cases.**

If Public Defender trial office attorneys carried equivalent caseload levels that year to that of prosecutors (299:1), the total number of public defenders would have needed to be 316 (94,421 closed PD cases/299 cases per attorney = 316 attorneys). This relative staffing deficit represents an equivalent caseload resource imbalance favoring the prosecution that year.

<sup>12</sup> This is an estimate as many District Attorney offices would not provide requested fiscal or employee information to the Public Defender for survey purposes.

No matter how you compare staffing resources and caseload levels, the prosecution maintains a relative resource advantage over the Public Defender in the criminal justice courts. As the number of prosecutors increases and the Public Defender's proportionate share of the total criminal caseload increases without substantial increases in Public Defender staff resources, this imbalance will continue to grow.

## **RECOMMENDATIONS**

### **Requirement To Achieve 100% Staffing**

In order to succeed at achieving its constitutional mandate of the people to provide effective legal assistance for indigent people accused of a crime in Colorado that is commensurate with that afforded non-indigents, the State must continue to make progress in closing the gap between caseload staffing and resource requirements and OSPD actual funding levels. Doing so will defray the cost associated with costly appeals and contracted attorney cases. Furthermore, doing so will simultaneously correct the disparity of resources currently provided to the prosecution and uphold the right to a fair trial. Not continuing to fill these resource gaps will only worsen the current, growing problems of insufficient funding and hasten the need to cap Public Defender caseloads at increased cost to the state.

As the rate of growth that has occurred in the last nine years continues, it is expected that the State's indigent criminal defense caseload will be near 172 thousand active cases by the year 2016, an increase of approximately 46,000 over the next 5 years, equivalent to 36.5 percent over this year's projected caseload. In order to meet 100 percent of the minimum caseload standards for representation of closed cases in FY 2011-12<sup>13</sup>, and to ensure the Public Defender is effectively serving its clients, the Public Defender would need to acquire (above its FY 2011-12 base request of 652.3 FTE) an additional 203.3 FTE, including 76.2 trial and appellate office attorneys plus necessary support staff at a first-year cost of about 12.4 million dollars, equivalent to a monetary resource deficit of 20 percent over the FY 2012 full continuation base budget requirement.

As the rate of growth that has occurred in the last eight years continues, it is expected that the State's indigent criminal defense Closed caseload will reach 105,496 by FY 2011-12. The total FTE requirement to reach 100 percent staffing—based on current FY 2010-12 closed case statistics—is 855.5 FTE. This would consist of:

- 489.4 Attorney FTE
- 186.1 Investigator FTE

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<sup>13</sup> See page 64, Public Defender Caseload and Staffing Standards, and page 65 Comparable National and State Caseload and Staffing Standards.

- 135.4 Secretary FTE
- 44.6 State Admin Staff (includes existing 9.0 Executive / Senior Management FTE)

**Table O-Total Staffing Needed for FY12 as adjusted by Current / Request Year Staff Allocations**

<u>Staffing Needs</u>	<u>Total Needs</u>	<u>FY 11 Staff Allocation</u>	<u>Net Need FY11</u>	<u>FY 12 Request</u>	<u>Net Need FY12</u>
Total Attorney Need FY12	489.4	393.60	95.80	19.60	76.20
Total Investigators Required	186.1	106.00	80.10	6.50	73.60
Total Secretary Need	135.4	86.35	49.10	5.20	43.90
Central Office Support Staff Req.	44.6	31.95	12.70	3.10	9.60
<b>Grand Total</b>	<b>855.5</b>	<b>617.90</b>	<b>237.70</b>	<b>34.40</b>	<b>203.30</b>

**Table P - Current Total Resource Requirement for FY 2011-12 To Meet 100% of Minimum Case Staffing Standards**

<b>Funding for 100% Staffing Rqmts</b>	No. of Mos.	12	<b>FY 2011-12 Funding (Final Installment of H.B. 07-1054)</b>			
	<u>Total FTE</u>	<u>Long Bill FTE</u>	<u>Per Unit Amt</u>	<u>FY12 Jun-Dec</u>	<u>FY12 Jan-May</u>	<u>Total</u>
Staffing						
Attorneys	76.2	76.2	[2788,4083,4457]	1,358,265	1,612,621	2,970,886
Investigators/Paralegals	73.6	73.6	3,048	1,345,997	1,121,664	2,467,661
Secretaries	43.9	43.9	1,901	500,723	417,270	917,993
Administrative Support	9.6	9.6	4,937	284,371	236,976	521,347
Total Staffing / Subtotal Gross Salary	203.3	203.3		3,489,356	3,388,530	6,877,887
PERA @ 7.65% (FY12), 10.15% (FY13)				266,936	259,223	526,159
FICA @ 1.45 %		<u>FTE</u>		50,596	49,134	99,730
Total Staffing Request		<b>203.3</b>	<u>Rate</u>	3,806,888	3,696,887	<b>7,503,776</b>
HLD @ FY11 ave \$6,879.45 pp rate (per August 2010 DPA rate)	Positions	<b>205</b>	6,882			<b>1,410,828</b>
STD @ .17%				5,932	5,761	<b>11,693</b>
AED @ 2.6, 3.0, 3.4 %				90,723	101,656	<b>192,379</b>
SAED @ 2.0, 2.5, 3.0 %		<u>FTE</u>		69,787	84,713	<b>154,500</b>
Subtotal Personal Services		<b>203.3</b>				<b>9,273,176</b>
Operating			<u>Rates</u>			
Operating pp \$500 Genl Op, \$450 Tele.	FTE	203.3	950			<b>193,135</b>
FTE	FTE	203.3	843			<b>171,332</b>
Capital Outlay \$4,703 pp per OSPB Budget Instructions	Positions	205.0	4,703			<b>964,115</b>
Rent p/te ave cost per sq foot	Positions	205.0	8,742			<b>1,792,192</b>
Subtotal Operating						<b>3,120,774</b>
	<u>Total FTE</u>	<u>Long Bill FTE</u>				
<b>Total Decision Item Amount</b>	<b>203.3</b>	<b>203.3</b>				<b>12,393,950</b>

The table above provides the first year estimate of salary and operating, using current common policy metrics, to achieve 100% of staffing. Note that this amount would be **in addition to** the Office's fully funded FY 2011-12 Base Continuation Request of 652.3 FTE and \$61.3 million, which includes the final



installment of funding and resources for H.B. 1054. If funded as detailed herein, 100% funding would provide for 855.5 FTE and \$73.7 million (General Fund).

The only caveat to this request is that the out-year request for the final installment of H.B. 07-1054 and this request combined would be an approximate additional \$970 thousand (General Fund) as further adjusted by base common policies (HLD, PERA, STD, Salary Survey / Merit).

**Requirement To Achieve 100% Attorney Pay Parity**

The State needs to fund salary parity increases for Public Defenders. Doing so will provide the OSPD with fair ability to compete for the recruitment and retention of qualified staff, thereby ensuring skilled attorneys will be available to represent clients and successfully provide effective legal assistance in all cases. Not doing so will continue to debilitate the historical knowledge and overall skill-level of on-board attorneys, and will result in increased levels of attrition due to burnout, increased claims of ineffective assistance of counsel, and costly appeals.

In total, to fully address the current pay disparity carried by Public Defender attorneys, the Office would require \$3.7 million as detailed below.

<b><u>Total Salary Increase costs</u></b>			
<b>3,289,567</b>	<b>Net Salary Increase</b>		
<b>244,536</b>	<b>PERA</b>		
<b>45,232</b>	<b>FICA</b>		
<b>5,484</b>	<b>STD</b>		
<b>83,091</b>	<b>AED</b>		
<b>63,927</b>	<b>SAED</b>		
<b>3,731,837</b>	<b>GROSS Salary Increase</b>		

This increase would address pay inconsistencies in two ways:

First, it would correctly classify 170 attorneys to the appropriate benchmark position level that is commensurate with their years of experience and level of responsibility. These 170 attorneys represent individuals who have progressed to higher skill and responsibility levels required of their job, but who are frozen at lower skill and experience, entry-level attorney benchmark grades. These attorneys are the lowest paid attorneys in the agency and have achieved the same level of expertise and responsibility as those at the grade they will be promoted to (as well as their peers in similar positions in the broader market).

The second aspect of the increase is to then provide salary survey increases to

all correctly classified attorneys to meet the market average salary adjustment associated with their benchmark position level.

If the attorney pay parity were addressed and funded as detailed herein, 100% funding of the State Public Defender's current resource requirement would include for 855.5 FTE and \$77.4 million (General Fund).

**Question 3: For the three most effective and the three least effective programs identified above, please provide the following information:**

**a. A statement listing any other state, federal, or local agencies that administer similar or cooperating programs, and outline the interaction among such agencies for each program.**

There are no other publicly funded programs that provide the same services as the OSPD. The only comparable services are provided through the private bar. Clients that are eligible for indigent criminal defense representation may be able to otherwise acquire their own resources to pay for private representation. Additionally, clients sometimes represent themselves pro se.

The Alternate Defense Counsel, an independent state agency within the Judicial Branch, also represents indigent clients in cases where there is an ethical conflict of interest with the Public Defender. In these cases, the ADC contracts with private bar attorneys to provide client representation.

Outside of professional organizations and the private bar participating in our annual attorney training seminars, Public Defender attorneys have no formal interaction or cooperation with the private bar. Similarly, federal indigent legal defense services are only provided for indigent clients facing federal charges, which The Office does not represent, so there is no cooperation or interaction among us.

**b. A statement of the statutory authority for these programs and a description of the need for these programs;**

The Office is the sole entity statutorily enabled in Colorado to provide indigent defense services in (non-federal) criminal cases in Colorado, excepting conflict cases referred to the ADC. There are no alternative state or federal programs that clients eligible for indigent criminal defense representation can use. The State Public Defender fulfills the State's Constitutional mandate with an unparalleled level of efficiency and expertise that benefits the State fiscally and effectively upholds core basic tenants of democracy: the right to a fair trial and a balanced justice system.

## Statutory And Other Authority

Colo. Rev. Stat. § 21-1-101 *et seq.*, (1998); U.S. CONST. Amend. VI; COLO. CONST. Art. II, § 16; ABA STANDARDS FOR CRIMINAL JUSTICE, *The Defense Function* (3d ed. 1993); Colo. Rules of Professional Conduct (Colo. RPC); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Alabama v. Shelton*, 535 U.S. 654 (2002); *Rothgery v. Gillespie County*, 554 U.S. \_\_\_\_ (6/23/08); *Nikander v. District Court*, 711 P.2d 1260 (Colo. 1986); *Allen v. People*, 157 Colo. 582, 404 P.2d 266 (1965).

The Office of the State Public Defender is established pursuant to C.R.S. § 21-1-101 *et seq.* as an independent entity within the Judicial Branch of Colorado State Government. By statute, The Office is required to “conduct the office in accordance with the Colorado Code of Professional Conduct<sup>14</sup> and with the American Bar Association standards relating to the administration of criminal justice, the defense function.” C.R.S. §21-1-101(1).

### **c. A description of the activities which are intended to accomplish each objective of the programs, as well as, quantified measures of effectiveness and efficiency of performance of such activities;**

The following tables outline the relevant activities and performance objectives of The Office and provide both targeted performance levels and measures of actual accomplishment for those objectives. These tables are taken directly from The Office’s annual budget submission document.

## OBJECTIVES

Priority	Objective
1.1	Provide effective legal representation in near 133,000 active cases that will be represented in FY 2012.
1.2	Ensure compliance with applicable constitutional and statutory mandates, the American Bar Association standards, the Colorado Rules of Professional Conduct and applicable court rules and case law.
1.3	Maintain a competitive work environment to be able to attract and retain qualified staff.
2.1	Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.
2.2	Continue to provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law.

<sup>14</sup> This has been changed to the Rules of Professional Conduct.

3.1	Better utilize existing resources and new technologies to more efficiently handle increasing caseload and increasingly complex cases.
3.2	Continually evaluate and evolve key functions to ensure the Public Defender System adapts to the changing legal environment.

**PERFORMANCE MEASURES**

<b>OBJECTIVE 1.1: Provide reasonable and effective legal representation.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> New cases received	Actual	96,339	95,621	100,353	105,936
<b>MEASURE:</b> Cases closed	Actual	94,421	95,580	100,148	105,496
<b>MEASURE:</b> Total cases represented	Actual	117,472	120,816	126,386	132,917
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	249 : 1	251 : 1	232 : 1	232 : 1
	Actual	395 : 1	360 : 1	353 : 1	371 : 1
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	57 %	55 %	52 %	60 %
<b>MEASURE:</b> Percent of compliance with staffing levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	71.2 %	75.6 %	76.8 %	76.3 %
<b>MEASURE:</b> Maintain established standards for reasonable Staff Supervision, Management, Development (staff Supervisor to employee Ratio)	Target	10%	10%	10%	10%
	Actual	4.5 %	5.5 %	5.5 %	5.5 %
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		

<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
<b>MEASURE:</b> Provide 3 hours of ethics training focusing on Colorado criminal law each year	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
<b>MEASURE:</b> Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	9		
<b>MEASURE:</b> Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	10.5 %	9.3 %		
Investigators	Actual	8.4 %	12.5 %		
Administrative	Actual	12.7 %	6.3 %		
Total	Actual	9.9 %	9.4 %		
<b>MEASURE:</b> Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	45.7 %	41.9 %		
Investigators	Actual	25.0 %	41.7 %		
Administrative	Actual	70.0 %	100 %		
Total	Actual	47.2 %	47.9 %		

<b>Objective 1.2: Ensure compliance with applicable constitutional and statutory mandates, the American Bar Association standards, the Colorado Code of Professional Conduct and applicable court rules and case law.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	249 : 1	251 : 1	232 : 1	232 : 1
	Actual	395 : 1	360 : 1	353 : 1	371 : 1
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	57 %	55 %	52 %	60 %

<b>MEASURE:</b> Percent of compliance with staffing levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	71.2 %	75.6 %	76.8 %	76.3 %
<b>MEASURE:</b> Maintain established standards for reasonable staff supervision, management, development (staff supervisor to employee ratio)	Target	10%	10%	10%	10%
	Actual	4.5 %	5.5 %	5.5 %	5.5 %
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
<b>MEASURE:</b> Provide 3 hours of ethics training focusing on Colorado criminal law each year	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
<b>MEASURE:</b> Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	9		

<b>Objective 1.3: Maintain a competitive work environment to be able to attract and retain qualified staff.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
<b>MEASURE:</b> Percent of compliance with market pay practices	Target	100%	100%	100%	100%
	Actual	86 %	88 %		
<b>MEASURE:</b> Number of attorney applications received (CY)	Target	175	175	175	175
	Actual	361	418		
<b>MEASURE:</b> Maintain established standards for reasonable staff supervision, management, development (staff supv to employee ratio)	Target	10%	10%	10%	10%
	Actual	4.5 %	5.5 %	5.5 %	5.5 %

<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (Trial Attorney Active Case Ratio)	Target	249 : 1	251 : 1	232 : 1	232 : 1
	Actual	395 : 1	360 : 1	353 : 1	371 : 1
<b>MEASURE:</b> Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	57 %	55 %	52 %	60 %
<b>MEASURE:</b> Percent of compliance with staffing levels (based upon Closed Case Ratios target)	Target	100%	100%	100%	100%
	Actual	71.2 %	75.6 %	76.8 %	76.3 %
<b>MEASURE:</b> Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
	Attorneys	Actual	10.5 %	9.3 %	
Investigators	Actual	8.4 %	12.5 %		
Administrative	Actual	12.7 %	6.3 %		
Total	Actual	9.9 %	9.4 %		
<b>MEASURE:</b> Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
	Attorneys	Actual	45.7 %	41.9 %	
Investigators	Actual	25.0 %	41.7 %		
Administrative	Actual	70.0 %	100 %		
Total	Actual	47.2 %	47.9 %		

<b>Objective 2.1: Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.</b>					
		<b>FY 08-09 (actual)</b>	<b>FY 09-10 (actual)</b>	<b>FY 10-11 (proj.)</b>	<b>FY 11-12 (proj.)</b>
<b>MEASURE:</b> Develop and test internet based administrative processes	Target	3	3	3	3
	Actual	7	5		

**Objective 2.2: Continue to provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law.**

		FY 08-09 (actual)	FY 09-10 (actual)	FY 10-11 (proj.)	FY 11-12 (proj.)
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		
<b>MEASURE:</b> Provide 3 hours of ethics training focusing on Colorado criminal law each year.	Target	3 hrs.	3 hrs.	3 hrs.	3 hrs.
	Actual	3 hrs.	3 hrs.		
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		

**Objective 3.1: Better utilize existing resources and new technologies to more efficiently handle increasing caseload and increasingly complex cases.**

**Objective 3.2: Continually evaluate and evolve key functions to ensure the Public Defender system adapts to the changing legal environment.**

		FY 08-09 (actual)	FY 09-10 (actual)	FY 10-11 (proj.)	FY 11-12 (proj.)
<b>MEASURE:</b> Number of attorney training sessions offered	Target	46	46	46	46
	Actual	67	30		
<b>MEASURE:</b> Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	15		
<b>MEASURE:</b> Develop and test internet based administrative processes.	Target	3	3	3	3
	Actual	7	5		
<b>MEASURE:</b> Number of offices audited each year	Target	11	11	11	11
	Actual	9	9		
<b>MEASURE:</b> Number of focused evaluations	Target	2	2	2	2
	Actual	5	5		



**d. A ranking of the activities necessary to achieve the objectives of each program by priority of the activities; and,**

The OSPD provides a single-purpose, integrated program that supports the needs of indigent clients and ensures that clients receive quality representation. The Office performs several basic activities that are crucial to successful accomplishment of its objectives. They include:

1. Ensuring adequate attorney resources to support caseload based on scientific case weighting studies supporting measurable workload standards relating to each Case Type and Class. Current caseload levels exceed standards for maximum caseload levels.
2. Ensuring adequate levels of case support staff based upon established standards including 1 staff investigator or paralegal providing support for the caseloads of every 3 attorneys, and 1 legal secretary supporting the caseload of every 4 attorneys.
3. Qualified attorney and investigative staff provided through thorough and rigorous recruitment, screening, training, mentoring and supervisory efforts that ensures high quality representation of indigent casework staff.
4. Integrated Technology. The Office has staff of nine IT professionals that provide support to the 21 trial offices, the Appellate Division and the Executive/Administrative Office. This staff fulfills the complete technology support functions of all regional, appellate, and administrative offices and staff related to: IT management, database development and maintenance, programming, web/intranet application development and maintenance, systems administration, network administration, telecommunications systems support, information security, disaster recovery/business continuity, IT desktop and peripheral equipment and software deployment and maintenance, legal applications and technologies specialization and training, imaging, and daily end-user help desk support. This staff fulfills these specialized areas at very conservative support ratios ranging from 1 IT division member to 210 users to as much as 1 IT division member to 630 users.
5. Oversight, management and training. In requesting new staffing, the Office uses general metric of 10 percent to account for management and supervisory needs of new program staff at the regional and appellate legal office level. This is aligned with established standards. Each trial office and the Appellate Division require senior, supervisory attorney staff, but are staffed at far below this standard. In addition, each of these entities requires effective supervisory investigators and office managers to provide the necessary quality assurance of case

support staff performance and development, but this requirement is not provided for effectively. At the state level, the State Public Defender is executive director of the agency and is assisted by a Chief Officer for Administration and Operations, two Chief Deputy Public Defenders, two Trial Deputies, a Senior Investigator and a Training Director.

6. Central Administrative Activities: A staff of 9 people provide the complete administrative support for all 21 regional Trial Offices, the Appellate Office and the Executive/Administrative office. This includes oversight, accountability, and execution of: program planning, evaluation, statistical analysis and strategy; budgeting; legislative affairs and fiscal notes; legal counsel; finance, accounting, contracts management, and purchasing; and human resources, recruitment, training coordination, compensation and benefits policy and administration. Individuals that serve the finance functions do so at ratios ranging from 1:315 to 1:630 employees and perform multiple functional areas. Two key Human Resource staff accomplish the total needs of personnel management and administration at a ratio of 1:315 employees (the common ratio cited for the HR function is 1:100).

**e. The level of effort required to accomplish each activity associated with these programs in terms of funds and personnel.**

For FY 2011, The Office has an appropriation of 604.5 FTE and \$57.1 million. As indicated above, the Office is operating at an overall staffing deficit of 23.2%. In order to be fully funded, under current salary and common policy allowances, the Office would require 855.5 FTE and \$73.7 million. The Office just completed a Salary Survey study of its attorney classes. In order to bring all attorney staff up to parity with their respective markets, the Office would require an additional \$3.7 million on top of its current base appropriation.

On a per-case basis, the Office, should it be fully funded (excluding the pay parity recommendations) in FY 2012 would close an estimated 105,496 cases at a cost of approximately \$698 per case. At current funding levels or optimal funding levels, the current Public Defender model represents the most efficient indigent defense method for the State of Colorado. A contract, county-based model, emulated by the Alternate Defense Counsel, would result in an estimated per case cost of \$1,858 or a total cost to local governments of about \$197.1 million to close the estimated 105,496 cases expected in FY 2011-12. The Public Defender provides these same services currently at about 29% of the cost of a devolved model (\$533 per case).

In terms of support activities (management, training, trial attorneys, case support staff, finance, HR and IT support), Question 3(d), above, gives examples of the workload efforts to provide these services.

**Question 4: Detail what could be accomplished by the OSPD if funding is maintained at the fiscal year 2009-10 level.**

The final appropriation for FY 2009-10 was 578.3 FTE (370.9 Attorney FTE) and \$54,583,854. The FY 2009-10 level of staffing reflects a 24.4% staffing deficit for FY 2009-10 caseload levels. By FY 2012, the total staffing required to achieve minimum staffing requirements and to maintain caseload levels at maximum ceilings will be 855.4 FTE. Therefore, the FY 2009-10 staffing levels would represent a near 33% staffing deficit under FY 2011-12 caseload levels.

Absent increases in resources and staff to address these caseload changes and to address the demands of new courts and new judgeships, The Office would be placed in a situation where it would be expected to continue to accept an increasing number of cases referred by the court, with fewer resources. This would directly result in decreasing levels of effectiveness of representation in Public Defender cases. In accord with guidelines and standards outlined by the ABA, The Colorado Office of Attorney Regulation Counsel, and other national justice policy leadership organizations, findings of excessive caseload levels would require The State Public Defender to turn away cases as part of its ethical and professional responsibility to clients. Based upon these standards requirements, to address these circumstances, The Office would need to closely monitor individual attorney caseloads to ensure that attorneys could adequately manage their cases and effectively perform in every case.

In order to perform at FY 2009-10 resource levels, the Public Defender would need to cap its caseload at pre-FY 2009-10 levels. That would mean it would need to turn away 10,000-15,000 cases, which accounts for at least 10-15% of its projected FY 2011-12 caseload. Those 10,000+ cases would still need to be provided for by the State, likely via the only other alternative, private contracted attorneys performing at a subsidized state-set rate. The estimated cost for those contracted services would be at least \$18,580,000 based upon the current average cost of private counsel cases contracted by the ADC for 10,000 cases. This cost is daunting when compared to the \$6,697,321 in resources required by the Public Defender in FY 2011-12 over a FY 2009-10 equivalent resource level.

Furthermore, since the Public Defender has already hired newly funded attorney and support staff with its FY 2010-11 appropriation, it would have to rely on a combination of attrition and possibly layoffs to achieve FTE and funding reductions. Furloughs, freezing and extending the replacement date of vacated positions would all have to be considered under such a scenario. This would likely result in further increases in attrition and a related compounding loss of skilled and qualified staff needed to effectively deliver our program.

**Question 5: Please provide a table comparing the actual number of OSPD FTEs in FY 2000-01 and the requested number of FTEs for FY 2011-12.**

In FY 2000-01, the Office had 356.9 total appropriated FTE (223.0 attorney FTE).

In FY 2011-12, the Office's request is for a total of 652.3 appropriated FTE (413.2 attorney FTE).

**Question 6: Please provide a table comparing the actual number of FTEs in FY 2008-09 and FY 2009-10 to the appropriated level of FTE for each of those fiscal years.**

In FY 2008-09, the Office was appropriated a total of 534.1 FTE and it used, through attrition and other measures to match expenditures with reduced State revenues, 510.3 of its authorized FTE. In FY 2008-09, the Office faced an overall attrition rate of 9.9% (10.4% in its trial offices).

In FY 2009-10, the Office was appropriated at total of 537.6 FTE and it used, through attrition and others measures to match expenditures with reduced State revenues (including freezing positions in this fiscal year), 518.4 of its authorized FTE. In FY 2009-10, the Office faced an overall attrition rate of 9.4% (with a matching 9.4% in its trial offices).

**Question 7: Please identify the number of attorneys employed by your office.**

The Office has 393.6 attorney FTE in total, of which 34.75 are assigned to its Appellate Division and the remaining 358.85 attorney FTE are assigned to 21 regional Trial Offices spread across the state supporting 22 Judicial Districts and 64 Counties.

The Office's FY 2011-12 Base Continuation Request, based upon the final installment of H.B. 07-1054 resources, would increase the attorney FTE count to 413.2 total FTE.