

Office of the State Public Defender



FY 2013-14 Strategic Plan & Program Evaluation

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State of Colorado
Office of the State Public Defender

FY 2013-14 Strategic Plan and Program Evaluation
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STRATEGIC PLAN

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ROLE & MISSION

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

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.

indigent persons 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

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.

System is the most effective and efficient means of meeting that requirement.

PROGRAM IN BRIEF

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 2011-12, The Office received 95,698 new trial and appellate cases, closed 94,276 trial and appellate cases and carried a total of 121,739 active trial and appellate cases. The Office functions as a single program devoted to providing reasonable and effective criminal defense representation in these cases.

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 both number and severity of charges.

The average annual growth rate since FY 2000, or compound rate of growth (CRG), for cases reflects a consistent pattern of growth with intermittent peaks and declines. Active trial case growth has stabilized at near two times the state's general population growth rate, while appellate case growth is near triple the state's population growth rate. Workload associated with this growing caseload has increased at a rate near one-and-one-half the rate of case growth and near three 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.

The Public Defender System is directed at the state level by the Colorado State Public Defender, Douglas K. Wilson. A 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; intragovernmental 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

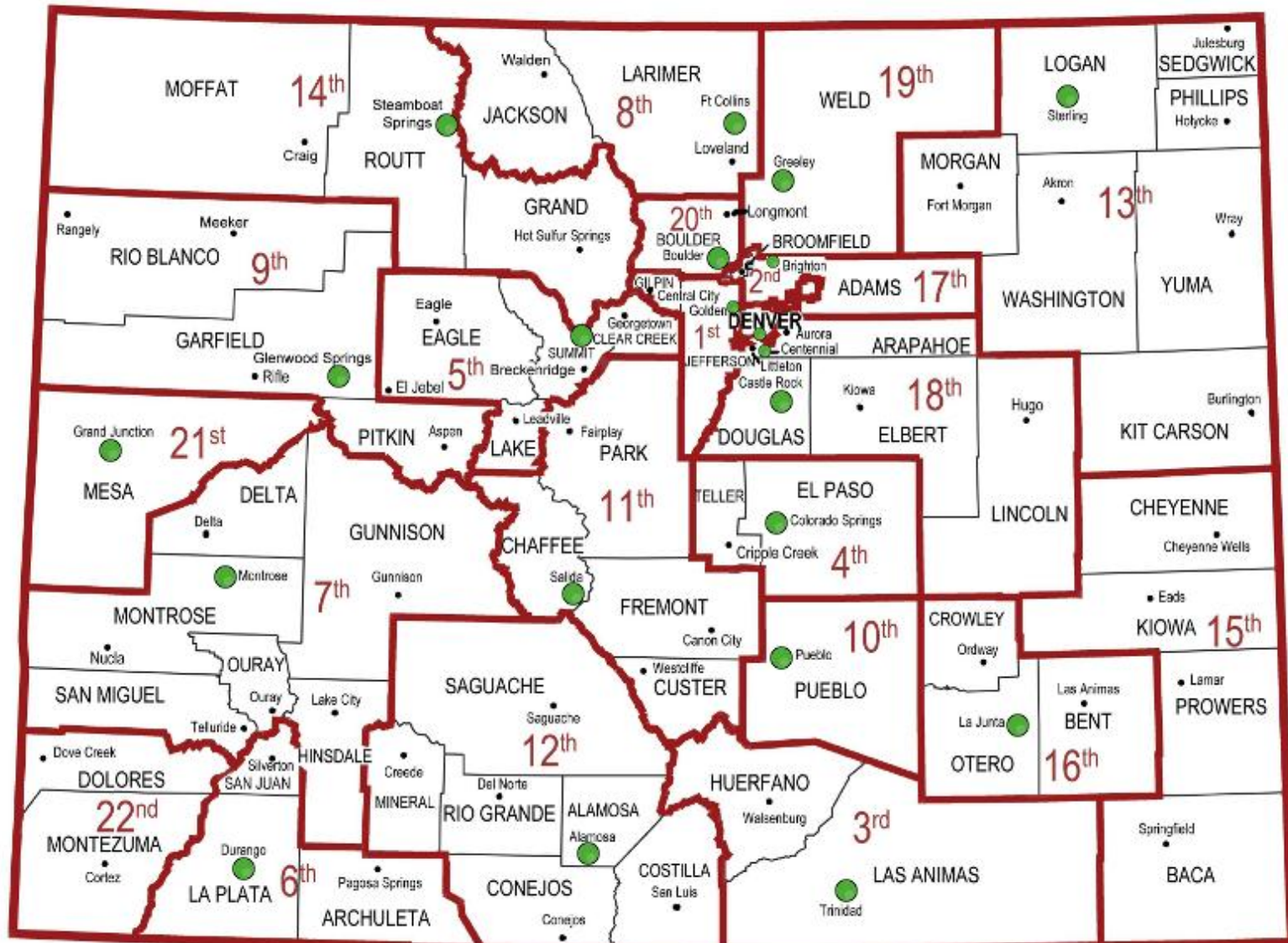
Our customers are indigent people in Colorado whom we are appointed to represent in near 135,000 active cases each year. They are indigent people who are faced with the possibility of incarceration. They are unable to afford private counsel and without counsel would otherwise be denied their constitutional right to a fair trial. A critical element in meeting these requirements is the need to maintain the attorney-client relationship. Attorneys, investigators and legal support staff are necessary to provide effective representation of counsel as mandated by the federal and state constitutions and other legal authority referenced above.

SUMMARY OF PROGRAM RESOURCES

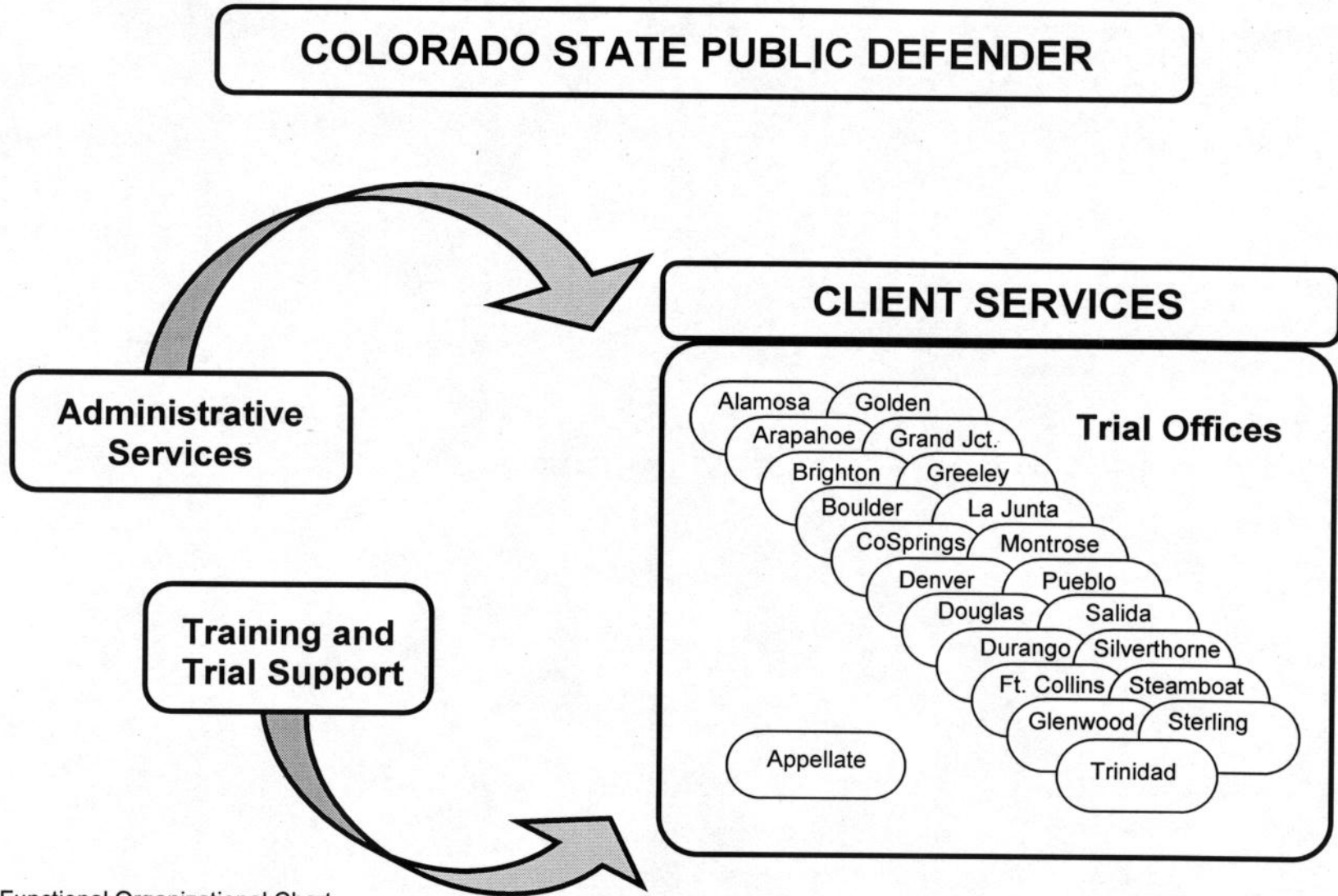
The Office of the State Public Defender is a single purpose program that provides criminal defense representation to indigent clients. It is an independent agency within the Judicial Branch of Colorado State Government. In order to fulfill our statutory responsibility in all proceedings mandated by the 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

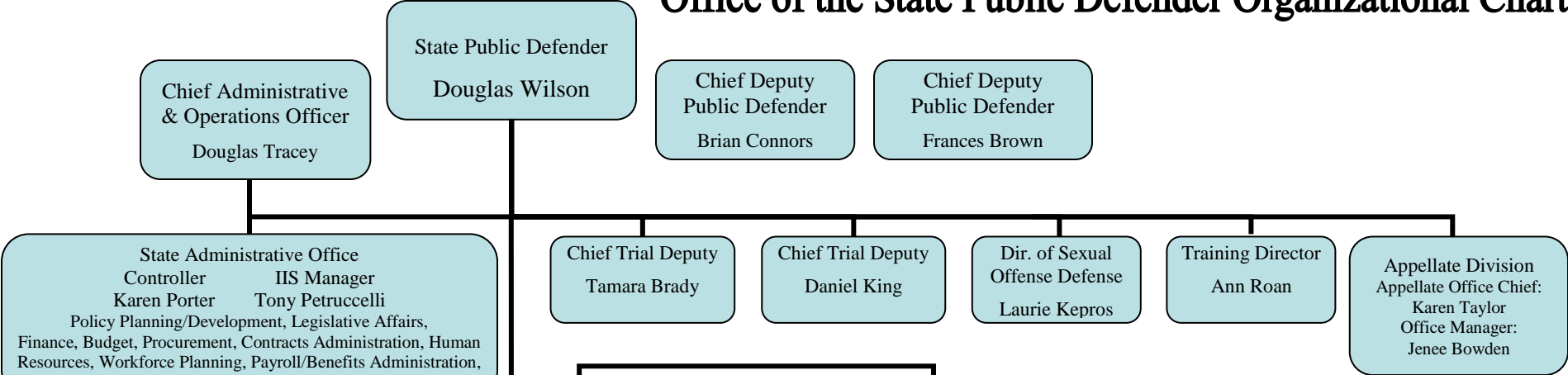


The following chart illustrates the functional organizational structure of The Office.

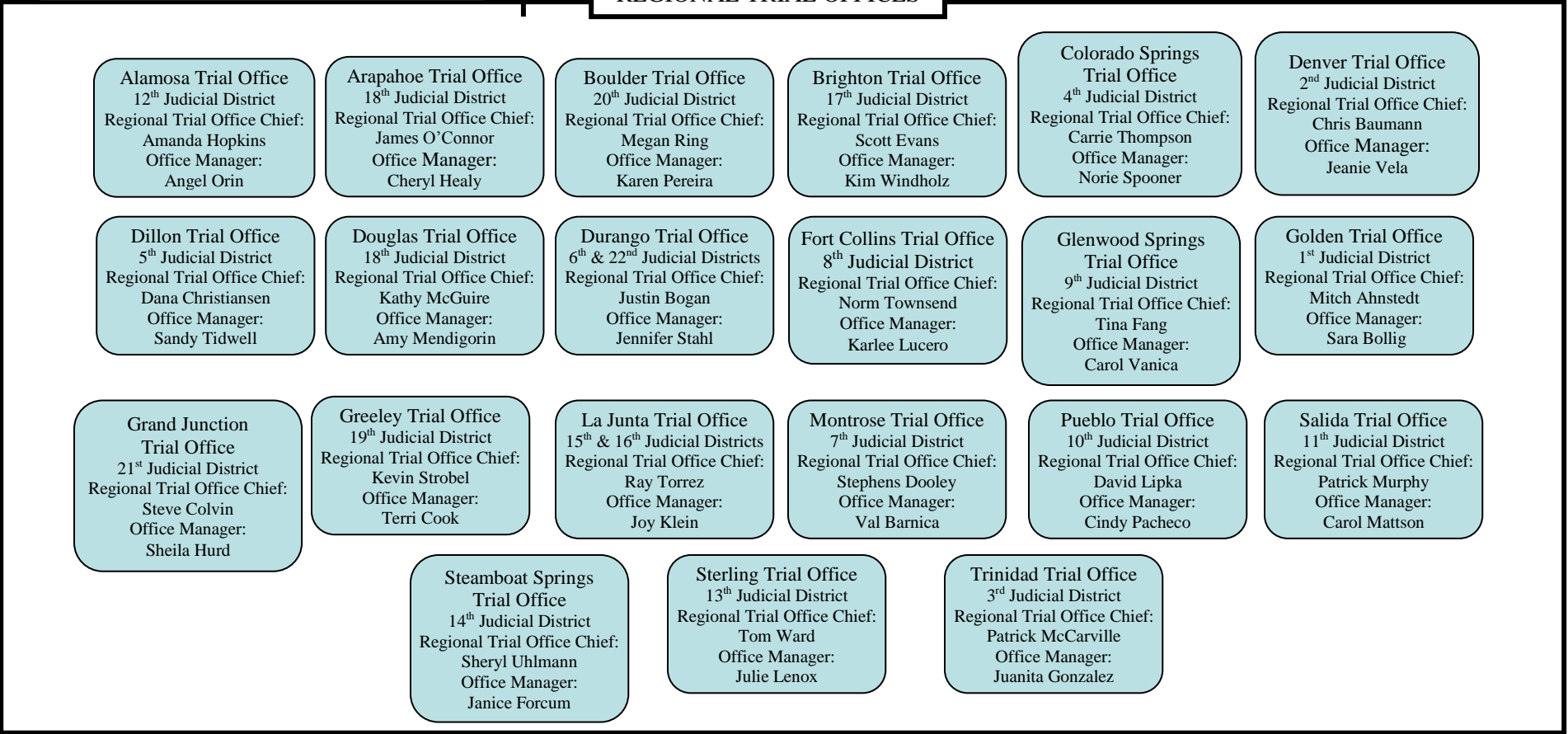


Functional Organizational Chart
of the
Office of the State Public Defender

Office of the State Public Defender Organizational Chart



REGIONAL TRIAL OFFICES



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. 191; *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 Conduct¹ 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 135,000 active appellate and trial cases that will be represented in FY 2014.
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 and appellate 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.

¹ This has been changed to the Rules of Professional Conduct.

PERFORMANCE MEASURES

OBJECTIVE 1.1: Provide reasonable and effective legal representation.					
		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.1A: To promote efficiency and quality of services, safeguard the independence of The Office from political influence and judicial ² oversight in the same manner and extent as assigned counsel, including funding, payment, staffing, etc. ^{3/4}	Target	100%	100%	100%	100%
	Actual	100%	100%		
MEASURE 1.1B: Defense counsel's workload is controlled to permit the rendering of quality representation. ^{5/6/7/8} (% Total staff allocated vs. required for Closed Trial Cases and Active Appellate Cases)	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%

² Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

³ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) hereinafter "NAC"; Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1(D).

⁴ *ABA Ten Principles of a Public Defense Delivery System, Principle 1, American Bar Association (2002)*

⁵ *ABA Ten Principles of a Public Defense Delivery System, Principle 5*: "Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement." *American Bar Association (2002)*

⁶ NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

⁷ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter "Death Penalty"].

⁸ ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.1C: Defense counsel's ability, training, and experience match the complexity of the case. ^{9/10} <i>(% of all staff that have at least intermediate level experience)</i>	Target	70%	70%	70%	70%
	Actual	43.7%	42.4%		
MEASURE 1.1D: Provide effective representation in cases referred by the courts <i>(# of new trial cases received annually)</i>	Actual	94,693	95,109	97,507	102,330
MEASURE 1.1E: Effectively represent to disposition cases referred by the courts <i>(# cases brought to disposition annually)</i>	Actual	94,219	93,692	97,527	101,946
MEASURE 1.1F: Provide effective representation in cases referred by the courts <i>(Total active trial cases represented annually)</i>	Actual	122,949	120,498	125,381	131,010
MEASURE 1.1G: Provide effective representation in cases referred by the courts <i>(New appellate cases received)</i>	Actual	575	589	598	608
MEASURE 1.1H: Effectively represent to disposition cases referred by the courts <i>(Appellate cases closed)</i>	Actual	557	584	584	584
MEASURE 1.1I: Effectively represent to disposition cases referred by the courts <i>(Total active appellate cases represented)</i>	Actual	1,209	1,241	1,255	1,279
MEASURE 1.1J: Maintain established standards for reasonable caseload levels <i>(Trial Attorney ABA Recommended Active Case Ratio vs. Actual Active Case Ratio)</i>	Target	232 : 1	234 : 1	234 : 1	235 : 1
	Actual	343 : 1	318 : 1	329 : 1	343 : 1

⁹ ABA Ten Principles of a Public Defense Delivery System, Principle 6: "Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation." American Bar Association (2002)

¹⁰ Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.1K: Maintain established standards for reasonable Caseload Levels (<i>% of General Attorney Active case overload</i>)	Target	0%	0%	0%	0%
	Actual	59.8%	44.0%	48.7%	55.5%
MEASURE 1.1L: Percent of compliance with minimum standards for staffing requirements levels (<i>based upon Closed Case Total Staffing target</i>)	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%
MEASURE 1.1M: Maintain established standards for reasonable Caseload Levels (<i>Appellate Attorney Active Case Ratio</i>)	Target	1 : 26	1 : 28	1 : 28	1 : 28
	Actual	1 : 35	1 : 36	1 : 36	1 : 37
MEASURE 1.1N: Maintain established standards for reasonable Caseload Levels (<i>% of General Appellate Active case overload</i>)	Target	0%	0%	0%	0%
	Actual	31.5%	28.3%	26.9%	31.5%
MEASURE 1.1O: Maintain established standards for reasonable Staff Supervision, Management, Development (<i>Dedicated Staff Supervisor FTE to total employee Ratio</i>)	Target	10%	10%	10%	10%
	Actual	3.6%	3.5%	3.0%	3.0%

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.1P: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. ^{11/12/13} (% of financial resources available as compared to the prosecution's proportionate share)	Target	100%	100%	100%	100%
	Actual	N/A	67.5%		
MEASURE 1.1Q: Ratio of attorney staffing resources as compared to the prosecution's proportionate share	Target	1 : 1.6	1 : 1.6	1 : 1.5	1 : 1.5
	Actual	N/A	N/A	1 : 1.6	
MEASURE 1.1R: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
MEASURE 1.1S: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
MEASURE 1.1T: Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
MEASURE 1.1U: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		

¹¹ ABA Ten Principles of a Public Defense Delivery System, Principle 8: "There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation." *American Bar Association (2002)*

¹² NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three Attorneys and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

¹³ ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.1V: 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.		
MEASURE 1.1W: Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	12		
MEASURE 1.1X: Office program audits to ensure consistent performance of mission across the state.	Target	4	4	2	0
	Actual	4	4		
MEASURE 1.1Y: Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	11.6 %	9.1 %		
Investigators	Actual	9.3 %	10.8 %		
Administrative	Actual	23.6 %	23.2 %		
Total	Actual	12.3 %	11.0 %		
MEASURE 1.1Z: Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	34.1 %	35.1 %		
Investigators	Actual	27.3 %	38.5 %		
Administrative	Actual	52.9 %	80.0 %		
Total	Actual	37.5 %	47.9 %		
MEASURE 1.1AA: Percent of experienced, fully capable staff (journey level or higher)	Target	70%	70%	70%	70%
Attorneys	Actual	44%	44%		
Investigators	Actual	38%	33%		
Legal Assistants	Actual	29%	24%		
Total All Employees	Actual	44%	42%		

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.

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.2A: To promote efficiency and quality of services, safeguard the independence of The Office from political influence and judicial ¹⁴ oversight in the same manner and extent as assigned counsel, including funding, payment, staffing, etc. ^{15/16}	Target	100%	100%	100%	100%
	Actual	100%	100%		
MEASURE 1.2B: Defense counsel's workload is controlled to permit the rendering of quality representation. ^{17/18/19/20} (%) <i>Total staff allocated vs. required for Closed Trial Cases and Active Appellate Cases)</i>	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%

¹⁴ Judicial independence is “the most essential character of a free society” (American Bar Association Standing Committee on Judicial Independence, 1997).

¹⁵ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) hereinafter “NAC”], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “NSC”], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA”], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter “Assigned Counsel”], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter “Contracting”], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter “Model Act”], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties”], Standard 2.1(D).

¹⁶ *ABA Ten Principles of a Public Defense Delivery System, principle 1, American Bar Association (2002)*

¹⁷ *ABA Ten Principles of a Public Defense Delivery System, Principle 5*: “Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.” *American Bar Association (2002)*

¹⁸ NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1, 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2(B)(iv).

¹⁹ Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (NSC Guideline 5.1) or “under no circumstances exceed” (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). *See also* ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (1989) [hereinafter “Death Penalty”].

²⁰ ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter “Appellate”], Standard 1-F.

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.2C: Defense counsel's ability, training, and experience match the complexity of the case. ^{21/22} (% of all staff that have at least intermediate level experience)	Target	70%	70%	70%	70%
	Actual	43.7%	42.4%		
MEASURE 1.2D: Maintain established standards for reasonable caseload levels (Trial Attorney ABA Recommended Active Case Ratio vs. Actual Active Case Ratio)	Target	232 : 1	234 : 1	234 : 1	235 : 1
	Actual	343 : 1	318 : 1	329 : 1	343 : 1
MEASURE 1.2E: Maintain established standards for reasonable Caseload Levels (% of General Attorney Active case overload)	Target	0%	0%	0%	0%
	Actual	59.8%	44.0%	48.7%	55.5%
MEASURE 1.2F: Percent of compliance with minimum standards for staffing requirements levels (based upon Closed Case Total Staffing target)	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%
MEASURE 1.2G: Maintain established standards for reasonable Caseload Levels (Appellate Attorney Active Case Ratio)	Target	1 : 26	1 : 28	1 : 28	1 : 28
	Actual	1 : 35	1 : 36	1 : 36	1 : 37
MEASURE 1.2H: Maintain established standards for reasonable Caseload Levels (% of General Appellate Active case overload)	Target	0%	0%	0%	0%
	Actual	31.5%	28.3%	26.9%	31.5%
MEASURE 1.2I: Maintain established standards for reasonable Staff Supervision, Management, Development (Dedicated Staff Supervisor FTE to total employee Ratio)	Target	10%	10%	10%	10%
	Actual	3.6%	3.5%	3.0%	3.0%

²¹ ABA Ten Principles of a Public Defense Delivery System, Principle 6: "Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation." American Bar Association (2002)

²² Performance Guidelines, *supra* note 15, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 19, Guideline 5.1.

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.2J: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. ^{23/24/25} (% of financial resources available as compared to the prosecution's proportionate share)	Target	100%	100%	100%	100%
	Actual	69.2%	67.5%		
MEASURE 1.2K: ratio of attorney staffing resources as compared to the prosecution's proportionate share	Target	1 : 1.6	1 : 1.6	1 : 1.5	1 : 1.5
	Actual	N/A	N/A	1 : 1.6	
MEASURE 1.2L: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
MEASURE 1.2M: 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.		
MEASURE 1.2N: Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	12		

²³ ABA Ten Principles of a Public Defense Delivery System, Principle 8: "There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation." *American Bar Association (2002)*

²⁴ NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1(B)(iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g.: there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

²⁵ ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

Objective 1.3: Maintain a competitive work environment to be able to attract and retain qualified staff.					
		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.3A: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
MEASURE 1.3B: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
MEASURE 1.3C: Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
MEASURE 1.3D: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
MEASURE 1.3E: Percent of compliance with market pay practices for Attorney Salaries <i>(Actuals based upon 2012 OSPD Attorney Salary Study Results. Projections add average of DPA findings from two private Compensation Studies of Colorado Market)</i>	Target	100%	100%	100%	100%
	Actual	86.7%	82.1%	78.4%	
MEASURE 1.3F: Percent of compliance with market pay practices for All Other Staff <i>(Actuals based upon 2012 DPA Compensation Study Results. Projections add average of DPA findings from two private Compensation Studies of Colorado Market)</i>	Target	100%	100%	100%	100%
	Actual	94.6%	90.8%	87.1%	
MEASURE 1.3G: Number of attorney applications received (CY)	Target	175	175	175	175
	Actual	779	389		
MEASURE 1.3H: Maintain established standards for reasonable Staff Supervision, Management, Development <i>(Dedicated Staff Supervisor FTE to total employee Ratio)</i>	Target	10%	10%	10%	10%
	Actual	3.6%	3.5%	3.0%	3.0%
MEASURE 1.3I: Maintain established standards for reasonable caseload levels <i>(Trial Attorney ABA Recommended Active Case Ratio vs. Actual Active Case Ratio)</i>	Target	232 : 1	234 : 1	234 : 1	235 : 1
	Actual	343 : 1	318 : 1	329 : 1	343 : 1

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.3J: Maintain established standards for reasonable Caseload Levels (<i>% of General Attorney Active case overload</i>)	Target	0%	0%	0%	0%
	Actual	59.8%	44.0%	48.7%	55.5%
MEASURE 1.3K: Percent of compliance with minimum standards for staffing requirements levels (<i>based upon Closed Case Total Staffing target</i>)	Target	100%	100%	100%	100%
	Actual	77.6%	85.3%	83.1%	79.6%
MEASURE 1.3L: Maintain established standards for reasonable Caseload Levels (<i>Appellate Attorney Active Case Ratio</i>)	Target	1 : 26	1 : 28	1 : 28	1 : 28
	Actual	1 : 35	1 : 36	1 : 36	1 : 37
MEASURE 1.3M: Maintain established standards for reasonable Caseload Levels (<i>% of General Appellate Active case overload</i>)	Target	0%	0%	0%	0%
	Actual	31.5%	28.3%	26.9%	31.5%
MEASURE 1.3N: Annual Rates of Attrition	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	11.6 %	9.1 %		
Investigators	Actual	9.3 %	10.8 %		
Administrative	Actual	23.6 %	23.2 %		
Total	Actual	12.3 %	11.0 %		
MEASURE 1.3O: Attrition within first three years of employment	Target	12 %	12 %	12 %	12 %
Attorneys	Actual	34.1 %	35.1 %		
Investigators	Actual	27.3 %	38.5 %		
Administrative	Actual	52.9 %	80.0 %		
Total	Actual	37.5 %	47.9 %		

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 1.3P: Percent of experienced, fully capable staff (<i>journey level or higher</i>)	Target	70%	70%	70%	70%
Attorneys	Actual	44%	44%		
Investigators	Actual	38%	33%		
Administrative	Actual	29%	24%		
Total	Actual	44%	42%		

Objective 2.1: Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices.

		FY 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 2.1: 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 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 2.2A: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
MEASURE 2.2B: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
MEASURE 2.3C: Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
MEASURE 2.2D: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
MEASURE 2.2E: 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.		

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 10-11 (actual)	FY 11-12 (actual)	FY 12-13 (proj.)	FY 13-14 (proj.)
MEASURE 3.1, 3.2A: Number of attorney training sessions offered	Target	46	46	46	46
	Actual	87	99		
MEASURE 3.1, 3.2B: Number of investigator/paralegal training sessions offered	Target	9	9	9	9
	Actual	4	5		
MEASURE 3.1, 3.2C: Number of legal assistant training sessions offered	Target	15	12	12	12
	Actual	15	16		
MEASURE 3.1, 3.2D: Number of CLE credits offered during year	Target	15	15	15	15
	Actual	15	27		
MEASURE 3.1, 3.2E: Develop and test internet based administrative processes.	Target	3	3	3	3
	Actual	7	5		
MEASURE 3.1, 3.2F: Office file audits to ensure compliance with appointment and withdrawal procedures	Target	11	11	11	11
	Actual	9	12		
MEASURE 3.1, 3.2G: Office program audits to ensure consistent performance of mission across the state.	Target	4	4	2	0
	Actual	4	4		
MEASURE 3.1, 3.2H: Number of focused evaluations of program and administrative processes and policies	Target	2	2	2	2
	Actual	5	3		
MEASURE 3.1, 3.2I: Number of revisions/updates to program and administrative processes and policies	Target	2	2	2	2
	Actual	3	3		

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STRATEGIC EVALUATION

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KEY TRENDS REVIEW & ASSESSMENT

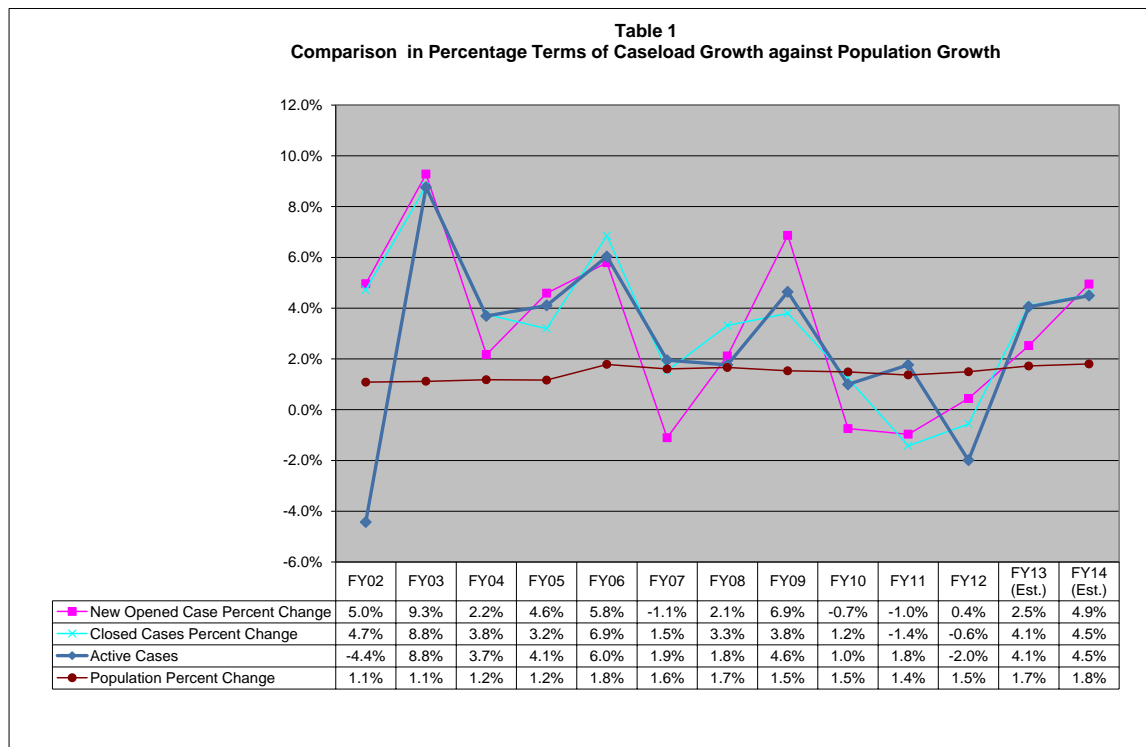
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REGIONAL TRIAL OFFICE CASELOAD

POPULATION TRENDS COMPARISON

OSPD Caseload and State Population. Case Trends are changing over time. The Office's caseload growth exceeds the state's population growth. Between FY 2000 and FY 2012, total cases closed (terminations) increased cumulatively by 45% while estimates of state population growth increased cumulatively 20% during the same period. Comparatively, total new cases opened (filings) increased cumulatively by 45%; total active cases also increased cumulatively by 45%.

Table 1 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.



REGIONAL TRIAL OFFICE CASELOAD

TOTAL COURT CRIMINAL CASES TRENDS COMPARISON

OSPD Case Portion of Total State-Wide Criminal Cases in the Courts. State Public Defender caseload accounts for about 68 percent of the total criminal cases terminated throughout the State's 22 District and 64 County courts. The Public Defender's proportionate share of the total State criminal caseload has been increasing steadily at a rate of 4.3 percent annually since FY 2000. This rate of growth exceeds the rate of the State's general population growth (1.6 percent CRG since 2000) by near three times. As the Public Defender's total cases closed has grown at a rate of 3.1 percent annually, criminal cases terminated by the Courts has declined by 1.1% average annually. By the end of FY 2012, the Public Defender's proportionate share of total state criminal cases terminated in the courts had grown by 65 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 near 85 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 grown from 64 percent of all State Felony cases and proceedings in FY 2000. Since FY 2000, The Office's proportionate share of all state-wide Felony cases and proceedings grew an average of 2.2 percent annually. Total Public Defender Felony cases closed grew at a rate of 1.7 percent annually since FY 2000, about equal to the population growth rate.

OSPD Portion of State Misdemeanor Cases. The Public Defender will represent 57 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 near tripled 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 8.2 percent annually. Total Public Defender Misdemeanor cases closed grew at a rate of 7.1 percent annually since FY 2000, near five times the population growth rate.

OSPD Portion of State Juvenile Cases. The Public Defender will represent 71 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 proportionate share of all state-wide Juvenile cases and proceedings grew by 1.7 percent annually. However, total Public Defender Juvenile cases closed declined at a rate of 2.4 percent annually since FY 2000, about two-thirds

the rate of decline of Statewide Juvenile cases adjudicated in the courts, which declined steadily at an annual rate of 3.7 percent during the most recent 12-year period of actual caseload data. 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 continue to increase.

Table 2 below provides detail related to The OSPD's closed caseload in the context of Total State-wide cases terminated in the Courts.

**Table 2 - OSPD Trial Office Cases Closed
Compared to State Courts' Terminated Cases
FY 2000 to FY 2014 Projected**

<u>Comparisons of Closings By Case Type: Court Totals (DAs Cases) vs. OSPD w/ Proportionate Shares</u>	FY 2000 Actual	FY 2011 Actual	FY 2012 Est.	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
State Courts Total All Terminated Criminal Cases & Proceedings--No Traffic	164,764	145,779	144,267	142,778	141,314	-12.44%	-13.34%	-14.23%	-1.08%
OSPD Total All Terminated Criminal Cases & Proceedings--No Traffic	64,779	94,219	93,692	97,528	101,945	44.63%	50.55%	57.37%	3.12%
Ratio of OSPD Total Criminal Cases to State Courts Total Criminal Cases	39.3%	64.6%	64.9%	68.3%	72.1%	65.18%	73.74%	83.49%	4.27%
Felony Terminated Cases & Proceedings of the Court	56,047	53,175	52,703	52,235	51,771	-5.97%	-6.80%	-7.63%	-0.89%
OSPD Total Felony Terminated Cases & Proceedings	35,999	44,603	43,894	44,466	45,151	21.93%	23.52%	25.42%	1.67%
Ratio of Total OSPD Felony Cases to Total State Courts Felony Cases	64.2%	83.9%	83.3%	85.1%	87.2%	29.67%	32.53%	35.78%	2.19%
Misd.. Terminated Cases of Court	90,948	81,318	80,692	80,070	79,454	-11.28%	-11.96%	-12.64%	-0.77%
OSPD Misdemeanor Cases	18,535	41,445	42,148	45,584	49,460	127.40%	145.93%	166.85%	7.09%
Ratio of OSPD Misd. Cases to Total State Courts Misd. Cases	20.38%	50.97%	52.23%	56.93%	62.25%	156.30%	179.34%	205.45%	8.16%
Juv. Terminated Cases of Court	17,769	11,286	10,872	10,473	10,089	-38.82%	-41.06%	-43.22%	-3.67%
OSPD Juvenile	10,245	8,171	7,650	7,478	7,334	-25.33%	-27.01%	-28.41%	-2.40%
Ratio of OSPD JUV Cases to Total State Courts JUV Cases	57.66%	72.40%	70.37%	71.40%	72.70%	22.04%	23.84%	26.08%	1.67%

REGIONAL TRIAL OFFICE CASELOAD

OVERALL OSPD CASE TRENDS

General Total Cases. 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 3 percent annual CRG since FY 2000 -- still at a rate about two times the Colorado general population growth rate. Meanwhile, workload associated with cases maintained growth of 4.3 percent CRG annually through FY 2012. 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.

General Felony Cases. 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 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 since FY 2000 – near 5 times the Colorado general population growth rate at that time. 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 1.7 percent CRG as of FY 2012. Meanwhile, the workload associated with these cases surpassed the rate of case growth at about 3 percent annual CRG through 2012. 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.

Felony Case Classes. 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 upwards toward M1, and Felony 6 upwards toward 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 12 years demonstrates the 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 3** provides the average number of days that closed cases were actively represented by The Office according to case class in 2012. 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 3 – FY 2012 Cases Closed with the Average Number of Days Active by Case Class

FY 2012		
Summary of OSPD Closed Cases	2012 CLOSED	AveDays Active/Case
Felony 1	79	443
Felony 2	285	300
<i>Sex Assaults F2 - F4</i>	597	283
Felony 3	3,945	153
Felony 4	6,764	147
Felony 5	3,266	133
Felony 6	5,113	112
Felony Trial & PreTrial	20,049	224
Misdemeanor 1	9,135	115
<i>Sex Assaults M1</i>	345	159
<i>Sex Assaults M2</i>	8	147
Misdemeanor 2/3	5,930	107
Traffic/PO	12,283	115
Misdemeanor Trial & PreTrial	27,701	129
Juvenile Felony	1,359	128
Juvenile Misdemeanor	1,878	107
Juvenile Trial & PreTrial	3,237	118
Total All	50,987	126

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 3 (F3), Felony 4 (F4) and Felony 5 (F5) cases have maintained case growth well below the population growth rate, but increased complexity in those cases has resulted in workload growth at a higher rate.

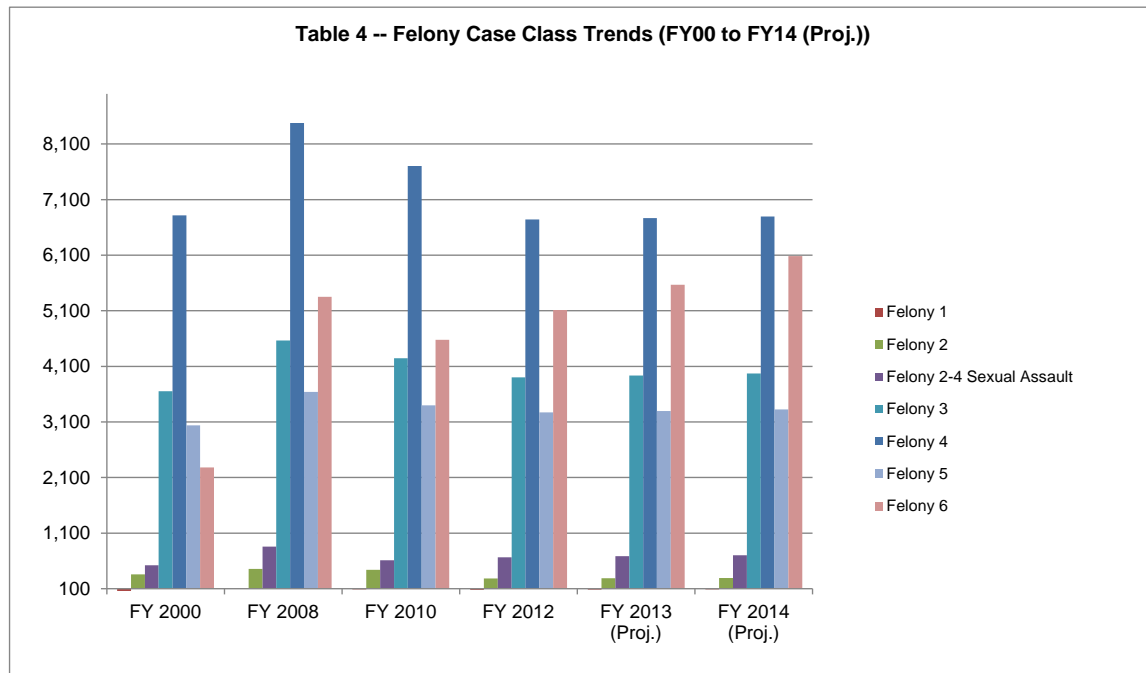
F1 cases closed in a year have grown at a rate of 2.3 percent annually, while the workload for these cases has increased at a rate of 4.2 percent annually. These (homicide) cases have grown at a rate greater than the population growth rate

since 2000, with workload near double the growth in cases. Similarly, F1 active cases have increased annually at rates of 1.9 percent and 3.9 percent for case growth and workload growth respectively. The active case growth of F1s is predictably higher than the closed case growth rate, since these cases tend to be disposed of in a much less timely manner than any other case class, and normally carry over to the next year with an average active period of 443 days per case as of 2012.

F6 cases opened in a year have grown at a rate of 8.2 percent annually, while the workload for these cases has increased at a rate of 12.6 percent annually, a case growth rate of five 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 7.8 percent and 12.5 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 more timely manner, with less carryover occurring across years. These cases had an average active period of 112 days as of 2012. The majority of these cases, therefore, do not tend to carry over to the next year.

While the growth in case numbers for Felony 3 (F3), Felony 4 (F4) and Felony 5 (F5) cases has fallen below the population growth rate, the workload associated with these cases has seen growth as much as double the population growth rate.

Tables 7, 10 and 12 contain the Felony Case class trend data discussed in this section.



The preceding **Table 4** provides graphical Felony Case class trends and their variability over time.

General Misdemeanor Cases. 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 above 7 percent annually in FY 2012. Similarly, the workload associated with these cases maintained annual growth of near 10 percent through FY 2012. 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.

General Juvenile Cases. 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 near -2 percent annual CRG through 2012. 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 in cases. 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 Adult case numbers, Adult workload and complexity of Adult cases, this competing growth of Juvenile case workload becomes increasingly challenging to effectively represent.

REGIONAL TRIAL OFFICE CASELOAD

OPENED CASE (“FILINGS”) TRENDS

Total Cases Opened. Opened cases are the Public Defender’s share of total cases filed in the courts state wide. The CRG for Opened Cases over the past 12 years is 3.1%, about double the population growth rate.

Table 5 - OSPD Trial Offices New Cases Opened - FY 2000 to FY 2014 Projected

OSPD Opened Cases Trial & Pretrial Caseload vs. Other Proceedings and Total	FY 2000 Actual	FY 2012 Actual	FY 2013 Proj.	FY 2014 Proj.	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
All New OSPD Cases (Tr./Prtrl+Other)	65,689	95,109	97,507	102,330	44.79%	48.44%	55.78%	3.13%
All Tr./Pretrl Cases	42,586	53,878	55,448	58,280	26.52%	30.20%	36.85%	1.98%
Tr./PreTrl. Portion of Total Caseload	64.8%	56.6%	56.9%	57.0%	-12.62%	-12.28%	-12.15%	-1.12%
Other Proceedings Only	23,103	41,231	42,059	44,050	78.47%	82.05%	90.67%	4.95%
Other Procs. Portion of Total Caseload	35.2%	43.4%	43.1%	43.0%	23.26%	22.64%	22.40%	1.76%

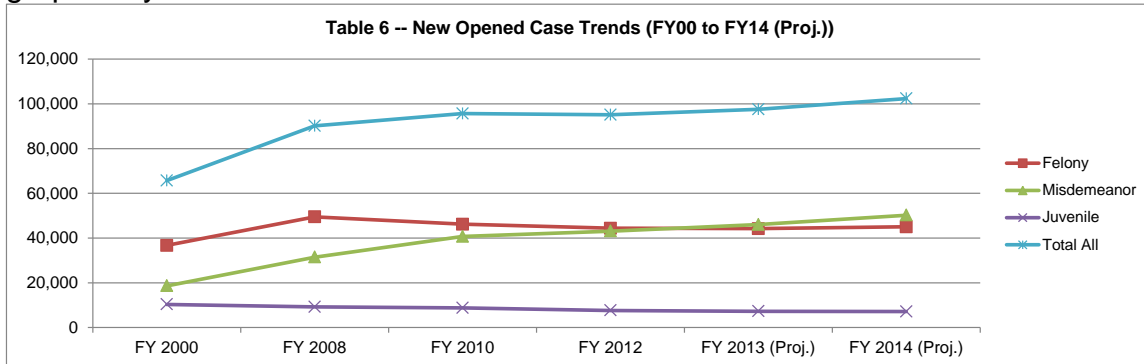
Table 5 above details the total cases opened since FY 2000 through FY 2012 and projected forward with CRG.

Felony Cases Opened. The CRG for Opened Felony Cases over the past 12 years has slowed to 1.6 percent, comparable to population growth, and comparable to the rate of The Office’s rate of growth of closed Felony cases (1.7 percent). This is important to note, since Felony cases are the most work intensive, time consuming and resource consuming class of cases handled by the Public Defender. A rate of growth of Opened Felony cases that would out-pace Closed Felony cases in a year would likely be evidence of a backlog occurring in these cases. Such a backlog would increase Active Felony caseload in the subsequent year, and further compound already growing Felony workload in the subsequent year. This backlog could very easily lead to a “snowball effect” which would continue to compound subsequent years. Based upon this data, it appears this is not currently a threat.

Misdemeanor Cases Opened. The CRG for Opened Misdemeanor Cases over the past 12 years is 7.2 percent, a rate near five times the population growth rate, and aligned with the rate of growth Misdemeanor cases closed each year (7.1 percent). As with Felony cases, this is important to note, since a continued rate of growth of Opened Misdemeanor cases that would out-pace Closed Misdemeanor cases in a year could be evidence of a backlog occurring in these cases, increasing Active Misdemeanor caseload in the subsequent year, and compounding the already rapidly growing Misdemeanor workload and caseload in the subsequent year. Based upon this data, it is believed that the marginal gap between growth of Opened and Closed cases and the relatively short length of time necessary to open and close a Misdemeanor case do not pose a current threat of backlog impacting subsequent years.

Juvenile Cases Opened. Opened Juvenile Cases have experienced a gradual decline over the past 12 years at a -2.5 percent CRG, a rate that is aligned with the rate of decline for Juvenile cases closed each year (-2.4 percent). This is important to note, because in the last 12 years there have also been many changes to criminal law that have resulted in an increase in Juvenile cases being charged as adults. These changes in law are likely one driver in the apparent decline of Juvenile cases.

Table 6, as follows, shows the variability of growth trends for case types graphically.



Opened Cases Workload/FTE Requirements. **Table 7** on the following page details the total cases opened by case class since FY 2000 through 2012 and projected forward with cumulative growth rate since 2000, annual CRG for cases since 2000, CRG for workload since 2000, and net trial attorney FTE required for caseload.

FTE requirements information is provided in this table for comparison purposes only, since the OSPD only uses actual and projected Closed case data to measure workload requirements associated with its annual budget requests and resource needs. Since the Public Defender relinquishes approximately 10 percent of its total Opened cases annually due to conflict withdrawals and other reasons, the FTE requirements contained here are inflated. However, as the Public Defender experiences a long-term decline in the number of Opened cases from which it is withdrawn each year, the gap between the workload requirements outlined in this Open Case table will continue to align more closely with the Closed case table resources detailed in **Table 7**, as each case that is not given up to withdrawals will result in an increase to cases closed and closed cases workload.

**Table 7 - OSPD Trial Office Cases Opened By Case Class with Attorney FTE Requirements
FY 2000 to FY 2018 Projected**

SUMMARY OF OSPD OPENED CASES	A.v. Equivt Cases per Yr/FTE 2012	Cum Change in Cases Since 2000	CRG in Cases Since 2000	CRG in Workload Since 2000	2018 Proj	2018 Res. Alloc.	2014 Proj	2014 Res. Alloc.	2013 Proj	2013 Res. Alloc.	2012 Open	2012 Res. Alloc.	2000 Open	2000 OSPD Res. Alloc Rqt
Felony 1	4.9	-35.5%	-3.6%	-1.9%	62	12.9	66	13.5	67	13.7	69	14.2	107	17.8
Felony 2	32.1	-66.0%	-8.6%	-8.7%	165	5.1	208	6.5	223	6.9	241	7.5	709	22.4
Sex Assaults (F2-F4)	31.3	-22.1%	-2.1%	-1.8%	655	20.8	696	22.1	708	22.5	745	23.8	956	29.7
Felony 3	98.0	-22.3%	-2.1%	-1.4%	3,605	36.8	3,845	39.3	3,913	40.0	4,052	41.4	5,216	49.0
Felony 4	150.8	-22.6%	-2.1%	0.2%	6,188	41.1	6,598	43.8	6,713	44.6	6,983	46.3	9,020	45.1
Felony 5	151.1	-10.4%	-0.9%	1.4%	3,304	21.9	3,387	22.4	3,410	22.6	3,488	23.1	3,892	19.5
Felony 6	235.1	157.2%	8.2%	12.6%	9,833	41.8	6,516	27.7	5,919	25.2	5,496	23.4	2,137	5.6
Subtotal Felony Trial & PreTrial	117.3	-4.4%	-0.4%	-0.4%	23,812	180.4	21,316	175.3	20,953	175.4	21,074	179.7	22,037	189.1
Misc. Proceedings		-10.8%	-0.9%	0.0%	12,890	-	12,757	-	12,767	-	13,102	-	14,682	-
Revocation of Probation	926.8				12,970	14.0	10,874	11.8	10,428	11.3	10,173	11.0		
Appeals		31.8%	2.3%	0.0%	46	-	32	-	29	-	29	-	22	-
Original Proceedings		800.0%	20.1%	0.0%	52	-	25	-	21	-	18	-	2	-
Partial Service		-100.0%	0.0%	0.0%	-	-	-	-	-	-	-	-	-	-
Subtotal Other Proceedings		58.6%	3.9%	23.0%	25,959	14.0	23,688	11.8	23,245	11.3	23,322	11.0	14,706	-
Total Felony	232.9	20.8%	1.6%	0.1%	49,771	194.4	45,004	187.1	44,198	186.7	44,396	190.6	36,743	189.1
Misdemeanor 1	174.5	189.0%	9.2%	10.5%	17,411	100.4	11,491	66.3	10,401	60.0	9,631	55.2	3,332	16.7
Sex Assault (M1)	167.5	17.3%	1.3%	2.4%	632	3.9	481	2.9	458	2.8	447	2.7	381	2.0
Sex Assault (M2)	182.9	-90.5%	-17.8%	-17.7%	9	0.0	12	0.1	14	0.1	16	0.1	169	0.9
Misdemeanor 2	316.9	126.9%	7.1%	9.8%	11,130	35.4	7,504	23.8	6,855	21.7	6,362	20.1	2,804	6.6
Misdemeanor 3/Traffic/PO	313.3	59.6%	4.0%	6.6%	18,604	59.5	14,374	46.0	13,567	43.4	12,989	41.5	8,139	19.2
Misdemeanor Trial & PreTrial	246.5	98.6%	5.9%	8.4%	47,786	199.2	33,862	139.1	31,295	128.0	29,445	119.5	14,825	45.4
Misc. Proceedings		58.0%	3.9%	0.0%	8,344	-	6,459	-	6,105	-	5,946	-	3,763	-
Revocation of Probation	946.2				17,573	18.6	9,688	10.3	8,445	8.9	7,526	8.0		
Appeals		281.1%	11.8%	0.0%	296	-	174	-	153	-	141	-	37	-
Original Proceedings		1400.0%	25.3%	0.0%	42	-	20	-	17	-	15	-	1	-
Partial Service		-100.0%	0.0%	0.0%	-	-	-	-	-	-	-	-	-	-
Subtotal Other Proceedings		258.5%	11.2%	20.0%	26,256	18.6	16,341	10.3	14,720	8.9	13,628	8.0	3,801	-
Total Misdemeanor	338.0	131.3%	7.2%	9.0%	74,042	217.7	50,203	149.3	46,015	137.0	43,073	127.4	18,626	45.4
Juvenile Felony	195.2	-52.1%	-6.0%	-4.3%	1,054	5.4	1,297	6.7	1,368	7.0	1,470	7.5	3,071	12.7
Juvenile Misdemeanor	195.4	-28.8%	-2.8%	-1.1%	1,736	8.9	1,806	9.3	1,832	9.4	1,889	9.7	2,653	11.0
Juvenile Trial & PreTrial	195.3	-41.3%	-4.3%	-2.7%	2,790	14.3	3,103	15.9	3,200	16.4	3,359	17.2	5,724	23.7
Misc. Proceedings		-65.5%	-8.5%	0.0%	995	-	1,317	-	1,421	-	1,581	-	4,585	-
Revocation of Probation	924.1				2,862	3.1	2,688	2.9	2,659	2.9	2,686	2.9		
Appeals		27.3%	2.0%	0.0%	18	-	15	-	15	-	14	-	11	-
Original Proceedings		-100.0%	0.0%	0.0%	-	-	-	-	-	-	-	-	-	-
Partial Service		-100.0%	0.0%	0.0%	-	-	-	-	-	-	-	-	-	-
Subtotal Other Proceedings		-6.9%	-0.6%	12.0%	3,876	3.1	4,020	2.9	4,094	2.9	4,281	2.9	4,596	-
Total Juvenile	380.0	-26.0%	-2.5%	-1.4%	6,666	17.4	7,122	18.9	7,294	19.3	7,640	20.1	10,320	23.7
Supervision/Management Standard		-100.0%	0.0%	1.7%		39.4		33.0		32.0		31.6		25.8
Other Proceedings total		78.5%	4.9%		56,090		44,049		42,059		41,231		23,103	
Total Trial/Pretrial	154.8	26.5%	2.0%	1.7%	74,388	433.3	58,280	363.4	55,448	351.9	53,878	348.0	42,586	284.0
Total Misc. Proceedings		143.4%	7.7%	0.0%	22,229	16.3	20,533	20,292	20,292	20,292	20,629	20,629	8,475	-
Total Probation Revocations	848.7	40.1%	2.8%	4.5%	33,406	39.2	23,250	27.4	21,532	25.4	20,385	24.0	14,555	14.1
Total Appeals		162.9%	8.4%	-100.0%	361	-	221	-	197	-	184	-	70	0.1
Total Original Proceedings		1000.0%	22.1%	-100.0%	95	-	45	-	38	-	33	-	3	0.0
Total Partial Service		-100.0%	0.0%	0.0%	-	-	-	-	-	-	-	-	-	-
Total All	255.7	44.8%	3.1%	1.9%	130,478	472.5	102,330	390.8	97,507	377.3	95,109	372.0	65,689	298.1

FTE requirements information is provided here for comparison purposes only, since the OSPD only uses Closed case data to measure its workload requirements associated with its annual budget requests and resource needs.

REGIONAL TRIAL OFFICE CASELOAD

CLOSED (“TERMINATED”) CASE TRENDS

Total Closed Cases. Closed Cases grew rapidly through FY 2005-06 and have since stabilized at an annual CRG that is double the Colorado general population growth rate. The Closed Cases CRG over the past 12 years (FY2000 to FY2011) is 3.1 percent. Meanwhile, workload associated with cases has maintained growth of near three times the population growth rate at 4.3 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, comparable population trends, and overall OSPD case trends.

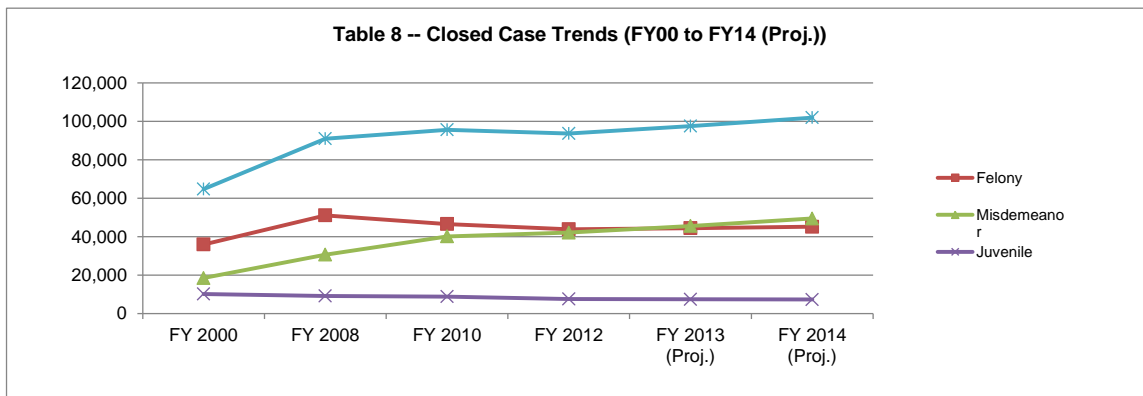


Table 8 above shows the variability of case types graphically.

**Table 9 - OSPD Trial Office Cases Closed By Type of Case
& Total Trial Office Cases Closed
FY 2000 to FY 2014 Projected**

All OSPD Closed Case Ratios by Type of Case to Total OSPD Cases	FY 2000	FY 2011	FY 2012	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
OSPD Total Closed Cases & Proceedings	64,779	94,219	93,692	97,527	101,946	44.63%	50.55%	57.38%	3.12%
OSPD Total Felony Terminated Cases	35,999	44,603	43,894	44,466	45,151	21.93%	23.52%	25.42%	1.67%
Ratio of OSPD Felony Cases to Total All OSPD Cases	55.57%	47.34%	46.85%	45.59%	44.29%	-15.70%	-17.96%	-20.30%	-1.41%
OSPD Total MISD Terminated Cases & Proceedings	18,535	41,445	42,148	45,584	49,460	127.40%	145.93%	166.85%	7.09%
Ratio of OSPD MISD Cases to Total All OSPD Cases	28.61%	43.99%	44.99%	46.74%	48.52%	57.22%	63.35%	69.56%	3.84%
OSPD Total JUV Terminated Cases & Proceedings	10,245	8,171	7,650	7,478	7,334	-25.33%	-27.01%	-28.41%	-2.40%
Ratio of OSPD JUV Cases to Total All OSPD Cases	15.82%	8.67%	8.17%	7.67%	7.19%	-48.37%	-51.52%	-54.51%	-5.36%

Table 9 above provides summary level information as to Closed cases by case type and the ratio of case types to total cases closed or projected to be closed in a year.

On the following page, **Table 10** details the total cases closed by case class since FY 2000 through 2012 and projected forward with cumulative growth rate since 2000, estimated CRG for cases since 2000, and CRG for workload since 2000. This table also includes trial attorney FTE required (Resource Allocation Requirement) for each caseload by year. It is this Closed case FTE data that the Public Defender uses to estimate its current and projected staffing resource needs.

However, even the resources referenced herein are not complete, since the Public Defender has seen a decline in the portion of total new cases opened in a year from which it is withdrawn. As a result, the portion of cases that the Office must carry through to completion has increased, and so has closed case numbers. This compounding rate of growth is not fully captured here.

Additionally, Closed case requirements can only measure retrospective, completed output, as opposed to net workload activity. An accurate measurement of net workload activity would incorporate that portion of workload performed on all active cases carried within one year. This is difficult to measure. A complete measurement of net workload incorporates workload of all cases that were both opened and closed in the current year, plus that portion of work performed in the current year on cases carried over from the previous year to the current year (opened in the prior year and closed in the current year), plus that portion of work performed in the current year on cases opened in the current year and carried over to the next year (opened in the current year and closed in the next year).

**Table 10 - OSPD Trial Office Cases Closed By Case Class with Attorney FTE Requirements
FY 2000 to FY 2018 Projected**

SUMMARY OF OSPD CASES CLOSED	A.v. Equivalent Cases Per Year/FTE 2012	Cum Change in Cases Since 2000	12 Yr. CRG in Cases	12 Yr. CRG in Workload	2018 Proj	2018 Res. A loc.	2014 Proj	2014 Res. A loc.	2013 Proj	2013 Res. A loc.	2012 Closed	2012 Res. A loc.	2000 Closed	2000 CSPD Res. A loc Rqt
Felony 1	4.8	31.7%	2.3%	4.2%	113	24	88	18.3	83	17.3	79	16.5	60	10
Felony 2	32.3	-20.6%	-1.9%	-2.0%	334	10	295	9.1	290	9.0	286	8.8	360	11
Sex Assaults (F2-F4)	31.3	28.0%	2.1%	2.3%	794	26	704	22.5	685	21.9	667	21.3	521	16
Felony 3	98.0	6.8%	0.6%	1.3%	4,150	42	3,974	40.6	3,936	40.2	3,901	39.8	3,652	34
Felony 4	150.8	-1.0%	-0.1%	2.4%	6,950	46	6,796	45.1	6,768	44.9	6,744	44.7	6,814	34
Felony 5	151.1	7.6%	0.6%	3.1%	3,449	23	3,325	22.0	3,298	21.8	3,271	21.6	3,039	15
Felony 6	235.1	124.3%	7.0%	11.6%	9,014	38	6,082	25.9	5,567	23.7	5,114	21.8	2,280	6
Subtotal Felony Trial & PreTrial	115.0	19.9%	1.5%	2.8%	24,803	209	21,264	183.5	20,627	178.7	20,062	174.5	16,726	126
Misc. Proceedings		-45.2%	-4.9%	0.0%	6,269	-	7,251	-	7,545	-	7,863	-	14,344	-
Probation Revocations	927.0				11,418	12.3	10,441	11.3	10,227	11.0	10,024	10.8		
Appeals		93.8%	5.7%	0.0%	54	-	37	-	34	-	31	-	16	-
Original Proceedings		1000.0%	23.0%	0.0%	26	-	15	-	13	-	11	-	-	-
Partial Service		20.2%	1.5%	0.0%	6,708	-	6,144	-	6,021	-	5,903	-	4,913	-
Felony Other Proceedings		23.7%	1.8%	22.8%	24,476	12	23,887	11.3	23,839	11.0	23,832	10.8	19,273	-
Total Felony	236.8	21.9%	1.7%	3.3%	49,279	221	45,151	194.7	44,466	189.8	43,894	185.3	35,999	126
Misdemeanor 1	175.3	236.1%	10.6%	11.9%	18,003	102	11,365	64.7	10,172	58.0	9,119	52.0	2,713	14
Sex Assault (M1)	168.4	20.1%	1.5%	2.6%	473	3	401	2.4	388	2.3	376	2.2	313	2
Sex Assault (M2)	177.6	-92.7%	-19.6%	-19.1%	4	0	6	0.0	7	0.0	8	0.0	109	1
Misdemeanor 2	317.4	166.6%	8.5%	11.4%	11,195	35	7,266	22.9	6,568	20.7	5,954	18.8	2,233	5
Misdemeanor 3/Traffic/PO	314.7	71.1%	4.6%	7.3%	18,223	58	13,868	44.0	13,034	41.4	12,279	39.0	7,176	17
Misdemeanor Trial & PreTrial	247.4	121.1%	6.8%	9.5%	47,898	198	32,907	134.0	30,169	122.4	27,736	112.1	12,544	38
Misc. Proceedings		-30.6%	-3.0%	0.0%	2,465	-	2,509	-	2,538	-	2,575	-	3,713	-
Probation Revocations	945.3				13,218	14.0	8,756	9.3	7,959	8.4	7,256	7.7		
Appeals		458.3%	15.4%	0.0%	369	-	186	-	158	-	134	-	24	-
Original Proceedings		2000.0%	28.9%	0.0%	74	-	31	-	26	-	21	-	1	-
Partial Service		96.4%	5.8%	0.0%	6,804	-	5,071	-	4,734	-	4,426	-	2,253	-
Misdemeanor Other Proceedings		140.6%	7.6%	19.7%	22,929	14	16,554	9.3	15,414	8.4	14,412	7.7	5,991	-
Total Misdemeanor	351.9	127.4%	7.1%	10.1%	70,828	212	49,460	143.3	45,584	130.8	42,148	119.8	18,535	38
Juvenile Felony	195.7	-41.6%	-4.4%	-2.5%	1,077	5	1,248	6.4	1,297	6.6	1,349	6.9	2,310	9
Juvenile Misdemeanor	195.5	-17.8%	-1.6%	0.2%	1,850	9	1,834	9.4	1,837	9.4	1,844	9.4	2,244	9
Juvenile Trial & PreTrial	195.6	-29.9%	-2.9%	-1.1%	2,926	15	3,082	15.8	3,134	16.0	3,193	16.3	4,554	19
Misc. Proceedings		-82.5%	-13.5%	0.0%	377	-	612	-	695	-	791	-	4,519	-
Probation Revocations	924.3				2,776	3.0	2,719	2.9	2,724	2.9	2,737	3.0		
Appeals		70.0%	4.5%	0.0%	26	-	19	-	18	-	17	-	10	-
Original Proceedings		600.0%	18.9%	0.0%	13	-	9	-	8	-	7	-	-	-
Partial Service		-22.1%	-2.1%	0.0%	902	-	894	-	898	-	905	-	1,162	-
Juvenile Other Proceedings		-21.7%	-2.0%	12.2%	4,095	3	4,252	2.9	4,343	2.9	4,457	3.0	5,691	-
Total Juvenile	396.6	-25.3%	-2.4%	0.3%	7,021	18	7,334	18.7	7,478	19.0	7,650	19.3	10,245	19
Supervision/Management		-100.0%	0.0%	4.3%		45.1		35.7		34.0		32.4		19.6
Other Proceedings total		37.9%	2.7%		51,500		44,693		43,597		42,701		30,955	
Total Trial/Pretrial	152.0	50.8%	3.5%	4.3%	75,628	466.8	57,253	368.9	53,930	351.1	50,991	335.4	33,824	201.6
Total Misc. Proceedings		35.2%	2.5%	0.0%	9,111		10,371		10,778		11,229		8,308	
Total Prob Revocations	933.2	40.3%	2.9%	3.7%	27,413	29.3	21,915	23.5	20,911	22.4	20,017	21.4	14,268	13.8
Total Appeals		264.0%	11.4%	0.0%	449		242		210		182		50	
Total Original Proceedings		3800.0%	35.7%	0.0%	113		55		46		39		1	
Total Partial Service		34.9%	2.5%	0.0%	14,414		12,110		11,652		11,234		8,328	
Total All	262.6	44.6%	3.1%	4.3%	127,128	496.1	101,946	392.4	97,527	373.5	93,692	356.8	64,779	215.4

REGIONAL TRIAL OFFICE CASELOAD

ACTIVE CASE TRENDS

Total Active Cases. Active caseload incorporates all cases that are actively represented in a given year: the total new cases received in a year, plus the remaining unfinished cases opened in the previous year that have not yet completed and closed, and therefore are carried into the new year as existing workload and caseload.

The number of Active Open Cases has grown at an annual CRG of 3.1% over the past 12 years (FY 2000 to FY 2012), about double the population growth. This number does not outweigh the rate of cases closed in a year or the rate of growth of opened cases. This is significant to note, since an increase in opened cases outweighing an increase in closed cases would likely lead to an increase in active cases in the next year, which would reflect a growing backlog of cases and workload, further impacting the caseload and workload of subsequent years. Based upon this data, it appears that this is not currently the case.

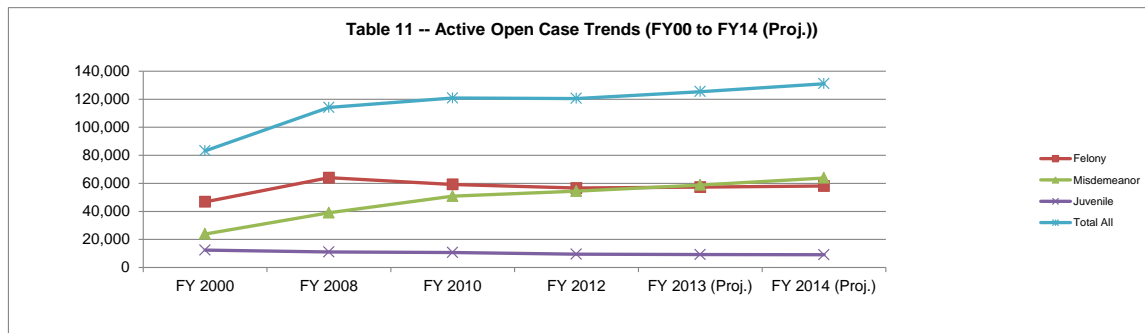


Table 11 above shows the variability of case types graphically.

Table 12 on Page 42 details the total cases actively carried each year by case class since FY 2000 through 2012 and projected forward with cumulative growth rate since 2000, estimated CRG for cases since 2000, and CRG for workload since 2000. This table also includes trial attorney FTE required for each caseload by year.

The FTE requirements detailed in this table are provided for comparison purposes only. The workload for these active cases is not completed in one year, but overlaps years. It is closed case FTE data (**Table 10**) that the Public Defender uses to estimate its current and projected staffing resource needs. However, the use of Closed cases resource data is not a complete analysis, since the Public Defender has experienced a decline in the portion of total new cases opened in a year from which it is withdrawn. As this decline occurred, the portion of cases that The Office must carry through to completion increased. This compounding rate of growth is not fully captured in Closed cases data.

Additionally, Closed case requirements can only measure retrospective, completed output, as opposed to net workload activity. An accurate

measurement of net workload activity would incorporate that portion of workload associated with all Active cases carried within one year.

The more meaningful data in this table is the number of cases represented by case type and case class, since it is this data that is used to develop the comparable national caseload standards and staffing requirements outlined by the American Bar Association (ABA). ABA standards apply caps to the total number of cases carried in a given year by an attorney (Active Cases), whereas OSPD FTE requirements are based upon weighted workload measurement of the time required to bring a case to full completion.

**Table 12 - OSPD Trial Office All Active Open Cases By Case Class with Attorney FTE Requirements
FY 2000 to FY 2018 Projected**

State-wide SUMMARY OF OSPD ACTIVE CASES	A.v. Equivalent Cases per Yr/FTE	Cum Change in Cases since 2000	CRG in Cases since 2000	CRG in Workload since 2000	2018 Proj	2018 Res. Alloc.	2014 Proj	2014 Res. Alloc.	2013 Proj	2013 Res. Alloc.	2012 Active	2012 Res. Alloc.	2000 Active	00 Res. Alloc.
Felony 1	4.8	25.9%	1.9%	3.9%	202	42	180	37	175	36	170	35	135	22
Felony 2	32.2	-25.3%	-2.4%	-2.5%	473	15	448	14	447	14	447	14	598	19
Sex Assaults (F2-F4)	31.4	61.1%	4.1%	4.4%	1,715	55	1,423	45	1,361	43	1,302	41	808	25
Felony 3	97.9	11.7%	0.9%	1.7%	6,031	62	5,720	58	5,650	58	5,584	57	4,998	46
Felony 4	150.8	0.4%	0.0%	2.5%	9,806	65	9,593	64	9,551	63	9,515	63	9,473	47
Felony 5	151.0	12.7%	1.0%	3.5%	4,958	33	4,718	31	4,663	31	4,610	31	4,092	20
Felony 6	235.1	147.0%	7.8%	12.5%	12,516	53	8,371	36	7,629	32	6,973	30	2,823	7
Subtotal Felony Trial & PreTrial	105.6	24.7%	1.9%	3.2%	35,701	323.8	30,453	285.2	29,477	277.6	28,601	270.7	22,927	186
Misc. Proceedings		-45.9%	-5.0%		7,480	-	8,795	-	9,184	-	9,601	-	17,760	-
Probation Revocation	926.6				13,576	15	12,685	14	12,487	13	12,300	13		
Appeals		96.2%	5.8%		97	-	62	-	56	-	51	-	26	-
Original Proceedings		1800.0%	27.8%		54	-	27	-	22	-	19	-	1	-
Partial Service		-1.5%	-0.1%		6,291	-	6,115	-	6,085	-	6,059	-	6,153	-
Subtotal Other Proceedings		17.1%	1.3%	24.8%	27,499	14.7	27,684	13.7	27,835	13.5	28,030	13.3	23,940	-
Total Felony	199.4	20.8%	1.6%	3.6%	63,200	338.4	58,137	298.9	57,312	291.1	56,631	284.0	46,867	186
Misdemeanor 1	174.6	240.5%	10.8%	12.0%	24,459	139	15,392	88	13,762	79	12,323	71	3,619	18
Sex Assault (M1)	168.4	56.8%	3.8%	4.9%	893	5	696	4	658	4	624	4	398	2
Sex Assault (M2)	188.0	-88.8%	-16.7%	-16.6%	12	0	16	0	17	0	19	0	169	1
Misdemeanor 2	316.3	170.1%	8.6%	11.5%	15,060	48	9,709	31	8,764	28	7,933	25	2,937	7
Misdemeanor 3/Traffic/PO	313.4	86.3%	5.3%	8.1%	25,815	82	19,167	61	17,900	57	16,756	53	8,995	21
Misdemeanor Trial & PreTrial	246.2	133.6%	7.3%	10.0%	66,238	274.7	44,979	184.0	41,101	167.6	37,655	152.9	16,118	49
Misc. Proceedings		-29.2%	-2.8%		3,018	-	3,052	-	3,083	-	3,122	-	4,409	-
Probation Revocation	945.7				15,463	16	10,481	11	9,592	10	8,806	9		
Appeals		364.0%	13.6%		606	-	315	-	270	-	232	-	50	-
Original Proceedings		2100.0%	29.4%		80	-	33	-	27	-	22	-	1	-
Partial Service		35.5%	2.6%		5,987	-	4,947	-	4,742	-	4,556	-	3,362	-
Subtotal Other Proceedings		114.0%	6.5%	21.5%	25,154	16.4	18,829	11.1	17,713	10.1	16,738	9.3	7,822	-
Total Misdemeanor	335.3	127.2%	7.1%	10.5%	91,392	291.0	63,808	195.1	58,814	177.7	54,393	162.2	23,940	49
Juvenile Felony	195.2	-34.3%	-3.4%	-1.5%	1,613	8	1,811	9	1,866	10	1,924	10	2,928	12
Juvenile Misdemeanor	195.1	-11.4%	-1.0%	0.9%	2,508	13	2,448	13	2,442	13	2,439	13	2,752	11
Juvenile Trial & PreTrial	195.1	-23.2%	-2.2%	-0.2%	4,120	21.1	4,259	21.8	4,308	22.1	4,363	22.4	5,680	23
Misc. Proceedings		-82.0%	-13.3%		453	-	746	-	848	-	966	-	5,362	-
Probation Revocation	924.2				3,078	3	3,131	3	3,156	3	3,187	3		
Appeals		58.8%	3.9%		41	-	31	-	29	-	27	-	17	-
Original Proceedings		800.0%	21.2%		19	-	12	-	10	-	9	-	-	-
Partial Service		-31.5%	-3.1%		845	-	887	-	904	-	922	-	1,346	-
Subtotal Other Proceedings		-24.0%	-2.3%	13.2%	4,436	3.3	4,806	3.4	4,947	3.4	5,111	3.4	6,725	-
Total Juvenile	367.1	-23.6%	-2.2%	1.0%	8,556	24.4	9,065	25.2	9,255	25.5	9,474	25.8	12,405	23
Supervision/Management		-100.0%	0.0%	4.7%		62.0		49.1		46.7		44.6		26
Other Proceedings total		29.6%	2.2%		57,088		51,319		50,495		49,879		38,487	
Total Trial/Pretrial	143.9	57.9%	3.9%	4.7%	106,060	681.5	79,691	540.2	74,886	514.0	70,619	490.6	44,725	283.9
Total Misc. Proceedings		35.1%	2.5%		10,951		12,594		13,115		13,689		10,131	
Total Probation Revocations	848.3	39.6%	2.8%	5.3%	32,116	37.8	26,297	31.0	25,236	29.7	24,293	28.6	17,400	15.3
Total Appeals		233.3%	10.6%		745		408		355		310		93	0
Total Original Proceedings		2400.0%	30.8%		154		71		60		50		2	0
Total Partial Service		6.2%	0.5%		13,123		11,949		11,730		11,537		10,861	8
Total All	232.1	44.8%	3.1%	5.2%	163,148	719.3	131,010	571.1	125,381	543.7	120,498	519.3	83,212	283.9

FTE requirements information is provided here for comparison purposes only, since the OSPD only uses Closed case data to measure its workload requirements associated with its annual budget requests and resource needs.

REGIONAL TRIAL OFFICE CASELOAD

TRIAL AND PRETRIAL CASE TRENDS

General Trial and Pretrial Cases. 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 126 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, which were counted and measured separately beginning in FY 2010 as a result of 2008 case weighting study recommendations. 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 at a rate of 3.5% over the past 12 years (FY 2000 to FY 2012). This number outweighs the rate of total cases closed in a year (3.1 percent). The case data in **Table 13** below reflects a gradual change in this case type’s proportionate share of total caseload, which has been increasing at an average annual rate of 0.4 percent since 2000.

**Table 13 - OSPD Trial Office Trial and Pre-trial Cases Closed
& Other Proceedings Cases Closed
FY 2000 to FY 2014 Projected**

OSPD Closed Trial & Pretrial Caseload vs. Other Proceedings and Total	FY 2000	FY 2011	FY 2012	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
All Closed OSPD Cases (Tr/Prtri+Other)	64,779	94,219	93,692	97,527	101,946	44.63%	50.55%	57.38%	3.12%
All Tr/Pretri Cases	33,824	52,346	50,991	53,930	57,253	50.75%	59.44%	69.27%	3.48%
Tr./PreTri. Portion of Total Caseload	52.2%	55.6%	54.4%	55.3%	56.2%	4.23%	5.90%	7.56%	0.35%
Other Proceedings Only	30,955	41,873	42,701	43,597	44,693	37.95%	40.84%	44.38%	2.72%
Other Procs. Portion of Total Caseload	47.8%	44.4%	45.6%	44.7%	43.8%	-4.62%	-6.45%	-8.26%	-0.39%

The case data in **Table 14**, on the following 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 1.5 percent annually, about equal to the population growth rate. Misdemeanor Trial/Pretrial cases are growing at a rate of 6.8 percent annually, over four times the population growth rate. Juvenile Trial/Pretrial cases are declining annually, at a rate of -2.9 percent annually since 2000.

**Table 14 - OSPD Trial Offices Closed Trial and Pre-trial Cases
FY 2000 to FY 2014 Projected**

All Closed OSPD Trial/Pretrial Cases by Case Type w/ Ratio to All Trl/Prtrl	FY 2000	FY 2011	FY 2012	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
OSPD Total Closed Cases	64,779	94,219	93,692	97,527	101,946	44.63%	50.55%	57.38%	3.12%
Total Trial & Pretrial Closings	33,824	52,346	50,991	53,930	57,253	50.75%	59.44%	69.27%	3.48%
Ttl Trl/Prtrl Ratio of All Cases	52.2%	55.6%	54.4%	55.3%	56.2%	4.23%	5.90%	7.56%	0.35%
OSPD Felony Trl/Pretrl	16,726	20,758	20,062	20,627	21,264	19.94%	23.32%	27.13%	1.53%
OSPD Felony Trl/Pretrl ratio to All Trl/Prtrl	49.45%	39.66%	39.34%	38.25%	37.14%	-20.44%	-22.65%	-24.89%	-1.89%
OSPD Misdemeanor Trl/Pretrl	12,544	27,921	27,736	30,169	32,907	121.11%	140.51%	162.33%	6.84%
OSPD Misdemeanor Trl/Pretrl Ratio to All Trl/Prtrl	37.09%	53.34%	54.39%	55.94%	57.48%	46.67%	50.84%	54.98%	3.24%
OSPD Juvenile Trl/Pretrl	4,554	3,667	3,193	3,134	3,082	-29.89%	-31.18%	-32.32%	-2.92%
OSPD Juvenile Trl/Pretrl Ratio to All Trl/Prtrl	13.46%	7.01%	6.26%	5.81%	5.38%	-53.49%	-56.84%	-60.02%	-6.18%

Trials. Trial Cases have continued to grow at a rate of 4 percent annually since 2000. Within this case type, Trials by Jury, have increased annually at a rate of 6 percent. This rate of growth is higher than the general trends of overall closed cases in the last 12 years, which was about 3.1 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. Alternately, Trials by Court have declined at a rate of 6 percent annually. Overall, the Trial portion of the caseload has remained relatively stable as a portion of total Trial and Pretrial cases, consistently accounting for about 2.6 percent of total Trial/Pretrial cases. **Table 15**, on the following page, provides data demonstrating these trends.

Table 15 also 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 290 days for trial cases, 2.3 times greater than the 126 days for general Trial/Pretrial cases. Therefore, while Trial cases are growing at a rate close to that of total Trial/Pretrial Case growth trend (3.5 percent) and near two and one-half times higher than the population growth rate, the increased complexity of these cases increases the time and workload standard required to represent them when compared to the overall Trial/Pretrial Case growth rate.

Table 16, also on the following page, refines the analysis further by examining the dynamics of Trial by Court and Trial by Jury cases as a subset of Trial cases. As the table shows, Trials by Court have been *declining* since FY 2000 at a 6 percent CRG while Trials by Jury have been *growing* overall at 6 percent, near double the rate of Closed Cases. As a percentage of overall Trial / Pretrial cases, however, T/C and T/J cases have remained stable since FY 2000 – 2.5% of total Trial / Pretrial cases in FY 2000 to 2.6 percent for FY 2012.

**Table 15 - OSPD Trial Office Trial Cases
Days Required to Try a Case by Case Type - FY 2000 to FY 2014 Projected**

Average Number of Days Required to Try A Case	FY 2014 Proj.			FY 2013 Proj.			FY 2012			FY 2000			CRG Cases	CRG Days	CRG Av/Case	
	Trial Cases Closed	Days	Ave/Case	Trial Cases Closed	Days	Ave/Case	Trial Cases Closed	Days	Ave/Case	Trial Cases Closed	Days	Ave/Case				
Felony 1	33	20,314	621	32	19,443	601	32	18,610	582	28	11,003	393	1.1%	4.5%	3.3%	
Felony 2	63	32,265	511	60	29,862	498	57	27,638	485	31	10,918	352	5.2%	8.0%	2.7%	
Felony 3	161	66,296	413	156	63,658	407	152	61,125	402	109	37,551	345	2.8%	4.1%	1.3%	
Felony 4	166	54,224	327	161	52,532	326	157	50,893	324	114	34,792	305	2.7%	3.2%	0.5%	
Felony 5	82	24,632	300	78	23,198	298	74	21,847	295	40	10,636	266	5.3%	6.2%	0.9%	
Felony 6	62	20,818	334	58	19,230	332	54	17,763	329	23	6,854	298	7.4%	8.3%	0.8%	
Felony Trials	566	218,548	386	546	207,923	381	526	197,876	376	345	111,754	324	3.6%	4.9%	1.3%	
Misdemeanor 1	336	78,386	233	314	72,097	229	294	66,313	226	132	24,309	184	6.9%	8.7%	1.7%	
Misdemeanor 2/3	176	42,236	240	167	39,276	235	159	36,524	230	87	15,274	176	5.2%	7.5%	2.3%	
Traffic/PO	292	76,783	263	269	71,006	264	248	65,663	265	93	25,684	276	8.5%	8.1%	-0.4%	
Misdemeanor Trials	804	197,405	246	751	182,379	243	701	168,500	240	312	65,267	209	7.0%	8.2%	1.2%	
Juvenile Felony	50	11,849	236	52	11,879	228	54	11,908	221	84	12,266	146	-3.6%	-0.2%	3.5%	
Juvenile Misdemeanor	47	7,998	171	50	8,297	167	53	8,608	162	114	13,384	117	-6.2%	-3.6%	2.7%	
Juvenile Trials	97	19,847	205	102	20,176	198	107	20,516	192	198	25,650	130	-5.0%	-1.8%	3.3%	
Total All	1,467	435,799	297	1,398	410,477	294	1,334	386,892	290	855	202,671	237	3.8%	5.5%	1.7%	
					Cumulative Growth in Av. # Trial Days Per Case											
																22.4%
																1.7%

**Table 16 - OSPD Trial Offices Court and Jury Trial Cases
FY 2000 to FY 2014 Projected**

OSPD Trial Case Summary	T/C CRG	T/J CRG	All Trials CRG	Proj. FY 2014			Proj. FY 2013			Proj. FY 2012			FY 2000			
				T/C	T/J	Total	T/C	T/J	Total	T/C	T/J	Total	T/C	T/J	Total	
Felony																
F1	-13%	3%	1%	1	33	33	1	32	33	1	31	32	5	23	28	
F2	-100%	6%	5%	-	64	64	-	60	60	-	57	57	3	28	31	
F3	0%	3%	3%	3	158	161	3	153	156	3	149	152	3	106	109	
F4	-13%	3%	3%	1	166	166	1	161	162	1	156	157	5	109	114	
F5	0%	6%	5%	3	79	82	3	75	78	3	71	74	3	37	40	
F6	0%	8%	7%	2	60	62	2	56	58	2	52	54	2	21	23	
Total Felonies	-6%	4%	4%	10	560	569	10	537	547	10	516	526	21	324	345	
Misdemeanors																
M1	-22%	8%	7%	1	344	345	1	317	318	1	293	294	20	112	132	
M2	-6%	10%	9%	2	107	109	2	98	100	2	89	91	4	29	33	
M3	-14%	4%	2%	1	71	73	2	69	70	2	66	68	12	42	54	
Traffic / PO	-5%	9%	9%	4	290	294	4	266	270	4	244	248	7	86	93	
Total Mismemeanors	-12%	8%	7%	8	813	820	8	750	758	9	692	701	43	269	312	
Juvenile																
Misdemeanors	-7%	-1%	-6%	39	9	48	42	9	51	45	9	54	104	10	114	
Felonies	-2%	-20%	-4%	49	1	50	51	1	52	52	1	53	70	14	84	
Total Juvenile	-5%	-7%	-5%	89	9	98	93	10	102	97	10	107	174	24	198	
Trials Total	-6%	6%	4%	106	1,382	1,488	111	1,297	1,408	116	1,218	1,334	238	617	855	
Total Trial/Pretrial Case Closed:						57,253			53,930			50,991			33,824	
Trial Percent of Total Trial/Pretrial Cases Closed:						2.6%			2.6%			2.6%			2.5%	
Key:																
T/C = Trial to Court																
T/J = Trial to Jury																

REGIONAL TRIAL OFFICE CASELOAD

OTHER PROCEEDINGS TRENDS

The other proceedings category includes probation revocations, Rule 35(b) sentence reconsiderations, Rule 35 (c) hearings, extradition matters, and other miscellaneous proceedings. Other proceedings may also include appeals and original proceedings handled by a regional office. The partial service category refers to cases that are not brought to a final disposition. These include conflict of interest, other withdrawals because a defendant retained private counsel or went *pro se*, and situations where a client fails to appear for a hearing. In order to be opened and subsequently counted as a partial service closing there must be client contact and a specific action taken with respect to the client.

General Other Proceedings. Overall Other Proceedings have grown over the last 12 years at a rate of about 2.7 percent annually. This is a relatively slower rate of growth than the Trial/Pretrial case growth (around 3.5 percent annually), but still near double the rate of population growth. The most significant changes in the Other Proceedings case category have been to Probation Revocation proceedings, which represented 21 percent of total closed case proceedings in FY 2012, 47% percent of the total closed Other Proceedings.

Probation Revocations. Probation Revocations have become a more significant portion of the overall caseload as a result of changes made at the District and County Court levels. Specifically, the expansion in use of specialized “problem solving”, “specialty” and/or “fast track” courts across the State has led to an increase in the number of other proceedings in which an attorney must participate to effectively represent a client in each case.

This method of case processing is thought to be highly effective at efficiently moving high caseload offenses, such as DWAI, DUI, Domestic Violence, Dependency and Neglect, and Mental Health cases, to name a few, through the courts. This method of judicial processing is also thought to reduce the time spent in jail or corrections by offering alternatives to incarceration like community service, treatment, and victim compensation. Such case processing methods are also thought to be more effective in addressing the problems that led to the activity/offense, and thereby could lead to better returns for both the client and society with reduced recidivism among participants.

These judicial process improvements also result in a significant reduction in costs to the Courts, Jails and Corrections, by cutting the time and resources these State and County programs must dedicate to each individual case. However, the increase in time that a Public Defender must spend preparing for, attending and advising clients in multiple proceedings results in an increase of both attorney time and cost for the Defense in each case that is processed this way. This places an additional drain upon Public Defender resources. Ultimately, there is a significant net savings to the State and counties, even with the increased time and cost to the Defense.

As a result of this increasingly relevant judicial process change that has occurred since FY 2002, the Public Defender has seen an increase in its workload equivalent to 21.4 FTE, or 6 percent of its total FY2012 trial office attorney FTE requirement.

REGIONAL TRIAL OFFICE CASELOAD

CASE WITHDRAWAL TRENDS

General Withdrawals. Changes in The Office's partial services caseload reflect a decline in the number of cases in which the Public Defender is requesting to withdraw from a case for reasons of codefendant conflict or witness-client conflict, as well as a decline in the number of cases that are removed for other non-conflict reasons, such as judicial discretion, appeal, private counsel, and *pro se*.

From FY 2000 through FY 2007, The Office saw as much as 12.4 percent of its annual new cases being removed from its caseload for the combination of both conflict reasons and non-conflict reasons. Since FY 2008, the number of cases that are removed for these reasons has declined below 10 percent to 8.8 percent in FY 2010, and remaining below 10 percent at 9.9 percent in 2012. This is a net decrease of 25 percent in ratio of case withdrawals since the last peak, as well as a -0.2 percent average annual CRG decline in these cases since FY 2000. This represents an annual decline in the number of cases that the Public Defender withdraws from each year and a corresponding increase in the cases it opens and represents to disposition.

Conflict Withdrawals. Conflict Withdrawals granted by the Judge to the Public Defender represent that portion of cases that the Public Defender must defer to contract attorneys hired by the Alternate Defense Counsel (ADC). Public Defender conflict withdrawals make up merely a portion of the cases referred to ADC contractors by the Court. Other cases are referred directly by the Court as a result of judicial discretion or client request in extreme cases.

Of the total partial service cases, conflict cases rose from about 5.8 percent of total opened cases in FY 2000 to a peak of 7.6 percent in FY 2005, and have since declined to 6.5 percent of total opened cases in FY 2012. This data is significant to note, because it demonstrates that as opened cases continue to grow in number on average the portion of them that we must fully represent, which we were not previously because of withdrawals, is also increasing. This equates to a 1.1 percent increase in opened cases that we must carry to completion (closing or termination) on an annual basis that we were not previously closing. This effective increase in opened cases results in a similar and corresponding increase in closed cases and case workload. Should this overall decline in withdrawals continue, this workload impact will continue to compound current resource demands.

Table 17, as follows, contains the historical case withdrawal data.

**Table 17 - OSPD Trial Offices Conflict Cases and Other Partial Services
FY 2000 to FY 2013 Projected**

	Fiscal Year	CONFLICT WITHDRAWALS				NON-CONFLICT WITHDRAWALS		TOTAL CONFLICT & NON-CONFLICT WITHDRAWALS		TOTAL NEW CASES	
		CODEF	WITCL	TOTAL CONFLICTS	% OF NEW CASES	TOTAL NON-CONFLICTS	% OF NEW CASES	Grand Total CON/NON-CON	% OF NEW CASES	NEW Cases	Annual % Change
GRAND TOTAL	2000	2,741	1,045	3,786	5.8%	2,883	4.4%	6,669	10.2%	65,689	
	2001	3,053	1,231	4,284	6.2%	3,086	4.5%	7,370	10.7%	68,853	4.8%
	2002	3,355	1,374	4,729	6.5%	3,174	4.4%	7,903	10.9%	72,267	5.0%
	2003	3,823	1,410	5,233	6.6%	3,321	4.2%	8,554	10.8%	78,971	9.3%
	2004	3,912	1,657	5,569	6.9%	3,359	4.2%	8,928	11.1%	80,684	2.2%
	2005	4,332	2,045	6,377	7.6%	4,051	4.8%	10,428	12.4%	84,383	4.6%
	2006	4,169	2,045	6,214	7.0%	4,137	4.6%	10,351	11.6%	89,270	5.8%
	2007	4,017	1,703	5,720	6.5%	4,628	5.2%	10,348	11.7%	88,282	-1.1%
	2008	3,851	1,495	5,346	5.9%	3,644	4.0%	8,990	10.0%	90,151	2.1%
	2009	3,693	1,897	5,590	5.8%	3,295	3.4%	8,885	9.2%	96,339	6.9%
	2010	3,710	1,710	5,420	5.7%	2,965	3.1%	8,385	8.8%	95,621	-0.7%
	2011	3,580	1,956	5,536	5.8%	3,043	3.2%	8,579	9.1%	94,693	-1.0%
	2012	3,740	2,428	6,168	6.5%	3,271	3.4%	9,439	9.9%	95,109	0.4%
<i>projected year</i>	2013	3,815	2,550	6,365	6.5%	3,361	3.4%	9,725	10.0%	97,507	2.5%
CRG		2.6%	7.3%	4.2%	1.0%	1.1%	-2.0%	2.9%	-0.2%	3.1%	

APPELLATE DIVISION CASELOAD

APPELLATE CASE TRENDS

Overall Appellate Cases. 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) is expected to carry 1,255 cases this year (FY 2013), including 598 New cases and 657 backlog cases carried over from previous years. While the Appellate caseload only accounts for one 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 10.4 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 4.2 percent, equal to near three times the rate of population growth, and 35 percent higher than the annual growth rate of Trial Office closings. This rapid rate of growth has occurred even as The Division has maintained an annual growth rate in its Appellate Case Closings of 3.5 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 23.6 percent in excess backlog cases alone (44 cases excess backlog). Additionally, the Division received an overload of New Cases (100 out of 487 New Cases) equivalent to 26 percent of the total cases it was able to close that year (387 Closed Cases). Excess Backlog has continued to grow and compound each year, and is expected to reach 331 cases this year. The 2013 Excess Backlog is equivalent to a case overload of 36 percent at current staffing levels (331 excess backlog cases in addition to 915 net cases effectively carried by staff this year).

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 1.6 percent annually, about 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 2013 is estimated at 37.2 percent of total cases carried.

At this point in time, Division attorneys are carrying 33 appellate cases annually per attorney (closing 17), plus 5 potential capital punishment cases 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 44 cases in 2000 to 331 this year.

Since FY 2000, Attorney staffing has increased at a rate of three percent annually, only 71 percent 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 4.9 percent annually, while the total backlog that the Division can represent efficiently in addition to its annual closed cases can be reasonably maintained at a rate of growth equal to 3.3 percent. 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 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 18, 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 18 – FY 2000 to FY 2018 Projected OSPD Appellate Caseload and Staffing

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	Total Max B/L Capable with Current 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
2018	1,474	915	61.1%	648	584	890	331	495	34.8	33.2	47.3	4.9	52.2	(17.4)	-33.4%
2014	1,279	915	39.8%	608	584	695	331	340	34.8	33.2	44.4	1.3	45.7	(10.9)	-24.0%
2013	1,255	915	37.2%	598	584	671	331	326	34.8	33.2	43.7	0.5	44.1	(9.4)	-21.3%
2012	1,241	915	35.6%	589	584	657	331	321	34.8	33.2	43.0	1.7	44.6	(9.9)	-22.2%
2000	756	611	23.6%	487	387	369	225	44	25.0	32.6	40.2	4.0	44.2	(19.2)	-43.4%
	4.2%	3.4%	3.5%	1.6%	3.5%	4.9%	3.3%	18.0%	3.0%	34.5	0.8%	-7.7%	0.3%	-5.0%	-5.3%

COMPLEXITY OF CASES

CONTRIBUTING FACTORS

Summary. 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 has also been a trend toward treating juveniles as adults over the last decade. District Attorneys were given broader discretion in direct filing of cases against juveniles as adults. The age for direct filing was lowered from 16 to 14 in 1993²⁶. Additionally, juveniles may be transferred to adult court in some instances at 12 years of age. The scope of situations allowed for direct filing greatly expanded in the last decade 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 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

²⁶ The 2010 Legislative Session passed a law that restricted direct file age on 14 and 15 year olds to certain violent offenses.

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

The 2012 Legislative Session brought three 3 significant pieces of legislation that changed Juvenile law to ease some of this pressure:

- HB 12-1139 amended CRS 19-2-508 as follows: District attorneys previously had sole discretion regarding whether or not children directly filed as adult offenders in district court (Direct Filed) were held in a juvenile or an adult facility. The enactment of HB 1139 ensures that Direct Filed children will now remain in juvenile facilities unless the facility requests a transfer to the county jail, in which case the court must hold a hearing to decide the most appropriate place to hold the child.
- HB 12-1271 amended CRS 19-2-517 by changing the age of eligibility for Direct File from 14 years old to 16 years old. HB 1271 also limited the offenses that can be Direct Filed. Under the new legislation, a child that is Direct Filed now has a right to a reverse transfer hearing as well. If convicted in District criminal court, children are no longer subject to the minimum mandatory sentences on crimes of violence (COVs) unless the offense is a class 1 Felony (F1) or an eligible sex offense. Now children can also be remanded to juvenile delinquency court for sentencing if not adjudicated for an eligible sex offense. If the child is sentenced in juvenile court, the conviction must be converted to an adjudication.
- HB12-1210 amended CRS 19-2-601 to allow consecutive sentencing for aggravated juvenile offender (AJO) and COV counts in a first or second degree murder case. HB 1210 provides for 10 years of parole supervision if a child is sentenced to the Division of Youth Corrections (DYC) as an aggravated juvenile offender for an F1 and then transferred to DOC. HB 1210 provides for a mandatory reconsideration hearing when child is 20.5, giving the court options of: transferring to an adult correctional facility, sending to YOS, placing child in community corrections, releasing immediately, releasing with 5 years adult parole, or leaving child in DYC until 21 years old, at which time they would be released.

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 to which they once may have previously been willing to plead guilty. Charges are more

vigorously and more frequently contested. Defendants are less willing to accept sentences to which they once would have agreed, 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.

Conviction And 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 2012, The Office received 4.7 million pages of printed and scanned discovery, plus 91,000 pieces of audio and video recording media containing discovery documentation. These two media types combined have grown at a 126% cumulative rate of growth and near 23% compound rate of growth since 2008.
- ◆ **Length of Trials.** The average length of trials has cumulatively increased 22.4 percent from 2000 to 2012, an average annual increase of 1.7 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 1999-2000, among all case types, the average number of counts filed by a prosecutor in cases closed that year was 2.8. In FY 2011-12, that average climbed to 3 counts per case.

EVALUATING & ESTABLISHING PERFORMANCE STANDARDS

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CASELOAD STANDARDS

IMPORTANCE OF STANDARDS

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.

In order to meet this mandate it is necessary to have a sufficient number of attorneys to provide those legal services commensurate with those provided by the private bar and consistent with relevant state and national standards.

The Guidelines for Legal Defense Systems in the United States, developed under a grant from the U.S. Department of Justice, provide that public defender systems should establish maximum caseloads for individual attorneys and that such standards reflect national standards and take into consideration objective statistical data and factors related to local practice.

In 2013, The Office is expected to undertake an estimated 98,105 newly assigned trial and appellate cases, close an estimated 98,111 trial and appellate cases, and carry a total of 126,636 active trial and appellate cases. It is therefore imperative to have an adequate number of attorneys to provide effective legal representation for this volume of cases. The following discussion addresses the relationship between cases and attorneys.

CASELOAD STANDARDS

ABA/NLADA NATIONAL CASELOAD STANDARDS

Prior to 1997, a felony equivalent system was used to measure workload. This system, developed by the National Legal Aid and Defender Association, represents the value of all cases as if they were felonies. Different types of cases are weighted as if they were felonies. These weights are illustrated in **Table 19**.

Table 19 – 1997 Felony Based Case Weights

Type	Weight
Felony	1.000
Misdemeanor	0.375
Juvenile	0.750
Misc. Proc.	0.375
Appeal	6.000
Orig. Proc.	2.000
Partial Service	0.100

This system was derived from the American Bar Association (ABA) standards. Both the ABA standards and the felony equivalent weighting were developed in the 1970s in response to the establishment of public defender systems throughout the country that began in the late 1960s and early 1970s.²⁷

Over the past thirty years, of course, the nature and practice of criminal law has changed. The ABA standards, however, have not been revised since they were established in 1973. In 2006, the ABA issued its first ever ethical opinion mandating that public defense systems address unmanageable caseloads at all costs, including capping individual attorney's caseloads or refusing to accept additional appointments²⁸. The Colorado Office of Attorney Regulation Counsel has indicated that these standards, if anything, should be seen as a ceiling on the number of cases an attorney can handle.

The primary deficiency of the felony equivalent system and the ABA standards from which it was derived is twofold. It is too generic to serve as a realistic forecasting tool, and it does not give due consideration to the different levels of work required for different types of cases.

While the standard says an attorney should not handle over 150 felony cases in a year, it does not distinguish, for example, between a class one felony of homicide and a class six felony of eavesdropping. In one case a defendant is facing a life

²⁷ This trend is continuing today as locations that still maintain court appointed counsel systems are realizing that a formal public defender system is more effective both in terms of cost and effectiveness of representation in providing defense services to indigent criminal defendants.

²⁸ ABA 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)

sentence without the possibility of parole, possibly death, and in the other is most likely facing the least restrictive form of probation for the minimum amount of time.

Furthermore, since the adoption of the ABA standards in 1973 there have been many significant changes in the criminal law that impact the varying workload required to process different types of cases. Some of these changes are:

- ◆ There have been major increases in the length of prison sentences in Colorado. In 1985, the Legislature doubled the length of all felony criminal sentences. Simultaneously, changes in the parole laws in effect quadrupled the amount of time a person could spend in prison for the same felony.
- ◆ There is no possibility of parole in life sentences for class one felony homicide convictions. In the 1970s, a convicted murderer was eligible for parole after 10 years. This was increased to 20 years in 1979 and increased to 40 years in 1985. In 1990, parole eligibility was eliminated for class one felonies.
- ◆ Additional enhanced, aggravated sentencing provisions have been applied to a large number of crimes.
- ◆ There is mandatory parole that extends beyond a defendant's original prison sentence – this increases the likelihood that a person's parole will be revoked and that individual returned to prison even though the original sentence has been served. The length of mandatory parole is 5 years, 3 years or 2 years, depending on the felony level.
- ◆ Sex offenders (class 4 felony and up) are now sentenced to what amounts to a life sentence. The actual sentence range is from a specified number of years to life (e.g. 4 years to life or some other number of years). To date, only a few individuals sentenced under the new sex offender lifetime sentencing law, which went into effect in 1998, have been paroled.
- ◆ Sex offenders, if they are released from prison, are essentially subject to lifetime supervision and mandatory registration requirements, which is resulting in new felony charges being filed for failure to register.
- ◆ Juveniles are being treated more as adults and, at the discretion of the District Attorney, may be charged and sentenced as an adult.
- ◆ 51 juveniles who committed murder when they were under the age of 18 are in DOC custody serving life sentences without the possibility of parole.

All of these changes impose a higher level of punishment and create a felony conviction with 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 guilty pleas to charges to which they once may have been willing to plead guilty. Charges are more vigorously and more frequently contested. Defendants are less willing to accept sentences to which they once would have agreed, because of the Parole Board's discretion to keep inmates in prison for the entire length of their sentence. A defendant can end up serving a prison term that is actually longer than the original sentence.

Attorneys are required to be aware of the future consequences of convictions or guilty pleas that are made today. This demands thorough consideration and knowledge of an increasingly complex web of interrelated statutes. This also includes a need to be aware of federal INS statutes and regulations if the client is not a U.S. citizen. 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 for understanding the law and giving competent and accurate advice to clients²⁹.

Other factors affecting the increasing complexity of criminal law include an increased amount of discovery, an increase in the length of trials, an increase in the likelihood of jury trials, and an increase in the number of counts filed in each case. These factors suggest that more witnesses are being called, that the evidence being used is more complex, and that criminal prosecution has become more aggressive.

For these reasons, discussed above, the 1973 ABA standards are outdated, and more sophisticated measurement and standards are called for.

²⁹ *Padilla v. Kentucky*, 559 U.S. ____ (2010).

CASELOAD STANDARDS

OSPD CASE WEIGHTING STUDY

To address the deficiencies of the NLADA/ABA standards, in 2008 The Office contracted with The Spangenberg Group³⁰ (TSG) to conduct an update to a study performed by TSG in 2002 and prior to that 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 used for the prior 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

³⁰ 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).

- 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.

In the 2002 study, a large sample of public defenders tracked their time on specially designed time sheets for 10 weeks. The sample included 114 attorneys, more than half of the trial attorneys in The Office. The 2002 time sheets were modified slightly from the 1996 study to reflect changes in public defender practice. In 2008, near all 298 trial attorneys, with very few exceptions, participated in tracking their time for an extended period of 12 weeks. This ensured that enough data was collected to create individual caseload standards for class 2 and class 3 felony cases, and other statistical margins of error were minimized in their overall impact to the data integrity. The larger sample also allowed the study to develop more accurate and separate sets of standards for urban and rural offices. In the 1996 study, certain categories had to be combined.

The contemporaneous time records kept by Office attorneys provides a means by which caseload (the number of cases a lawyer handles) can be translated to workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). Weight can be given to the total annual caseload of an office to compare to the next year's anticipated volume of cases. Based on the actual data collected, the translation of projected caseload into projected workload can be accomplished with some assurance of precision. This case weighting method is one of the most thorough and complete methods to determine valid, empirical workload measures that can be translated into caseload standards for public defender programs.

A major finding in the 2002 study was that class 4 and above felony sex offenses take an average of 53 hours of attorney time based on 93 case dispositions during the period of the study. For this reason, these sex offense cases were equated with class 2 felonies. As noted, felony sex offenses at this level result in a prison sentence of an indeterminate number of years to life. If the offender is eventually paroled, the period of parole is for the most part a lifetime period of parole. For this reason the 2002 study recommended increasing the weight of these sex offenses to the equivalent of a class 2 felony.

The caseload standards resulting from the 2002 study are summarized in the following table. **Table 20** presents an averaged figure for both urban and rural offices and establishes the number of cases of a given type that an attorney can be expected to handle in a year.

Table 20 – 2002 Case Weights

Felony Class	Urban/Rural Average	
	Cases per Year	Hours per Case
Class 1	6	285:20
Class 2 & Felony Sex		
Assault	32.6	52:27
Class 3	105.5	16:14
Class 4-5	200.2	8:33
Class 6	386.2	4:26
Class 1 Misdemeanor & Sex Assault	196.4	8:43
Class 2-3 Misdemeanor & Traffic/Other	429.8	3:59
All Juvenile	248.7	6:53

According to TSG, the following major changes have impacted the workload of Colorado's public defenders since the 2002 study was performed:

A. National Case Law: Right to Counsel Expansion

Just months after the time-keeping period ended for the 2002 case-weighting study, the United States Supreme Court decided *Alabama v. Shelton*, holding that the Sixth Amendment of the United States Constitution forbids imposition of a suspended sentence of imprisonment where an indigent defendant has neither received a court-appointed lawyer nor waived the right to counsel.³¹ If a defendant faces a possible incarceration sentence associated with his or her charge at any point, then he or she must be afforded the Sixth Amendment right to counsel. Defendants seeking counsel in misdemeanor cases are statutorily required to first meet with the prosecution. Counsel is only provided when a defendant was unwilling to accept an un-counseled plea offer from the prosecutor³².

Not surprisingly, the number of misdemeanor cases closed³³ by the Colorado State Public Defender increased by approximately 31 percent from FY 2002³⁴ until FY 2008. Additionally, the low level felony caseload increased significantly; for example, the Class 6 felony caseload increased by 55 percent during this same period. One possibility for the increase in the low level felony caseload could be that *Shelton* significantly expanded the

³¹ *Alabama v. Shelton*, 535 U.S. 654 (2002).

³² C.R.S. 16-7-301

³³ Includes only those cases resolved by trial and pre-trial dispositions; excludes appeals, partial service cases, and miscellaneous proceedings.

³⁴ The fiscal year in Colorado runs from July 1 through June 30.

pool of possible public defender clients, and prosecutors are now charging what they formerly charged as high level misdemeanors as low level felonies.

The United States Supreme Court more recently decided a case regarding a defendant's right to counsel at initial appearance.³⁵ In *Rothgery*, the Court held that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction ... trigger[s] attachment of the Sixth Amendment right to counsel."³⁶ Currently, Colorado is one of only seven states that do not provide counsel to indigent defendants at, before or immediately after initial appearance.³⁷ Although the case has not yet had an impact in Colorado, it will likely add to the amount of time required to handle a case.

B. Attorney and Staff Attrition Rates

In both prior study reports, TSG stated that the "overall caseload requirements ... should be based on the actual number of public defender trial attorneys at any given period of time and not the annual number of authorized positions." High attorney and staff attrition rates expand both the caseload and workload of a given public defender office. Attorneys must take on higher caseloads to compensate for attorney turnover, and when investigator and secretary positions are unfilled, attorneys must take on the work normally performed by support staff to ensure that they are providing competent representation.

A stated goal of the Colorado State Public Defender is to "maintain a competitive work environment to be able to attract and retain qualified staff" with a target annual attrition rate of 12 percent.³⁸ During FY 2012, turnover rates for The Office were approximately 9.1 percent for attorneys, 10.8 percent investigators, and 23.2 percent for administrative staff. Fifty-eight percent of turnover occurs among beginning staff: 56 percent of the attorneys, 67 percent of the investigators, and 76 percent of legal secretaries who left the Colorado State Public Defender system in FY 2012.

³⁵ *Rothgery v. Gillespie County*, 554 U.S. 191

³⁶ *Id.* at 2592.

³⁷ *Id.* at 2587.

³⁸ Douglas K. Wilson, *Colorado State Public Defender, Fiscal Year 2008 Budget Request* (November 2006).

Tables 21A and 21B, as follows, provide overall attrition details.

Table 21A – FY 2010-11 Employee Resignations and Terminations

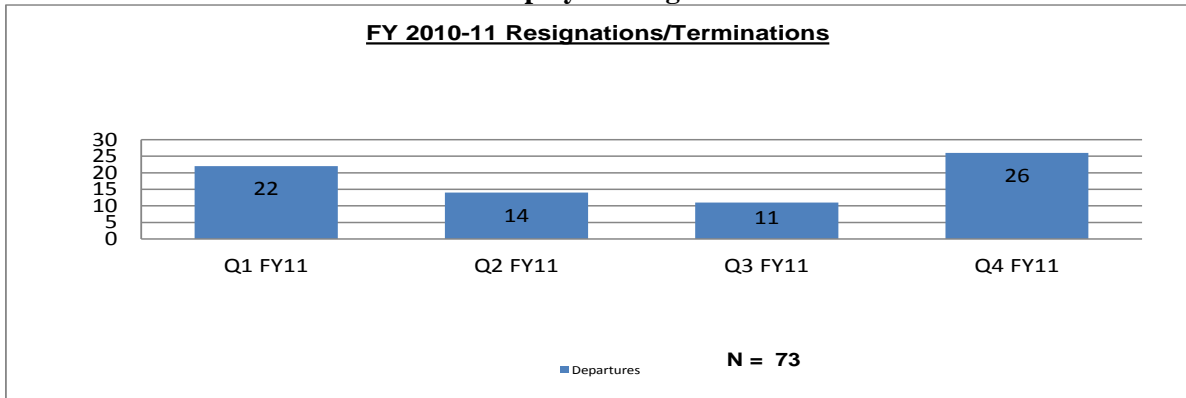
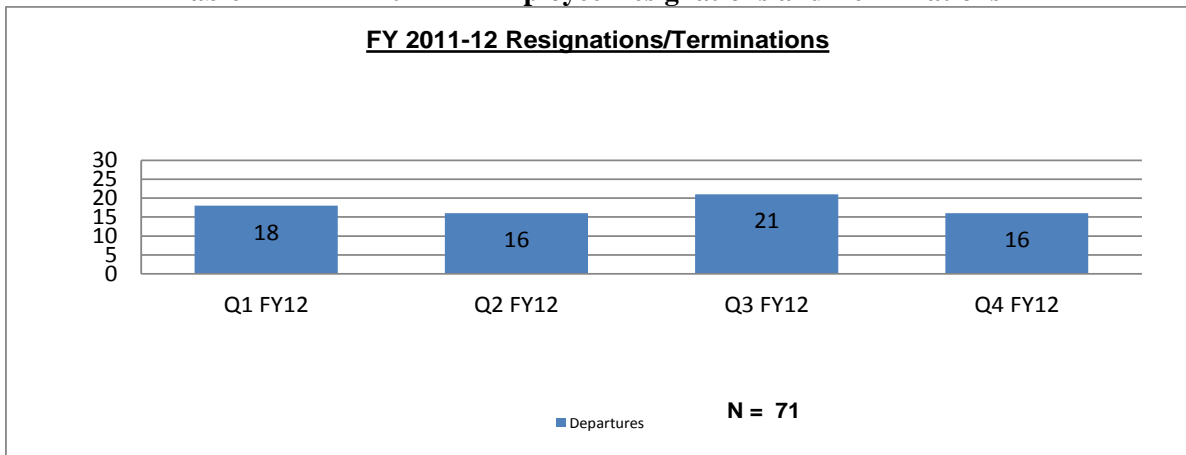


Table 21B – FY 2011-12 Employee Resignations and Terminations



C. Colorado Supreme Court Rule Amendment

In April 2007, the Colorado Supreme Court amended its Rules of Professional Conduct, and the amendments went into effect in January 2008. Changes to the rule that governs those cases deemed conflicts of interest³⁹ particularly influence the overall caseload of the Colorado State Public Defender, because there are now greater restrictions on the circumstances that must apply for a case to be considered a conflict of interest. First, new Rule 1.7 centers on “concurrent” conflicts of interest, a term that was introduced in the current version of the rules. While the definition of what is considered a “conflict of interest” did not change substantially, a number of permissible exceptions to the rule were added.

While it may be too early to show a statistically significant causal relationship between the new rule and caseload increase, the Office of the State Public Defender believes that the new rule is reducing the number of cases transferred out of our offices due to conflicts of interest. In FY 2005, a

³⁹ Colo. R. Prof. Conduct 1.7, Conflicts of Interest: Current Clients (2007).

conflict of interest was discovered in 7.6 percent of all new cases; in FY 2010, that number declined to 5.7 percent of all new cases.

D. Increase in Judgeships

In recognition of the caseload increase and docket backlogs in Colorado, beginning in FY 2003, the Colorado General Assembly substantially increased and will further increase the number of judgeships throughout the state.⁴⁰ Between the 2002 case-weighting study and the 2008 case-weighting study, the number of district court judgeships increased by 32. Twelve more district judges were statutorily to be appointed within FY 2009-10; however, these were subject to available appropriations and were delayed, but have since been placed.⁴¹ Twenty-two judges are now on the court of appeals, six having been added in since the 2002 case-weighting study.⁴² In addition, five county court judges were added in FY 2008-09; and, three more county court judges were appointed in FY 2009-10.⁴³ Legislation passed in the 2011 Legislative Session, transferred one county judge position to Montrose and retained one judge that has yet to be funded in the 1st Judicial District. As the Public Defender's Office is affected by such appointments, its base appropriation for FY 2011-12 was tied to actions taken by the Judicial Department with regard to these appointments. The Public Defender's Office delayed hiring of associated attorney and support staff per H.B. 07-1054 until FY 2010-11. The Office received 29.3 of the requested 34.4 remaining allotment of H.B. 07-1054 FTE in FY 2011-12 and received the balance of 5.1 FTE within its FY 2012-13 Appropriation.

Additional judges were added to address a civil caseload backlog; however, most of the new judges are handling or will handle a criminal docket as well. While additional judgeships throughout the state may ease the caseload burden on the courts, it will add to the burden on public defenders if adequate staffing to deal with the increase is not appropriated. In simple terms, courts will be able to move cases more expeditiously, and public defenders will be expected to keep up with the courts. The majority of time-consuming criminal cases fall under the jurisdiction of the district courts. Since 2002, 50 new district judgeships have been created. From FY 2004 through FY 2010, The Office received an appropriation of 92 total attorney positions specifically to address caseload increases; nevertheless, the Public Defender has had trouble retaining attorneys (See B, "Attorney and Staff Attrition Rates" on page 60). Each new courtroom adds a considerable volume to the Colorado Public Defender's courtroom coverage.

Similarly, any increase in the number of prosecutors throughout the state without an equivalent increase in the number of public defenders might intensify caseload and workload inequities in what is already an unbalanced

⁴⁰ Increase the Number of Court Judges Act of 2007, ch.355, 2007 Colo. Sess. Laws 1525.

⁴¹ C.R.S. 13-5-102

⁴² C.R.S. 13-3-103

⁴³ C.R.S. 13-6-202

system. In a survey completed in 2012 for the 2012 Colorado County budget year, there were 582 staff attorneys in district attorney offices across Colorado. On the other hand, there are 376 appropriated public defender trial office positions throughout the state in FY 2013. Although the defense sees a smaller share of that statewide criminal caseload, the gap in resources provided to the prosecution and defense functions is greater than the caseload gap. Any further widening of the gap exacerbates the workload of public defenders.

E. New and Expanded Crime Legislation

Between the time that TSG last conducted a case-weighting study for the Colorado State Public Defender and the time-keeping period that ended in August 2008, the state legislature passed several initiatives which identified and codified new crimes.⁴⁴ Much of the new crime legislation during this time period reflects ever-evolving technologies and political climate. As both old and new behaviors are increasingly criminalized, public defenders' caseloads inevitably escalate.

During the 2006 legislative session, the Colorado General Assembly passed two new laws concerning the smuggling and trafficking of humans, particularly illegal immigrants.⁴⁵ According to the acts, trafficking or smuggling an illegal immigrant are respectively classified as Class 2 and Class 3 felonies. Each individual trafficked or smuggled can be charged as a separate felony. New smuggling and trafficking laws have added considerably to the overall public defender caseload in Colorado.

Other new crimes are linked to technological advances. For instance, recording a live performance without permission⁴⁶ or using a recording device as an invasion of one's privacy⁴⁷ now constitute crimes in Colorado. Since the advent of the internet, a new range of internet-based crimes have emerged. During the 2006 legislative session, for example, the Colorado General Assembly passed a bill which classified internet luring of a child as either a Class 4 or a Class 5 felony, depending on whether there was any intent to sexually exploit the child.⁴⁸

The legislature also expanded the definition of existing crimes to include additional behaviors. For example, the Colorado legislature redefined "identity theft" to meet modern developments as a result of technological advances.⁴⁹ In response to an escalating occurrence of in-home drug

⁴⁴ For the purposes of this report, we only identify legislation that was in effect prior to the beginning of the time-keeping period. Thus, we examined legislation enacted through the 2007 legislative session in Colorado.

⁴⁵ Human Smuggling Act of 2006, ch. 285, 2006 Colo. Sess. Laws 1301; Human Trafficking Act of 2006, ch. 287, 2006 Colo. Sess. Laws 1307.

⁴⁶ Unlawful Recording of a Live Performance Act of 2005, ch. 50, §2, 2005 Colo. Sess. Laws 202.

⁴⁷ Criminal Invasion of Privacy Act of 2004, ch. 204, 2004 Colo. Sess. Laws 655.

⁴⁸ Internet Crimes Against Children Act of 2006, ch. 362, 2006 Colo. Sess. Laws 2054.

⁴⁹ Identity Theft Act of 2006, ch. 289, 2006 Colo. Sess. Laws 1317.

laboratories, the General Assembly enacted a law which expands the definition of child abuse to include the production of illegal drugs where a child lives or is present.⁵⁰ All new and expanded crimes, such as those described above, expand the pool of possible public defender clients.

F. Enhanced Penalties on Existing Crimes

Whereas much of our discussion thus far has been in regard to factors which add to the raw caseload of public defenders, enhanced penalties on crimes that already exist add to public defender workload, or the amount of time and energy that a public defender must expend on a case. Similar to new and expanded crime legislation, enhanced penalties on existing crimes are often in response to an ever-evolving culture (e.g., new technologies, drug habits, etc.) and also to “tough on crime” policies. The complexity of enhancements ranges from simply increasing the class of a crime to imposing or enhancing sentencing requirements, such as mandatory minimum sentences or fines.

Between the time that the last case-weighting study report was released and the 2007 legislative session, several crimes changed from former criminal classifications to more serious classifications. A sampling of crime classification enhancements follows:

- Impersonating a law enforcement officer went from a Class 2 misdemeanor to a Class 1 misdemeanor and then to a Class 6 felony.⁵¹
- Pirating recordings was increased from a Class 3 misdemeanor to a Class 1 misdemeanor.⁵²
- Indecently exposing oneself to a victim greater than 15 years old is now defined as a Class 1 misdemeanor instead of a Class 3 misdemeanor.⁵³
- Possessing materials that are sexually exploitative of children went from a Class 1 misdemeanor to a Class 6 felony.⁵⁴

As mentioned previously, the legislature may enhance the severity of criminal penalties without changing the crime’s classification; instead, sentencing requirements are changed to enhance penalties. In 2003, the Colorado General Assembly enhanced drug charges by: 1) adding a mandatory minimum sentence requirement to Class 3 felony marijuana convictions; and 2) mandating that a court adhere to a more serious

⁵⁰ Child Abuse Definition Child in Drug Lag Act of 2003, ch. 91, 359, 2003 Colo. Sess. Laws 819, 2383.

⁵¹ Impersonating a Peace Officer Act of 2003, ch. 192, 2003 Colo. Sess. Laws 1383; Peace Officer Impersonation Act of 2004, ch. 289, §1, 2004 Colo. Sess. Laws 1080.

⁵² Unlawful Recording of a Live Performance Act of 2005, ch. 50, §1, 2005 Colo. Sess. Laws 202.

⁵³ Changes to Substantive Criminal Law Act of 2003, ch. 199, §31, 2003 Colo. Sess. Laws 1435.

⁵⁴ Possession of Sexually Explicit Penalty Act of 2006, ch. 359, 2006 Colo. Sess. Laws 2043.

sentence when faced with two possible statutes governing sentencing on unlawful possession and distribution charges.⁵⁵ Faced with greater possible penalties, mandatory minimums, and enhanced sentencing requirements, public defenders must exert correspondingly more time and energy to defend their clients.

Finally, the Colorado General Assembly has passed measures limiting eligibility requirements for probation and parole on several crimes, especially for crimes of violence. For instance, defendants convicted of third and subsequent felony thefts are ineligible for probation and suspended sentences⁵⁶. Defendants charged as habitual felons now face mandatory parole; if the felony is convicted as a serious crime of violence, the defendant will face mandatory parole for life after serving a 40-consecutive-year sentence.⁵⁷ For certain Class 2 through Class 5 felony crimes of violence, parole eligibility increased from requiring that 50 percent of a sentence be served to requiring that 75 percent of a sentence be served.⁵⁸ Lastly, if a convicted felon's parole application is rejected on a Class 1 or 2 crime of violence, parole eligibility will now be considered every five years thereafter, instead of every three years.⁵⁹ Similar to enhanced penalties, limiting parole and probation eligibility requirements adds to the gravity of conviction, thereby compelling defense attorneys to expend more effort during representation.

G. Conviction & Collateral Consequences

In addition to new and enhanced criminal legislation, over the years, the expanding scope of other conviction consequences has added an increasing burden to public defender workload. We refer to conviction consequences as those penalties directly related to criminal conviction. Collateral consequences, on the other hand, are sanctions that result from a criminal conviction, and include such consequences as loss of government benefits or deportation. These sanctions are often not imposed by the court but instead are statutorily legislated.

When defendants in Colorado are convicted of a crime, the conviction may haunt them for years, even after their criminal sentence has been fulfilled. A county prosecutor from Minnesota wrote, "Every day, individuals are summarily denied opportunities and meaningful involvement in our society because of a record of conviction [t]he conviction record has become a modern-day Scarlet Letter."⁶⁰ With some exceptions, most criminal convictions in Colorado carry a lifelong record. A person charged with a

⁵⁵ Changes to Substantive Criminal Law Act of 2003, ch. 199, §1-2, 12, 26, 2003 Colo. Sess. Laws 1423.

⁵⁶ Changes to Substantive Criminal Law Act of 2003, ch. 199, §8, 2003 Colo. Sess. Laws 1427.

⁵⁷ *Id.* at §33, 1436.

⁵⁸ Reduction of Recidivism Act of 2004, ch. 366, 2004 Colo. Sess. Laws 1739.

⁵⁹ Parole Reconsideration Violent Felons Act of 2003, ch. 89, 2003 Colo. Sess. Laws 812.

⁶⁰ Robert M.A. Johnson, "Have All Convictions Become a Life Sentence?" *Criminal Justice*, American Bar Association, Section of Criminal Justice, Volume 22 (2), 2007.

crime can petition to have their records sealed only if the following circumstances apply: the person was not actually charged with the crime; the case was dismissed; the case was acquitted; the charge was dropped as a result of the plea in a separate case and the person can show a clean record for 10 consecutive years.⁶¹ In 2007, the Colorado General Assembly passed a measure which further restricted a person's ability to seal his/her criminal record – if the petitioner owes any money to the court, the records may not be sealed.⁶² This is especially problematic for indigent criminal defendants, and as such, encumbers a public defender's workload.

One of the common and most frequently legislated consequences of a criminal conviction in recent years is sex offender registration. The Colorado Sex Offender Registration Act was passed in 2002,⁶³ and for most of the years between the current case-weighting study and the last, the Colorado General Assembly passed or refined at least some form of sex offender requirements. The act required, with few exceptions, those who pleaded to or were convicted of an unlawful sexual behavior to register as a sex offender. In 2004, the legislature passed a series of reforms to its sex offender registration requirements: failing to register as a sex offender now must be posted online; sex offenders must register their address (part of the 2002 legislation), which is then verified by law enforcement (enacted in 2004); and failure to register is either a misdemeanor or felony, depending on the crime convicted.⁶⁴ In 2005, the General Assembly removed restrictions on access to the sex offender registry, requiring that information for all registrants convicted of felonies or second/subsequent misdemeanors be posted online and giving law enforcement officials the authority to post information about sex offenders from areas outside of their jurisdiction.⁶⁵ During the same year, the legislature added a registration condition of treatment release for those deemed not guilty by reason of insanity or impaired mental state if the alleged crime was sexual in nature.⁶⁶ A 2006 act permitted the Colorado Bureau of Investigation to locate those who failed to register.⁶⁷ In 2007, the General Assembly required sex offender registrants to register all online identities, such as e-mail addresses and chat room names. Not only do these requirements potentially increase the caseload of public defenders because it creates a new crime (i.e., failure to register), defendants seek to avoid a sex offense conviction, which will burden them beyond any incarceration, probation, or parole time.

Mandatory DNA testing of all persons convicted of a felony, another recently popular legislative measure nationwide, was enacted by the Colorado General Assembly in 2006. The Department of Corrections is authorized to

⁶¹ COLO. REV. STAT. §24-72-308 (2007).

⁶² Criminal Procedural Omnibus of 2006, ch. 122, §4, 2006 Colo. Sess. Laws 422.

⁶³ Sex Offender Registration Act of 2002, ch. 297, 2002 Colo. Sess. Laws 1157.

⁶⁴ Sex Offender Registration Changes Act of 2004, ch. 297, 2004 Colo. Sess. Laws 1107.

⁶⁵ More Access to Sex Offender Registry Act of 2005, ch. 174, 2005 Colo. Sess. Laws 611.

⁶⁶ NGRI Sex Offenders Act of 2005, ch. 251, 2005 Colo. Sess. Laws 995.

⁶⁷ Enhancements Sex Offender Registration Act of 2006, ch. 219, 2006 Colo. Sess. Laws 1005.

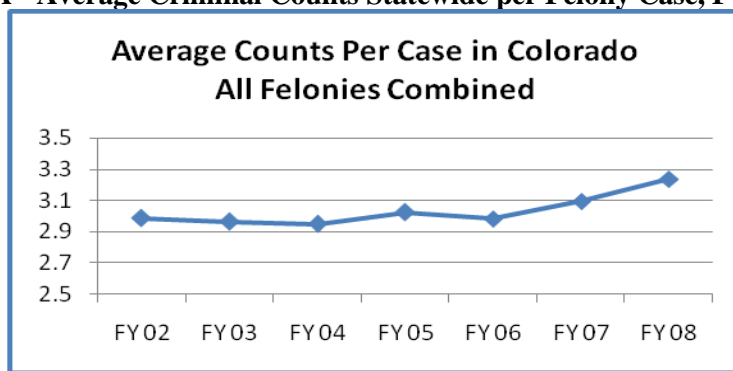
take samples from all convicted felons, and furthermore, if a convicted felon does not comply, he or she may have his or her probation or parole revoked.⁶⁸ This added consequence of conviction may add substantial work to cases as public defenders must defend their clients in resulting probation revocation proceedings. Additional "cold case" hits from the DNA samples have increased as well. In 2009, Senate Bill 241 was enacted which has exacerbated this impact by requiring DNA testing of all individuals arrested and charged with a felony.

H. Prosecutorial Practices

One common source of public defender workload fluctuation is the change in prosecutorial charging and plea negotiation practices. Both charging and plea negotiation practices vary from one district to the next, and while it would be too difficult to capture sufficient quantitative information on plea negotiation practices, some data available to us provides informative trends about changes in charging practices.

The case management system of the Colorado State Public Defender records the number of charges involved in each case. TSG examined the average number of counts in all trial and pre-trial felonies, misdemeanors and juvenile delinquency cases from the time of the last case-weighting study through FY 2008. As mentioned previously, although the results are likely to vary from one Colorado jurisdiction to the next, when taken as a whole, the average number of counts charged for each type of case increased from FY 2002 to FY 2008. While the increases in the average number of counts charged statewide are not necessarily dramatic, they do add to the workload of public defenders. The average number of felony counts per case increased by 8.4 percent; the average number of misdemeanor counts per case increased by 4 percent; and the average number of juvenile counts per case increased by 8.2 percent (See **Graphs 22A through 22C** below). Therefore, on average, prosecutors throughout Colorado are charging more counts per case than they did in 2002.

Table 22A - Average Criminal Counts Statewide per Felony Case, FY02 - FY08



⁶⁸ DNA Testing for all Felons Act of 2006, ch. 339, 2006 Colo. Sess. Laws, 1687; DNA Testing for all Felons Act of 2007, ch. 373, 2007 Colo. Sess. Laws, 1611.

Table 22B - Average Criminal Counts Statewide per Misdemeanor Case, FY02 - FY08

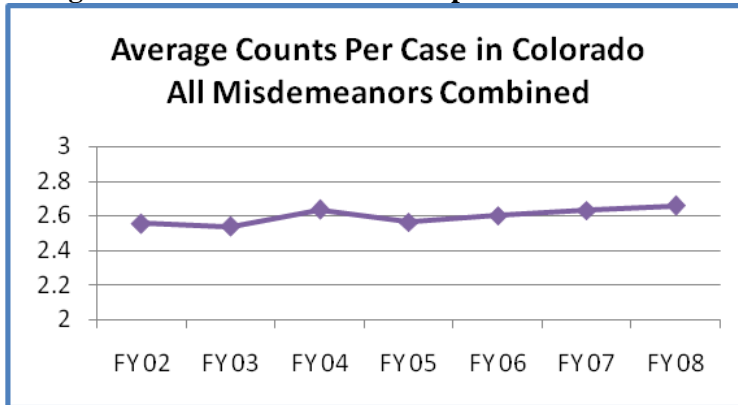
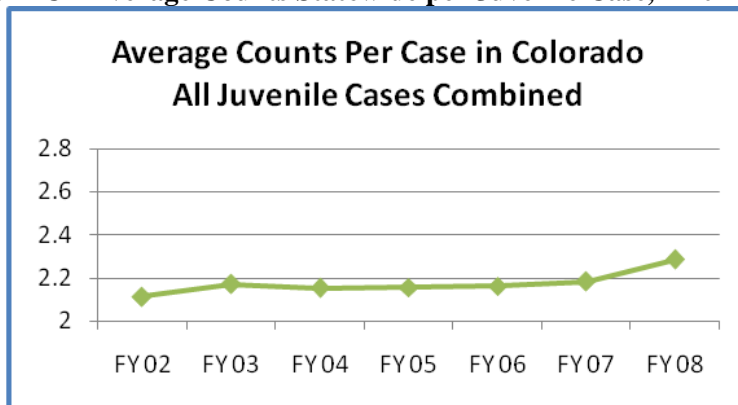


Table 22C - Average Counts Statewide per Juvenile Case, FY02 - FY08



The most substantial increase in the number of charges per case type between FY 2002 and FY 2008 was in the category of Class 2 felonies, with nearly a 30 percent increase, from an approximate average number of counts per case of 5.2 in FY 2002 to approximately 6.7 counts per case on average in FY 2008. Both Class 4 and Class 5 felonies, which now average 3 and 3.1 counts per case (respectively), jumped by around 12 percent over the six-year time period. Finally, misdemeanor DUI cases, which typically now involve 4 criminal counts per case saw a 9 percent increase in the average number of counts across Colorado. While these increases do not necessarily add to the *caseload* of public defenders, they do add to the *workload* as they now have to defend against more charges, on average, for each case they handle.

CASELOAD STANDARDS

2008 UPDATE TO OSPD CASE WEIGHTED STANDARDS

Updated caseload standards resulting from the study are summarized in **Table 23**, as follows. **Table 23** 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 23** 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 23 – 2008 Weighted Case Standards and Workload Changes Since 2002 Study

State Public Defender 2002 Case Weighting Study Results (Standards)						
	Urban Offices		Rural Offices		Average	
	Estimated Hours/Case	Equivalent Cases per Yr/FTE	Estimated Hours/Case	Equivalent Cases per Yr/FTE	Estimated Hours/Case	Equivalent Cases per Yr/FTE
Trial & Pretrial Cases by Case Class						
Class 1	285.3	6.0	285.3	6.0	285:20	6.0
Class 2 & Felony Sex Assault	56.3	30.20	44.0	38.90	52:27	32.60
Class 3	15.7	109.3	17.7	96.8	16:14	105.5
Class 4-5	8.6	198.3	8.4	205.0	8:33	200.2
Class 6	4.7	361.7	4.1	417.6	4:26	386.2
Class 1 Misdemeanor & Sex Assault	10.1	169.5	6.0	287.7	8:43	196.4
Class 2-3 Misdemeanor & Traffic/Other	4.2	407.6	3.6	471.2	3:59	429.8
All Juvenile	6.7	254.9	8.3	206.3	6:53	248.7
State Public Defender 2008 Case Weighting Study Results (Standards) Based Upon VALIDATED Data						
	Urban Offices		Rural Offices		Average	
	Estimated Hours/Case	Equivalent Cases per Yr/FTE	Estimated Hours/Case	Equivalent Cases per Yr/FTE	Estimated Hours/Case	Equivalent Cases per Yr/FTE
Trial & Pretrial Cases by Case Class						
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
Net Change						
	Urban Offices		Rural Offices		Average	
	Estimated Hours/Case	Equivalent Cases per Yr/FTE	Estimated Hours/Case	Equivalent Cases per Yr/FTE	Estimated Hours/Case	Equivalent Cases per Yr/FTE
Trial & Pretrial Cases by Case Class						
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%

CASELOAD STANDARDS

DISCUSSION OF OTHER RELATED STANDARDS

The American Bar Association (ABA) has taken a leadership role in developing a set of standards and goals for each component of the criminal justice system. These are found in the ABA's Standards Relating to the Administration of Criminal Justice. Two chapters of this document address the subject of indigent defense. Chapter 4 is devoted to the prosecution and defense functions, while Chapter 5 is concerned with the provision of defense services. These are the two pertinent sections with which the Colorado State Legislature urges The Office to follow.

Standard 4-1.3 of Chapter 4 deals with the ethical considerations regarding a defense lawyer's workload. It states:

(e) 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.⁶⁹

The ABA's Discussion of this Standard continues as follows:

Excessive Workloads

Although lawyers, like other people, vary in their capacity for effective performance, there is a limit to how much work any one lawyer can effectively perform. Some sophisticated defendants have been known to engage a lawyer because the lawyer had so many cases on the calendar that normal priorities of the docket would preclude an additional case from trial for an inordinate period. Obviously it is improper for a lawyer to participate in such a fraud on the courts; apart from that, the lawyer has a duty to accept no more employment than can be effectively performed without unreasonable delay.⁴ Moreover, it is improper for defense counsel to accept so much work that the quality of representation or counsel's professionalism is in any way diminished for that reason.

Chapter 5 provides a blueprint and set of standards for delivering defense services. It spells out in detail the requirements for both public defenders and privately appointed counsel in meeting their constitutional and ethical requirements. Standard 5-5.3 reasserts and builds on Standard 4-1.3:

(a) Neither defender organizations, assigned counsel, nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. . . .

⁶⁹ American Bar Association Standards for Criminal Justice, Prosecution Function and Defense Function, Third Edition (1993).

(b) Whenever defender organizations, individual defenders, assigned 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.⁷⁰

While these statements, guidelines, and standards are extremely important, they do not provide specific guidance. Additional detail can be found by examining the work of two other national bodies that have attempted to deal with the problem: the National Study Commission on Defense Services and the National Advisory Commission on Criminal Justice Standards and Goals.

Under a grant from the U.S. Department of Justice, the National Legal Aid and Defender Association conducted a two-year study through the National Study Commission, which resulted in the publication in 1976 of the Guidelines for Legal Defense Systems in the United States. Chapter 5 of that report addresses the maximum criminal caseload for a defense attorney. Section 5.1 states:

- a. In order to achieve the prime objective of effective assistance of counsel to all defender clients, which cannot be accomplished by even the ablest, most industrious attorneys in the face of excessive workloads, every defender system should establish maximum caseloads for individual attorneys in the system.
- b. Caseloads should reflect national standards and guidelines. The determination by the defender office as to whether or not the workloads of defenders in the office are excessive should take into consideration the following factors:
 1. Objective statistical data;
 2. Factors related to local practice; and
 3. An evaluation and comparison of the workload of experienced, competent, private defense practitioners.⁷¹

Section 5.3, which deals with the elimination of excessive caseloads, states:

- a. Defender office caseloads and individual defender attorney workloads should be continuously monitored, assessed, and predicted so that,

⁷⁰ American Bar Association Standards for Criminal Justice, Providing Defense Services, Third Edition (1992).

⁷¹ 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), p. 411.

whenever possible, caseload problems can be anticipated in time for preventive action.

- b. Whenever the Defender Director, in light of the system's established workload standards, determines that the assumption of additional cases by the system might reasonably result in inadequate representation for some or all of the system's clients, the defender system should decline any additional cases until the situation is altered.
- c. When faced with an excessive caseload the defender system should diligently pursue all reasonable means of alleviating the problem including:
 - 1. Declining additional cases and, as appropriate, seeking leave of court to withdraw from cases already assigned;
 - 2. Actively seeking the support of the judiciary, the defender commission, the private bar, and the community in the resolution of the caseload problem;
 - 3. Seeking evaluative measures from the appropriate national organization as a means of independent documentation of the problem;
 - 4. Hiring assigned counsel to handle the additional cases; and
 - 5. Initiating legal causes of action.
- d. An individual staff attorney has the duty not to accept more clients than he can effectively handle and should keep the Defender Director advised of his workload in order to prevent an excessive workload situation. If such a situation arises, the staff attorney should inform the court and his client of his resulting inability to render effective assistance of counsel.⁷²

The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC), which published its standards in 1973. In that report, standard 13.12 on courts states:

The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.⁷³

⁷² Ibid., p. 413.

⁷³ National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Courts (Washington, D.C., 1973), p. 186.

Commentary to Chapter 5 of the ABA Standards incorporates these public defender caseload standards developed by NAC.

In 2002, the ABA reasserted its leadership role in defining requirements for indigent defense and published its Ten Principles of a Public Defense System, which delivered strict guidelines for public defense.⁷⁴

⁷⁴ ABA, Ten Principles of Public Defense Delivery System, (2002)

CASELOAD STANDARDS

COMPARISON OF NATIONAL AND STATE CASELOAD STANDARDS

Table 24, as follows, outlines current Colorado Public Defender caseloads as compared to national standards for indigent defense systems.

Table 24 – Colorado Public Defender Standards and Comparative Data

COLORADO PUBLIC DEFENDER CASELOAD & STAFF DATA						
		TOTALS	FEL Trial & Pre Trial	MISD Trial & Pre Trial	JUV Trial & Pre Trial	OTHER PROCEEDINGS (NON-Trial & NON-PreTrial) (non add)
	<i>Projected 2014 Concurrent Cases</i>	131,010	30,453	44,979	4,259	51,319
	2014 Allocated Trial Attorney Staff (ESTIMATED/Proportionate)	382	128	190	18	47
	Actual AVERAGE Cases Per Trial Attorney	343	237	237	237	1,102.77
	2014 Col. Pub. Def. Full Attorney Staff Rqt	424	142	210	20	52
	Standard's AVERAGE ACTIVE Cases Per Trial Attorney	309	214	214	214	978
	<i>% Over Caseload & Under-staffed in 2014</i>	<i>11.0%</i>				
COMPARATIVE STANDARDS & ACTUAL CASELOAD LEVELS:						
NATIONAL STANDARDS DATA						
		TOTAL CASELOAD	FELONY Trial & Pre-Trial	MISD Trial & Pre-Trial	JUV Trial & Pre-Trial	OTHER PROCEEDINGS (NON-Trial & NON-PreTrial) (non add)
** AMERICAN BAR ASSOCIATION	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	300	250	1,500
** NATIONAL LEGAL AID AND DEFENDER ASSOCIATION	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	300	200	N/A
** NATIONAL ADVISORY COMMISSION ON INDIGENT DEFENSE SYSTEMS	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	400	200	N/A
** These are maximum case assignments allowed per attorney per year. The limits are not intended to be combined. An attorney should carry a maximum of 150 felony cases OR 300 misdemeanor cases OR "X" juvenile cases OR 1,500 miscellaneous proceedings.						
LOCAL & STATE DATA:						
SEATTLE-KING COUNTY	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	300	250	N/A
	Actual Caseload (for one type of case or the other or the other...these are not combinable)	No Information	150	440	330	No Information
NEW YORK CITY	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	400	N/A	N/A
	Actual Caseload (for one type of case or the other or the other...these are not combinable)	No Information	150	400	N/A	No Information
MINNESOTA	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	300	N/A	N/A
	Actual Caseload Average Combined	304	No Information			
DELAWARE	Standards (for one type of case or the other or the other...these are not combinable)	N/A	120	300	200	300
	Actual Caseload Average Combined	475	No Information			
VIRGINIA	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	300	250	N/A
	Actual Caseload Average Combined	340	No Information			
WASHINGTON, D.C.	Standards (for one type of case or the other or the other...these are not combinable)	N/A	150	300	250	N/A
	Actual Caseload Average Combined	244	No Information			
All standards specified as annual caseload maximum limits for attorneys with adequate support staff and are not intended to be aggregate.						
For example, if the standard is 150 felony cases per attorney, this is intended to be the attorney's total annual caseload, since on average it requires approximately 11-12 hours to provide effective representation in a Felony case, and it is assumed that an attorney's actual available case time is no more than approximately 1,712 hours annually.						

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CASE STANDARDS PERFORMANCE REVIEW

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CASELOAD STANDARDS PERFORMANCE

IMPACT OF CASE STANDARDS & CASE STUDY

By the end of FY 2012-13, The Office will have 381.3 appropriated trial attorney FTE. 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 deficit exists under its own staffing and resource allocation model, under the national American Bar Association and National Legal Aid and Defender Association standards, and even simply by calculating the relative ratio of caseload growth and workload growth as compared to the FTE resource growth during the last 12 years. In the face of continual case growth, difficult government-wide fiscal circumstances that necessarily limit available resources, and continued high rates of attrition among all classes of employees, The Office is unable to assert its ability to effectively provide reasonable and adequate representation to its clients.

The primary factor in this attorney deficit is caseload growth. Caseload growth over the past 12 years has placed The Office in a difficult situation; we are exceeding not only our internal case standards but also national standards relating to the number of cases an attorney can effectively handle without impairing quality or breaching professional obligations. These national standards are the very same standards that the Colorado Office of Regulatory Counsel has said should be followed as a cap to maximum cases carried by an attorney in order to ensure effective representation of our clients.

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. Additionally, the ABA and other national standards, discussed above, suggest that at some point The Office needs to consider declining appointment to cases if caseloads become excessive. The Colorado Office of Regulatory Counsel echoes the concerns of the ABA standards. Although under Colorado rules the issue is framed as one of competency. An attorney is not competent to provide effective representation if his or her caseloads are too high.

CASELOAD STANDARDS PERFORMANCE

STAFFING REQUIREMENTS

In the preceding discussion, two methods of measuring workload were provided: the 1973 ABA standards and the use of a weighted caseload formula. The results of these two approaches are presented comparatively in the following **Table 25**.

Table 25 -- OSPD FY 2012 Actual Through 2014 Projected Closed Cases & OSPD Weighted Resource Requirements Compared to ABA Resource Requirements

OSPD CLOSED CASES & RESOURCE REQUIREMENTS	FY 12	FY 13 Proj.	FY 14 Proj.	2012 ABA Standard (Active Caseload)	2012 OSPD Weighted Standard (Closed Caseload)	2013 ABA Standard (Active Caseload)	2013 OSPD Weighted Standard (Closed Caseload)	2014 ABA Standard (Active Caseload)	2014 OSPD Weighted Standard (Closed Caseload)
Felony Trial & Pretrial (includes Trial Office DP)	20,062	20,627	21,264	198.7	182.5	204.5	186.7	211.0	191.5
Total Felony	43,894	44,466	45,151						
Misdemeanor Trial & Pretrial	27,736	30,169	32,907	94.1	112.1	102.8	122.4	112.4	134.0
Total Misdemeanor	42,148	45,584	49,460						
Juvenile Trial & Pretrial	3,193	3,134	3,082	21.8	16.3	21.5	16.0	21.3	15.8
Total Juvenile	7,650	7,478	7,334						
Net Other Proceedings*	42,701	43,597	44,693	153.3	21.4	157.7	22.4	163.1	23.5
Total Cases	93,692	97,527	101,946						
Management FTE				46.8	33.2	48.7	34.8	50.8	36.5
Mandated FTE Req.					22.1		22.1		23.2
Attorney FTE Need				514.7	387.6	535.2	404.4	558.6	424.5

It should be noted that the ABA standards used in the above table do not specifically address other types of cases to which Public Defenders are appointed. In applying the ABA standards a felony equivalent system was developed by the National Legal Aid and Defender Association during the 1970s. Under this system partial credit was given for these other proceedings⁷⁵ at a rate of 1,500 such proceedings per attorney. For the purposes of the OSPD standards used in the above table, proceedings are already accounted for in the case time dedicated to trial and pre-trial caseload. Under the case weighting study, the work performed for these other proceedings was folded into the overall standards of the various case types. Thus in the weighted caseload formula a separate attorney need is not identified for these proceedings.

In FY 2013, there are 381.3 trial office attorneys appropriated to the Office.⁷⁶ As shown in the above tables, under the weighted caseload standard, the Public Defender is short at least 23.1 attorneys needed to provide representation in the 97,527 trial office cases and proceedings estimated to be closed this year. Alternately, the ABA standards required the addition of 153.9 attorneys to support

⁷⁵ Other proceedings fall into four categories: miscellaneous proceedings, appeals handled by the trial office, original proceedings and partial service cases.

⁷⁶ Includes 1.0 FTE associated with the Boulder JITC program; and, 2.0 FTE associated with the Denver Sobriety Court.

this same caseload. The OSPD case weighting analysis of 2012 saves the State several millions of dollars in potential staffing costs, which would otherwise be needed to fill the current deficit of staffing resources under ABA guidelines.

This year, trial and pretrial caseload is expected to reach a net increase of 59 percent since 2000. In FY 2000, there were 199 allocated trial attorneys. Accounting for 89.5 FTE in statutory mandates that have occurred since then, and adjusting for growth since 2000, the Public Defender will require 460 trial attorneys to support near 102 thousand cases expected to be closed in FY2014. This does not include additional staff required for appellate staff or the support of 0.36 investigator FTE, 0.28 trial secretary FTE, and .05 FTE for agency direction and central administration support. Under this assessment, total staffing required to support FY2014 trial and pretrial cases is expected to be about 827 total FTE compared to a base continuation request for 658.6 FTE.

The following tables detail the total staffing requirements required to meet the MINIMUM case standards for The Office's growing caseload.

Table 26 details staffing requirements based upon new cases received each year. It shows that The Office maintains a 6.6 percent deficit of the trial attorneys needed to adequately support new cases received this year. The total 2013 case ratio for all offices would be only 239 new cases opened to 1 attorney if The Office were at full staffing levels. However, the current average statewide ratio of cases per attorney (256 : 1) demonstrates that The Office is stretched beyond that established maximum case level with the average attorney taking on 7.1 percent (17) more new cases this year than is ethically or professionally responsible.

Table 26 – Staffing Requirements for New Opened Cases FY08 to FY17

	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
						Approp.	Request			
	Actual	Actual	Actual	Actual	Actual	(Est.)	(Est.)	(Est.)	(Est.)	(Est.)
Total New Cases Filed a	90,150	96,339	95,621	94,693	95,109	97,507	102,330	107,909	114,362	121,829
Trial Attorney Appropriation	289.0	298.0	335.2	358.9	378.4	381.3	382.4	382.4	382.4	382.4
<i>Cases / Trial Attorney b</i> (row 1 / row 2)	312	323	285	264	251	256	268	282	299	319
Trial Attorney Need for Full Staffing Based on Caseload Model	407.0	483.6	503.3	493.3	402.9	408.2	422.8	439.3	458.6	481.1
<i>Cases / Trial Attorney with Full Staffing</i> (row 1 / row 4)	221	199	190	192	236	239	242	246	249	253
<i>Trial Attorney Deficit</i> (row 2 - row 4)	(118.0)	(185.6)	(168.2)	(134.5)	(24.6)	(27.0)	(40.5)	(57.0)	(76.3)	(98.8)
% Trial Attorney Deficit (row 7 / row 5)	-29.0%	-38.4%	-33.4%	-27.3%	-6.1%	-6.6%	-9.6%	-13.0%	-16.6%	-20.5%
% of Trial Attorney Need Met (row 2 / row 4)	71.0%	61.6%	66.6%	72.7%	93.9%	93.4%	90.4%	87.0%	83.4%	79.5%
% Case Overload	40.8%	62.3%	50.2%	37.5%	6.5%	7.1%	10.6%	14.9%	19.9%	25.8%
General Attorney staffing Level	70.2%	62.5%	67.7%	73.0%	92.3%	92.0%	89.0%	85.7%	82.2%	78.5%
Appellate Attorney Appropriation	32.0	32.0	34.8	34.8	34.8	34.8	34.8	34.8	34.8	34.8
Appellate Attorney Total Need Estimate	50.5	44.1	42.7	45.7	44.6	44.1	45.7	47.3	48.9	50.5
Support Staff Appropriation	196.0	204.1	208.4	224.3	237.2	240.4	241.5	241.5	241.5	241.5
<i>Support Staff Need for Full Staffing Based on Caseload Model</i>	338.6	397.8	414.3	420.6	373.2	379.8	392.9	407.5	424.2	443.2
Total Appropriation	517.0	534.1	578.3	617.9	650.3	656.4	658.6	658.6	658.6	658.6
Total Staffing Requirement	796.1	925.5	960.3	959.6	820.7	832.1	861.4	894.1	931.7	974.9
Total Staffing Deficit	(279.1)	(391.4)	(382.0)	(341.7)	(170.4)	(175.7)	(202.8)	(235.5)	(273.1)	(316.3)
Percent of Staffing Deficit	-35.1%	-42.3%	-39.8%	-35.6%	-20.8%	-21.1%	-23.5%	-26.3%	-29.3%	-32.4%
Percent Appropriated Staff	64.9%	57.7%	60.2%	64.4%	79.2%	78.9%	76.5%	73.7%	70.7%	67.6%

^a Trial and pretrial cases are the most labor intensive for the PDO. They are cases brought to a final disposition and comprise an estimated 57 percent of total newly filed caseload in FY 2012. The remaining closings include other proceedings, such as probation revocations, original proceedings, etc.

^b 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.

^c The Public Defender's Staffing 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 ratio has been decreased and is reflected at .74 support staff level. Full staffing levels for support staff will not be addressed until a future budget request.

Table 27 details staffing requirements based upon cases closed each year. It shows that The Office maintains a 5.7 percent deficit of the trial attorneys needed to adequately support cases that will be closed this year. The total 2013 case ratio for all offices would be only 241 cases closed to 1 attorney if The Office were at full staffing levels. However, the current average state-wide case ratio (256 : 1) demonstrates that The Office is stretched beyond that established maximum case level with the average attorney taking on 6.1 percent (15) more closed cases this year than is ethically or professionally responsible.

Table 27 – Staffing Requirements Based on Closed Cases FY08 to FY17

	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
	Actual	Actual	Actual	Actual	Actual	Approp. (Est.)	Request (Est.)	(Est.)	(Est.)	(Est.)
Total Closed Cases ^a	90,969	94,421	95,581	94,219	93,692	97,527	101,946	107,020	112,836	119,498
Trial Attorney Appropriation	289.0	298.0	335.2	358.9	378.4	381.3	382.4	382.4	382.4	382.4
<i>New Attorney Positions Received (included above)</i>	<i>53.0</i>	<i>9.0</i>	<i>37.2</i>	<i>23.7</i>	<i>19.5</i>	<i>2.9</i>	<i>1.1</i>			
Cases / Trial Attorney ^b (row 1 / row 2)	314.8	316.8	285.2	262.6	247.6	255.8	266.6	279.9	295.1	312.5
Trial Attorney Need for Full Staffing Based on Caseload Model	332.9	403.1	407.1	406.5	387.7	404.4	424.4	446.4	471.2	499.3
<i>Cases / Trial Attorney with Full Staffing</i> (row 1 / row 5)	<i>273</i>	<i>234</i>	<i>235</i>	<i>232</i>	<i>242</i>	<i>241</i>	<i>240</i>	<i>240</i>	<i>239</i>	<i>239</i>
Trial Attorney Deficit (row 2 - row 5)	(43.9)	(105.1)	(72.0)	(47.7)	(9.3)	(23.2)	(42.1)	(64.1)	(88.9)	(117.0)
% Trial Attorney Deficit (row 7 / row 5)	-13.2%	-26.1%	-17.7%	-11.7%	-2.4%	-5.7%	-9.9%	-14.3%	-18.9%	-23.4%
% of Trial Attorney Need Met (row 2 / row 4)	86.8%	73.9%	82.3%	88.3%	97.6%	94.3%	90.1%	85.7%	81.1%	76.6%
% Case Overload	15.2%	35.3%	21.5%	13.3%	2.5%	6.1%	11.0%	16.8%	23.2%	30.6%
General Attorney staffing Level	83.7%	73.8%	82.2%	87.0%	95.5%	92.7%	88.7%	84.5%	80.2%	75.9%
Appellate Attorney Appropriation	32.0	32.0	34.8	34.8	34.8	34.8	34.8	34.8	34.8	34.8
Appellate Attorney Total Need Estimate	50.5	44.1	42.7	45.7	44.6	44.1	45.7	47.3	48.9	50.5
Support Staff Appropriation	196.0	204.1	208.4	224.3	237.2	240.4	241.5	241.5	241.5	241.5
<i>Support Staff Need for Full Staffing Based on Caseload Model</i>	<i>294.6</i>	<i>340.4</i>	<i>342.3</i>	<i>344.0</i>	<i>329.8</i>	<i>341.4</i>	<i>356.9</i>	<i>373.9</i>	<i>392.9</i>	<i>414.2</i>
Total Appropriation	517.0	534.1	578.3	617.9	650.3	656.4	658.6	658.6	658.6	658.6
Total Staffing Requirement	678.0	787.6	792.1	796.2	762.1	789.9	827.0	867.5	912.9	964.1
Total Staffing Deficit	(161.0)	(253.5)	(213.8)	(178.3)	(111.8)	(133.5)	(168.4)	(208.9)	(254.3)	(305.5)
Percent of Staffing Deficit	-23.7%	-32.2%	-27.0%	-22.4%	-14.7%	-16.9%	-20.4%	-24.1%	-27.9%	-31.7%
Percent Appropriated Staff	76.3%	67.8%	73.0%	77.6%	85.3%	83.1%	79.6%	75.9%	72.1%	68.3%

^a Trial and pretrial closed cases are the most labor intensive for the PDO. They are cases brought to a final disposition and comprised 54.4 percent of total closed caseload in FY 2012. The remaining closings include other proceedings, including probation revocations, original proceedings, etc.

^b 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.

^c The Public Defender's Staffing 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 .74 support staff level. Full staffing levels for support staff will not be addressed until a future budget request.

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**TARGETED PERFORMANCE
REVIEW:
BASE RESOURCES**

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CASELOAD & RESOURCES DEVELOPMENT

SUMMARY

The Office has experienced a 50.8 percent cumulative increase in trial and pre-trial cases closed since 2000 at an annual compound rate of increase of 3.5 percent annually. Annual active trial and pre-trial cases increased by 57.9 percent at an annual compound rate of growth of 3.9 percent annually. This growth is compounded by an increase to the effective workload required of total caseload measuring at 21 percent (through 2008), based upon a recent case weighting study performed by an independent consultant. During that same period (FY 2000 through FY 2013), The Office received only 137.2 FTE in support of its continued caseload growth, as well as 166.8 FTE associated with new mandates of criminal justice statutes that further impact the Public Defender's already growing caseload and workload. **Tables 28A and 28B**, as follows, details funding and FTE resources received since FY 2000 according to caseload increases and statutory mandates enacted since then.

**Table 28A – OSPD Historical FTE Allocations:
Summary of Mandates & Caseload Decision Items**

Detailed FTE Changes		Total FTE	Attorney Subtotal of Total FTE	Funding
FY00 Total Appropriation		352.4	220.1	26,006,900
1999-00	Base Caseload <i>(includes Appellate Cases)</i>	65,535	65,535	65,535
1999-00	Base FTE Required <i>(\$\$ estimated upon actual Appropriation per FTE level)</i>	478.7	272.8	35,325,036
	Base Deficit Level	-26.4%	-19.3%	-26.4%
FY 13 Total Final Appropriation		656.4	416.0	62,998,015
Totals		304.0	195.9	\$ 36,991,115
Cumulative Resource Growth FY 2000 to FY 2013		86.3%	89.0%	142.2%
Mandates		166.80	100.3	\$ 11,172,796
% Mandates Total Change =		47.3%	45.6%	43.0%
Caseload Staffing Incr		137.2	95.6	25,818,319
% Caseload Staffing Total Change =		38.9%	43.4%	99.3%
2013-14	Request Year Budget	658.6	417.1	\$ 64,845,319
2013-14	Est. Request Yr Caseload <i>(includes Appellate Cases)</i>	103,225	103,225	103,225
2013-14	Current FTE Required <i>(includes Trial, Capital, appellate)</i>	827.0	470.1	\$ 9,408,602
	Current Deficit Level	-25.6%	-12.7%	-85.5%

Table 28B – Detailed Historical FTE Allocations: 2001 Through 2007

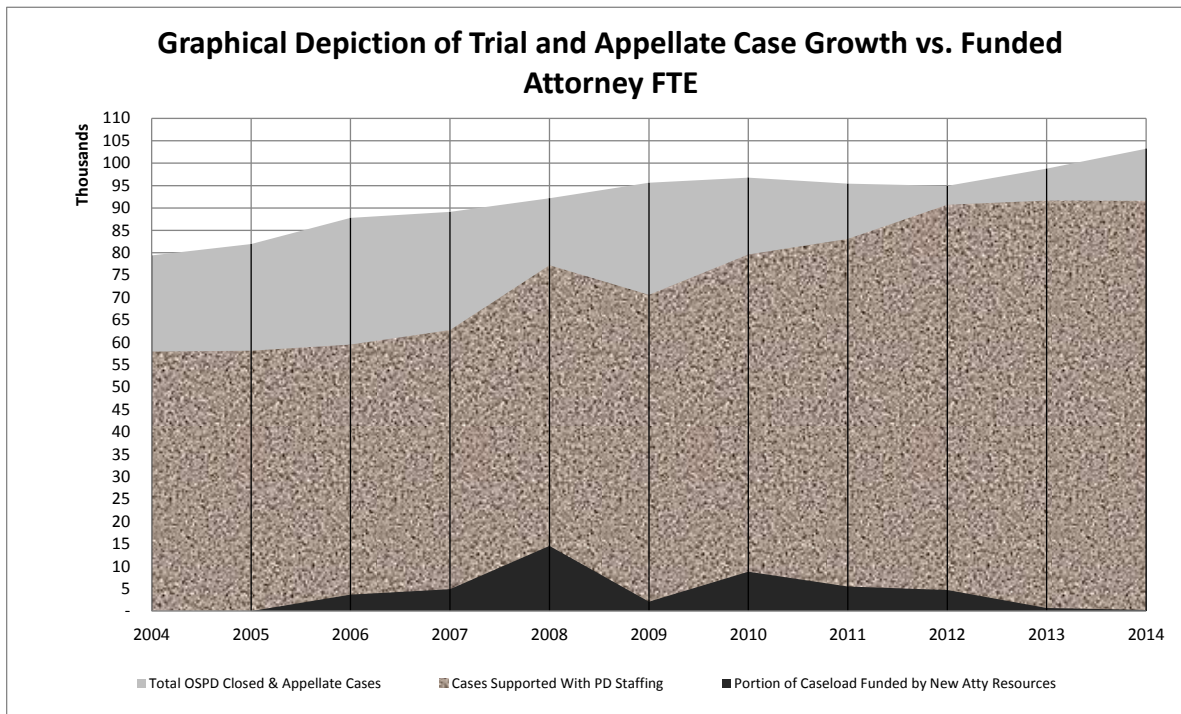
Changes to FY 2000 Appropriation:			
<i>H.B. 00-1174 Eliminate ADC Representation Partially Indigent</i>	3.7	2.4	171,996
<i>S.B. 00-163 Drug Court Pilots</i>	0.8	0.5	36,680
<i>Other Legislative changes (var. bills)</i>	-	-	(24,676)
<i>Various Long Bill Budget Adjustments</i>	-	-	1,289,981
<i>S.B. 01-186 Supplemental Funding (mandated costs)</i>	-	-	25,000
FY01 Total Final Appropriation	356.9	223.0	27,505,881
<i>Annualize H.B. 00-1174</i>	1.1	0.4	38,324
<i>Annualize S.B. 00-163</i>	0.8	0.5	26,710
<i>DI Staffing Increase (Caseload)</i>	6.0	6.0	290,000
<i>H.B. 01-1075 Judges Bill (1st Year)</i>	2.5	2.5	125,985
<i>S.B. 01-048 Broomfield Judgship</i>	0.6	-	67,076
<i>Various Long Bill Budget Adjustments</i>	-	-	1,661,196
<i>Special Session bill (benefits adjustment)</i>	-	-	28,150
<i>H.B. 02-1373 Supplemental Budget Reduction</i>	-	-	(367,780)
FY02 Total Final Appropriation	367.9	232.4	29,375,542
<i>Annualize S.B. 01-048</i>	0.4	0.0	(5,245)
<i>S.B. 02-050 Meth Bill</i>	0.3	0.3	14,373
<i>H.B. 02-1038 Drug Manufacturing Bill</i>	0.3	0.3	12,947
<i>S.B. 02-018 Drug Court Bill</i>	0.0	0.0	63,390
<i>H.B. 01-1075 Judges Bill (2nd Year)</i>	1.5	1.5	75,000
<i>DI Staffing Increase (Admin Support)</i>	2.5	0.0	85,000
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	1,782,950
<i>H.B. 02-1468 (benefits adjustment)</i>	0.0	0.0	18,898
<i>Adjustment to match FTE authorization</i>	0.0	(2.4)	-
<i>S.B. 03-197&03-206 Pay Date Shift (-2,013,578) and Suppl (-1,144,652)</i>	0.0	0.0	(3,158,230)
FY03 Total Final Appropriation	372.9	232.1	28,264,625
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	3,691,833
<i>S.B. 03-273 Eliminated Long Bill Salary Survey</i>	0.0	0.0	(876,676)
<i>H.B. 03-1316 Employee Benefits Adjustment</i>	0.0	0.0	(3,056)
<i>H.B. 04-1323 Supplemental Adjustment (vehicle lease rates)</i>	0.0	0.0	184
FY04 Total Final Appropriation	372.9	232.1	31,076,910
<i>DI Staffing Increase / Caseload Impacts</i>	6.0	6.0	346,000
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	1,170,750
FY05 Total Final Appropriation	378.9	238.1	32,593,660
<i>DI Staffing Increase / Caseload Impacts</i>	6.0	4.0	395,192
<i>H.B. 01-1075 (delayed 3rd Year funding)</i>	3.0	3.0	190,457
<i>Other Base Increases (Discovery, IT, Operating Adjustments)</i>	0.0	0.0	668,782
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	1,072,669
<i>H.B. 06-1220 Supplemental (var. common policy adjustments)</i>	0.0	0.0	(2,899)
FY06 Total Final Appropriation	387.9	245.1	34,917,861
<i>DI Staffing Increase / Caseload Impacts</i>	20.0	12.0	882,019
<i>H.B. 01-1075 (delayed 4th year funding)</i>	3.0	3.0	148,557
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	1,222,843
<i>H.B. 06-1028 Judges Bill</i>	13.0	7.1	634,312
<i>S.B. 07-166 (Supplemental / Drug Court Initiative)</i>	2.0	2.0	593,601
FY07 Total Final Appropriation	425.9	269.2	38,399,193

Table 28B (Cont'd) – Detailed Historical FTE Allocations: 2008 Through 2013

<i>DI Staffing / Caseload Impacts</i>	59.9	36.6	2,296,021
<i>USSC Shelton Decision Impact</i>	21.2	12.2	1,261,530
<i>Annualize S.B. 07-166</i>	2.0	2.0	131,250
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	2,632,103
<i>H.B. 07-1054 Judges Bill (1st Year funding)</i>	7.0	5.0	351,004
<i>H.B. 08-1288 (Supplemental / cyber security)</i>	0.5	0.0	849,972
FY08 Total Final Appropriation	516.5	325.0	45,921,073
<i>Annualize H.B. 08-1288</i>	0.5	0.0	69,960
<i>H.B. 07-1054 Judges Bill (2nd Year funding)</i>	17.1	8.4	747,736
<i>Base Increases (mandated costs, automation plan, leased space)</i>	0.0	0.0	1,505,596
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	2,649,159
<i>Officially Add Existing Contract Staff as State FTE [30.0 FTE non-add]</i>	0.0	0.0	-
<i>Adjustment to match FTE authorization</i>	0.0	(3.3)	-
<i>S.B. 09-190 Supplemental Reductions (Mandated, Automation & Operating)</i>	0.0	0.0	(494,579)
FY09 Total Final Appropriation	534.1	330.1	50,398,945
<i>DI Staffing / Caseload Impacts</i>	36.8	36.8	2,431,049
<i>JITC & Boulder Family Advocate Initiatives</i>	2.0	1.0	56,245
<i>Judicial Department DI # 2 Expand Drug Courts</i>	5.4	3.0	295,876
<i>Base Increases (Leased Space)</i>	0.0	0.0	635,484
<i>Restore FY 2008-09 Base Reductions</i>	0.0	0.0	410,883
<i>Personal Services Base Reduction (statewide balancing)</i>	0.0	0.0	(673,907)
<i>Various Long Bill Budget Adjustments</i>	0.0	0.0	1,029,279
FY10 Total Final Appropriation	578.3	370.9	54,583,854
<i>H.B. 07-1054 / Adjusted for Long Bill</i>	26.7	15.5	1,992,250
<i>Drug Court / Adjusted for Long Bill</i>	5.1	2.9	240,016
<i>H.B. 10-1352 / Adjusted for Long Bill</i>	(5.6)	(3.5)	(244,512)
<i>Partial Year Denver Sobriety Court (SB 11-142 Suppl)</i>	0.8	0.7	
<i>Various Long Bill Budget Adjustments / Adjustment to Round up Approps.</i>	0.0	0.0	539,771
FY11 Total Final Appropriation	605.3	386.5	57,111,379
<i>H.B. 07-1054</i>	42.7	24.8	1,937,484
<i>Annualization of FY11 H.B. 10-1352, H.B. 07-1054 funding & Drug Court Funding</i>	0.0	0.0	60,010
<i>Additional Grant Program Resources (Denver Sobriety Ct) Annual. Amount</i>	2.3	1.9	196,520
<i>Partial Restoration of Base Reductions</i>	0.0	0.0	402,319
<i>Leased Vehicle Decision Item</i>	0.0	0.0	(14,305)
<i>Various Long Bill Adjustments (incl FY12 base supplemental adjustments)</i>	0.0	(0.1)	1,528,659
FY12 Total Final Appropriation	650.3	413.1	61,222,066
<i>Annualize FY12 HB 1054 and other funding</i>	0.0	0.0	121,736
<i>H.B. 07-1054 final phase of funding</i>	5.1	2.9	282,079
<i>Sobriety Court transfer to General Fund (net impact)</i>	1.0	0.0	89,706
<i>Centrally Appropriated lines items + common policy</i>	0.0	0.0	1,244,855
<i>Restore base reductions + new base reductions</i>	0.0	0.0	(63,362)
<i>New base funding (Attorney Registration Fees)</i>	0.0	0.0	100,935
FY 13 Total Final Appropriation	656.4	416.0	62,998,015

As demonstrated in the previous table, staffing increases have not kept up with caseload increases and the overall complexity of cases over time. This has resulted in a staffing deficit and case overload that prevents the State from fulfilling its constitutional mandate to provide effective representation to Colorado’s growing poor population. This is graphically demonstrated in **Table 29**. It is evident in this chart that great strides toward narrowing the gap between caseload and resources were achieved in FY 2006 and FY 2007, but that this gap continues to expand again, as statutory changes, and caseload and workload of the Public Defender have since grown disproportionately. As trial attorney FTE increased 6.2 percent annually since 2000 (including statutorily mandated FTE) Case Ratios have dropped 2.9 percent annually. Cumulatively, FTE resources increased 38.9% in support of caseload, but combined caseload and workload increased 80.4% percent leaving a 41.5 percentage point caseload/workload impact unaddressed.

Table 29 –Comparison of Trial & Appellate Case Growth vs. Available Attorney Staffing



The grey area of the chart is total cases (trial and appellate). The textured area is that portion of the grey area (total cases) supported by appropriated attorney staff based upon caseload standards. The black area is that portion of the textured area representing new attorneys funded by the General Assembly to address caseload.

Table 30 - OSPD Case Ratios

OSPD Case Ratios	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Est.	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
Appropriated Trial Office Public Defenders	174.0	358.7	378.4	381.3	382.4	117.44%	119.11%	119.74%	6.22%
Total Case Ratio	372	263	248	256	267	-33.48%	-31.29%	-28.38%	-2.85%
Trial & Pretrial Case Ratio	194	146	135	141	150	-30.67%	-27.23%	-22.97%	-2.42%
Other Proceedings Case Ratio	178	117	113	114	117	-36.56%	-35.72%	-34.30%	-3.34%

Table 30 provides compares the ratio of cases litigated by The Office’s trial attorneys in FY 2000 as compared to FY 2011 and FY 2012 and projected into FY 2014.

CASELOAD & RESOURCES DEVELOPMENT

TRIAL OFFICE CASELOAD & STAFFING LEVELS

In FY 2011-12, Trial and Pretrial Cases reached a cumulative growth of 50.8 percent since FY 2000. The current projected 2012-13 attorney case ratio (256 to 1, six percent greater than the fully staffed caseload ratio) demonstrates that the Public Defender exceeds maximum case levels. If the Public Defender were at full staffing levels, the case ratio would be 241 : 1.

Utilizing historic case data and applying the Public Defender's established staffing and resource allocation model to analyze the projected FY 2013 caseload, it has been determined that the most current trial office attorney requirement totals 404.4 FTE. The Office is appropriated 381.3 trial attorney FTE this year -- a trial attorney staffing deficit of 5.7 percent.

APPELLATE CASELOAD & STAFFING LEVELS

Since 2000, new appellate cases received annually have increased from 487 cases in FY 2000 to 589 cases in FY 2011-12. It is projected that this caseload will reach 598 new cases by FY 2012-13. Overall, new Appellate cases have increased at a rate of 1.6 percent annually since 2000. It is believed that this growth directly correlates to continued increases in felony charges, trials, convictions and incarcerations as a ratio of the Court's total criminal caseload. It is also believed that inadequate resource levels of the defense combined with increasing caseload, more severe penalties and the relative advantage of prosecutors' resources over the Defense's resource levels all cause increased appeals.

In 2000, the Public Defender's appellate division (The Division) maintained 25 attorneys, and carried an existing backlog of 369 cases in addition to the 487 new cases received that year. At that time, the total attorney resources required to handle the new cases and dissolve any existing backlog was estimated to be 44.2 attorney FTE. Therefore, the appellate division maintained a deficit of 43.4 percent of required attorney resources. Each year since 2000, the division's backlog has increased, gradually reaching a level of 693 cases on backlog near the end of FY 2008. At that time, the Public Defender applied approximately 500 thousand dollars in personal services funds to contract out 82 significant cases within its backlog. This reduced the 2008 year-end backlog to 611 cases.

The Division is currently staffed at 34.8 attorney FTE, but requires 44.1 to carry its current caseload. This represents an appellate attorney staffing deficit of 21.2 percent. For FY 2012-13, the appellate division is expected to carry a backlog of 657 cases from previous years as well as receive 598 new cases. However, it is expected that the division will only be able to close 584 of its total 1,255 cases at existing resource levels. Therefore, the current backlog will continue to climb due to inadequate staffing levels.

CASELOAD & RESOURCES DEVELOPMENT

ETHICAL OBLIGATION & CASELOAD

As caseloads per attorney increase, we enter an area where we conflict with both state and national ethical standards. The implications of this conflict are that at some point an attorney has to question whether he or she can be effective in representing clients with increasingly higher caseloads and has an obligation to refuse to accept additional cases in the interest of maintaining some minimum level of quality representation.

To the degree that our ability to handle criminal cases effectively and efficiently is impaired, the entire criminal justice system becomes affected. Potential problems include conflict with the need to provide physical coverage for the various courtrooms throughout the State that handle criminal cases. Constitutional and statutory obligations to provide legal representation for indigent defendants, constitutional and statutory requirements pertaining to speedy trial, and courtroom efficiency are all directly impacted.

In addition to the attorney need, the State Public Defender is in critical need of program support staff. Any increase in attorney FTE requires a proportionate increase in attorney support positions, including: trial office secretaries, paralegals, and investigators. The current base year budget request does not include standard levels of investigators and trial office secretaries to meet a current need that has grown as caseloads have increased, and as the Public Defender has received Attorney FTE resources in recent years without corresponding support staff increases.

COMPOUNDING RESOURCE & WORKLOAD FACTORS

Changes in the State's population growth, caseloads of the Public Defender's partners in the Judiciary and the CDOC, restrictive financial circumstances of recent years, and unusually high rates of attrition among employees of the Public Defender have affected this program's ability to manage its caseload growth in a way that has created a threatening inability to meet its constitutionally mandated mission.

Caseload, Workload, Staffing and Resource Growth Comparison. In FY 1999-00, the Public Defender maintained a staffing deficit of approximately 28.6 percent. Since then, the staffing resources allocated to the Public Defender for its caseload have increased at an average of 2.6⁷⁷ percent annually up to FY 2012-13, while the equivalent workload impact for cases closed has increased by 4.3 percent annually. As a result, **the Public Defender's resource levels for total staffing have reached a current deficit level of 20.4 percent of *minimum* staffing standards in FY 2012-13.** This current, growing deficit presents a clear threat to the Public Defender's ability to ethically, responsibly and successfully meet its constitutionally mandated mission.

The impact of existing staffing deficits and continually growing caseload is compounded by substantial increases in the time it takes for public defenders to effectively represent a case in the courts. A 2008 independent case weighting time study⁷⁸ of Public Defender cases has demonstrated that in the six years between FY 2002-03 and FY 2007-08, statutory changes to the criminal code combined with changes in the practices of the prosecution and the courts have cumulatively caused a 21 percent increase in the workload public defenders must carry to adequately represent their current caseload. Prior to the case study, the estimated minimum attorney FTE required to support the FY 2008-09 caseload was estimated at 309 attorney FTE (based upon a 2002 independent case weighting time study). The 2008 update to the previous study reflects a requirement of 373 attorney FTE needed to adequately support the same caseload⁷⁹.

Similarly, the Public Defender's appellate division carried a significant staffing deficit in 2000. The division now carries a deficit of 9.3 FTE in attorney resources, and has developed a backlog that seems impermeable in the face of increasing new cases. New cases have increased steadily at a rate of 1.6 percent, plus the backlog of cases carried over from previous years has surpassed the number of new cases received each year and continues to grow at 4.9 percent annually. These developments in the appellate division have culminated to create unmanageable workload at current resources.

⁷⁷ Includes only staff received for caseload and workload increases. Does not include staff resources associated with compounding statutory mandates.

⁷⁸ See 2008 Case Study, Page 61.

⁷⁹ See 2008 Case Study, Page 61.

Summary of Key Compounding Workload Developments. Several factors have contributed to and compounded these challenging circumstances. Key developments include the following:

- The State Public Defender's portion of the State's total felony caseload has increased from 64 percent of all felony cases statewide in 2000 to an estimated 85 percent in this year.
- The rate of the State Public Defender's trial and pretrial closed cases growth has averaged near four percent annually since FY 2000. This rate of growth is more than double the State's general population growth during that period.
- The proportionate balance of the Public Defender's cases has maintained severity in felony classifications. In FY 2013, Felony cases account for 56.9 percent of the total Trial Office attorney staffing requirement. The remaining balance of workload and associated FTE impact is split among Misdemeanor (37.6 percent) and Juvenile cases (5.5 percent).
- While total statewide criminal cases in the courts declined at a CRG of -1.1 percent since 2000 (excluding traffic cases), the OSPD share of those cases has grown at an annual CRG of 3.1 percent during the same period.
- Meanwhile, the State's populace of people earning income at or below 125 percent of the poverty level⁸⁰ has continued to grow at an annual average of 5.2 percent since 2000, thereby, increasing the population of people eligible for representation by the Public Defender.
- Furthermore, the number of people who are incarcerated as a result of a conviction has increased at an average of 2.4 percent since FY 2000 (based upon CDOC Admissions).
- The compensation of public defenders has fallen to 17.9 percent less than that paid to comparable public attorneys in the Department of Law, District Attorney offices, and city and county attorney offices across the state.
- The impact of the growth in number of cases and severity of cases is further compounded by an unusually high rate of attrition for all program staff (Attorneys, Investigators, Paralegals, Trial Secretaries), averaging near 14 percent in the last six fiscal years.
- The relative resources dedicated to the prosecution state-wide remains significantly imbalanced and favored in the courts when compared to Public Defender resources, leaving Public Defender clients at a significant disadvantage and lack of adequate assurance of effective counsel.
- New criminal statutes are enacted every year that change criminal justice processes, penalties, classifications, dockets, and staffing, which have a direct impact on the time and resources the Public Defender must dedicate to its existing caseload.

Ultimately, the culmination of these factors has translated to an increasing ratio of more complex and resource intensive cases as a portion of the Public Defender's total caseload with a decreasing level of resources available. This intensifies the

⁸⁰ 125 percent of the poverty level is the set general standard of eligibility for indigent defense representation by the State Public Defender in accord with CJD 04-04.

challenge of handling an increasing number of cases in the face of already inadequate resource levels.

District and County Court Caseload Comparison. The growth of indigent cases assigned to the Public Defender has out-paced the growth of the total criminal cases terminated in District and County Courts. As the rate of growth of the Public Defender's trial and pretrial caseload assignment by the Court has increased by an average of 3.5 percent annually, the Courts total cases have actually declined at a CRG of -1.1 during the same period.

In effect, the number of indigent cases assigned by the Court to the Public Defender as a portion of the Court's total criminal caseload has been increasing significantly. In fact, the Public Defender's portion of the Court's total criminal caseload has increased from 39 percent in FY 2000 to 65 percent in FY 2012. This effect could be due to an increase in the population that qualifies as indigent for representation by the Public Defender.

Colorado General & Poverty Populations Comparison. The current rate of Public Defender case growth has out-paced the State's population growth rate by about two times the population growth rate over the last 12 years. According to the official population statistics, population growth over the last 12 years has increased from 4,233,791 in 1999 to 5,029,196 in FY 2010 (U.S. census estimate), a net increase of 18.8 percent, a 1.6 percent annual average rate of growth. Cases opened, closed and actively represented by the Public Defender have all increased at 3.1 percent annually during that period. These rates fall midway between the growth of general population (1.6 percent) and the long-term growth rate of the State's population of people earning at or below 125 percent of the poverty level. Demographic reports indicate that in 1999, over 480,000 Coloradans fell below this income threshold. As of 2010 (based on the 2010 census), this population grew to more than 800,000, an equivalent annual growth rate of 5.2 percent.

Incarcerated Population Comparison. While the number of criminal cases opened and terminated by the Court has declined slightly by a negative CRG of -1.1 percent during the last 12 years, the Public Defender's trial and pretrial caseload grew by an annual average of 3.5 percent, and its general caseload grew at 3.1 percent average annually. Similarly, statistics published by the Colorado Department of Corrections reflect that the rate of people convicted of a crime and incarcerated grew at an annual average of 2.4 percent during the period of FY 2000 through FY 2012. Admissions to CDOC facilities were 6,853 in FY 2000 and grew to 9,111 by FY 2012. As this rate of growth continues, the number of new admissions to CDOC facilities could reach 9,330 by the end of FY 2013. This is important to note, because it demonstrates not only that there is an increased portion of Court cases falling upon the Public Defender, but it also demonstrates that even as the number of criminal cases terminated in the Court each year remains relatively stable, convictions more frequently result in incarceration.

This apparent increased potential of incarceration increases demand for Public Defender resources to negotiate better deals for clients or to take a case to trial as

a result of clients' decreased willingness to take deals in the face of likely incarceration.

Staff Attrition Growth. The cumulative workload impact that results from growth of cases and the eligible client population, increases in the severity of cases, inadequate resource levels, and more sentences resulting in incarceration is further compounded by an unusually high rate of attrition for total State Public Defender program staff (Attorneys, Investigators, Paralegals, Trial Secretaries) -- averaging near 15 percent over the last six fiscal years. **Table 31** below shows overall attrition and by classification for FY 2007 through FY 2012.

Table 31 – OSPD Attrition for All Employees

OSPD Rates of Attrition	FY07 Year-End Actual	FY 08 Year-End Actual	FY 09 Year-End Actual	FY 10 Year-End Actual	FY 11 Year-End Actual	FY 12 Year-End Actual	Average 2007-2012
Attorneys	22.8%	17.9%	10.5%	9.3%	11.6%	9.1%	13.5%
Investigators	24.5%	18.4%	8.4%	12.5%	9.3%	10.8%	14.0%
Secretaries	31.9%	33.3%	12.7%	6.3%	23.6%	23.2%	21.8%
Total	24.5%	20.4%	10.4%	9.4%	13.0%	11.5%	14.9%
State office	13.6%	4.0%	0.0%	0.0%	0.0%	2.8%	3.4%
Total	23.9%	18.8%	9.9%	9.0%	12.3%	11.0%	14.2%

The State Public Defender has reached its 40th year as a state agency and program last year. It is expected that over the next five years, this number will continue to increase as a result of retiring senior staff (members of the “baby-boom” generation), many of whom were founding employees of the agency. However, actual attrition data reflects that the increase that has occurred over the last eight years is predominately a result of loss of beginning level employees having three or fewer years of experience. For legal secretaries, an average of 70.8 percent of the staff departures over the last eight years have occurred at this level, while investigators and paralegals have experienced an average rate of departure of 29.5 percent for individuals with the same level of experience. Attorney staff has carried the same dominant trend with its average attrition of entry-level through third-year employees equating to 47.1 percent of all departures during the last eight years. **Table 32** below reflects these trends and provides information dating back to 2005.

Table 32 – OSPD Attrition for Employees within Three Years Tenure

	% Staff Leaving in First 3 years of Employment								
	2005	2006	2007	2008	2009	2010	2011	2012	Average
Attorneys	63.4%	46.2%	50.9%	59.3%	45.7%	41.9%	34.1%	35.1%	47.1%
Investigators	0.0%	11.1%	38.9%	53.8%	25.0%	41.7%	27.3%	38.5%	29.5%
Legal Secretaries	60.0%	38.5%	83.3%	81.8%	70.0%	100.0%	52.9%	80.0%	70.8%
Total	55.8%	39.3%	53.1%	60.0%	47.2%	47.9%	37.5%	47.9%	48.6%

This growth of attrition further diminishes available staff resources. Also, since it is happening predominantly with developing staff, while the most experienced-independent performers and leaders are quickly reaching retirement eligibility, the availability of skilled and capable attorneys is increasingly limited. This

compounded effect creates an incredible deficit of capable and experienced staff to handle high stress levels associated with unreasonable caseload levels and increasingly severe case circumstances, as well as to recruit, train and develop new staff.

Table 33 provides the percent of staff for each occupational group that has reached the journey level or higher, and therefore are considered to be fully capable, independent experts. It is this group of staff that is tasked with handling the most difficult cases as well as with mentoring and supervising younger, inexperienced staff until they are fully capable. Since 2005, the percent of fully capable attorneys dropped from 62 percent to 44 percent, a reduction in relative expertise of 28 percent of the experienced attorney population. This is a reflection of the increasing inability to maintain experienced staff and to also assert that the adequate representation of our clients is ensured.

Similarly, since 2005, the percent of fully capable investigators, paralegals, and mitigation specialists dropped from 64 percent to 33 percent, a reduction in relative expertise of 31 percent of that population. The legal assistant population reduced from 42 percent of fully capable staff to 24 percent, a reduction of expertise equivalent to 18 percent of the population in 7 years.

Table 33 – Ratio of Entry Level, Journey Level and Career Staff 2005 to 2012

Employees by Occupation & Experience Level by Fiscal Year											
Occupation	Experience Level	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	Cum. %	
										Change	CRG
Legal Secretaries	BEG	58%	59%	40%	51%	57%	58%	71%	76%	31%	4%
	JRNY+CAREER	42%	41%	60%	49%	43%	42%	29%	24%	-43%	-8%
Inv/Para/SW	BEG	36%	34%	29%	44%	47%	52%	62%	67%	85%	9%
	JRNY+CAREER	64%	66%	71%	56%	53%	48%	38%	33%	-48%	-9%
Attorneys	BEG	38%	38%	46%	53%	55%	58%	56%	56%	46%	6%
	JRNY+CAREER	62%	62%	54%	47%	45%	42%	44%	44%	-28%	-5%
Professional Services	BEG	0%	0%	0%	4%	4%	3%	10%	10%	968%	40%
	JRNY+CAREER	100%	100%	100%	96%	96%	97%	90%	90%	-10%	-1%
% of all staff at Beg.		37.7%	37.9%	40.0%	48.1%	50.9%	54.1%	56.3%	57.6%	53%	6%
% of all staff at Jrny & Above		62.3%	62.1%	60.0%	51.9%	49.1%	45.9%	43.7%	42.4%	-32%	-5%

In total, the Office has lost about 20 percent of its experienced, capable staff since 2005. As already explained in detail, Public Defender caseload and workload continues to grow over the long-term without sufficient staffing resources provided in accord with established minimum standards of representation. This is compounded by changes in the greater criminal justice system and population; and the most complex, resource intensive cases (felony and trial/pretrial cases, and jury trials) continue to grow over the long-term as a majority of the caseload. This significant, growing loss of experienced staff is now the greatest threat posed to the State's ability to fulfill its Constitutional Mandate to effectively represent the poor of Colorado. An ever-decreasing number and significant minority of capable staff are carrying an ever-increasing number of serious cases, while also tasked with training, mentoring and overseeing the work of an ever-increasing majority population of inexperienced and appropriately incapable colleagues. As such, more and more of the State's poor clients are being represented by these

inexperienced and relatively incapable staff. The State cannot assert that it is adequately representing the poor of Colorado under these circumstances.

Imbalance of Prosecution Resources Over Public Defender Resources. The significant, growing deficit of Public Defender resources, combined with increasing severity of cases and significant attrition is further compounded by an imbalance in staffing resources favoring prosecutors in the courts as compared to public defender resources dedicated to the same caseload.

This year, it is estimated that the State Public Defender will represent 68% of all criminal cases terminated in the courts, including a higher ratio of Felony cases (85%). There are approximately 595⁸¹ prosecutors (District Attorneys and Attorneys General) supporting the Court's total criminal caseload of near 143 thousand terminated cases (excluding traffic cases). **Assuming that the 595 prosecutors handled all 142,778 Court terminated criminal cases, the 2012 caseload per prosecutor is 240 to 1 at an average cost per case of \$960.**

This year, 381 public defenders will close an average of 256 cases at an average cost per case of \$645.

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.

The most recent comparative staffing data for prosecutors as compared to public defenders is shown in the following **Table 34** as of County Fiscal Year 2012.

⁸¹ 582 District Attorneys plus 13 Deputy Attorney Generals in the Department of Law Criminal Division based upon a 2013 survey of all offices.

Table 34 – 2013 OSPD Attorney Staffing Compared to Prosecution

Judicial District	2013 Criminal Prosecutors	FY 2013 Public Defenders	Variance	Public Defender Office
12th	6	5.00	-1	Alamosa
18th	74	42.00	-32	Arapahoe/Douglas
20th	28.5	16.00	-12.5	Boulder
17th	60	38.00	-22	Brighton
4th	79	56.00	-23	Colorado Springs
2nd	79	55.50	-23.5	Denver
5th	11	5.00	-6	Dillon
6th/22nd	15	9.00	-6	Durango
8th	32	18.00	-14	Ft. Collins
9th	13	5.00	-8	Glenwood Springs
1st	66	30.00	-36	Golden
21st	20	18.00	-2	Grand Junction
19th	29	22.00	-7	Greeley
15th/16th	9.5	6.00	-3.5	La Junta
7th	10	8.00	-2	Montrose
10th	19	23.00	4	Pueblo
11th	8	6.60	-1.4	Salida
14th	10	5.00	-5	Steamboat Springs
13th	9	5.00	-4	Sterling
3rd	4	4.00	0	Trinidad
Total	582	377.1	-204.9	All Offices
AG Crim Division Depty AGs vs. OSPD Chief Deputies	13	2	-11	
Grand Total	595	379.1	-215.9	All Offices (DAs 2013 vs. OSPD 2013)
2013 Ratio of Attorneys (2013 Pros. vs. 2013 OSPD)			1.57	1
Ideal Ratio of Attorneys Based upon proportionate Caseload (Pros. Vs. OSPD)			1.51	1

COMPENSATION PRACTICES

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 FY 2011-12 pay practices compared to corresponding public (government) attorney jobs across the state.

The survey was independently performed by Fox Lawson & Associates (FLA), a private compensation practices consulting firm. FLA surveyed 36 participant organizations, including: the Department of Law, District Attorney offices, city and county governments, and a couple of relevant Federal offices. Twenty-three of the 36 surveyed entities actually participated and responded.

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 17.9 percent below what the market currently pays public attorneys in corresponding positions within the participant organizations. To be absolutely clear, these results of the survey do 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 significantly 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 35** 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 that amount and a negative figure means that the Public Defender is below the market by that amount.

Table 35 - The Office's Attorney Salary Variances from the FLA's Market Analysis

Salary Comparison	Overall Market Average
Actual Salaries	-17.9%*
Salary Range Minimums	-19.0%
Salary Range Midpoints	-22.5%
Salary Range Maximums	-25.2%

- The following **Table 36** 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 7.8 percent below market for public defender staff attorneys at the non-supervisory, intermediate-level to as much as 30.7 percent for Managing Attorneys, the equivalent position of elected district attorneys.

Table 36 – Attorney Salary Variances by Career Level

Bench No.	Benchmark Title	Public Defender Avg. Actual	Overall Market Avg Actual	% Diff.
1	Deputy PD Managing Attorney/Office Head	\$108,561	\$141,911	-30.7%
2	Deputy PD Supervising Attorney	\$97,266	\$120,413	-23.8%
3	Deputy PD Senior Attorney	\$92,265	\$100,974	-9.4%
4	Deputy PD Intermediate Staff Attorney	\$69,082	\$74,476	-7.8%
5	Deputy PD Entry-level Staff Attorney	\$54,442	\$59,473	-9.2%
Average				-17.9%

- 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.
- The results of this FY 2011-12 market survey are intended to provide recommendations to catch up Public Defender attorney salaries and salary ranges with the market’s pay practices as of the 2011-12 fiscal year. The data comparisons provide a snapshot as of that time. They do not reflect further market adjustments made during 2012-13 or anticipated over the course of the request year (FY 2013-14), which will have been additionally implemented after June 30, 2012. Under normal pay cycles, pay ranges are updated to the time in which those ranges will be effective, in the case of the OSPD, new pay ranges would be further developed for July 1, 2013 to incorporate additional changes proposed in this year’s Governor’s compensation survey and to incorporate other pay adjustments made by the primary attorney comparison market between June 30, 2012 and June 30, 2013. However, market data obtained during this survey and during a more recent survey of the primary comparison market indicated that slight market movement has occurred since June 30, 2012, therefore, this survey data is believed to remain current and accurate within a one and one-half percent margin.

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**BASE CONTINUATION
PROGRAM PERFORMANCE
REVIEW**

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BASE RESOURCES

OPERATIONAL EFFICIENCIES

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.

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- 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 2010-11, the Alternate Defense Counsel system completed 11,878 cases at a total cost of \$22,275,954 (according to the Joint Budget Committee's FY 2012-13 Appropriations Report). This equates to an average per-case cost of \$1,875.

In FY 2011-12, the OSPD closed 93,692 cases while expending \$61,222,066, for an overall per-case cost of \$653.

If Colorado were a county-based or judicial district-based system in which public defense attorneys were structured and financed on individual contract basis similar to Alternate Defense Counsel, the cost to Colorado citizens (in this case, at the local/county government level) would have been approximately \$198 million to represent all 106 thousand OSPD and ADC cases combined at the \$1,875 per-case amount. This is nearly three times the cost if the OSPD had defended all 106 thousand at its average \$653 per-case cost.

Prosecution Cost Comparison. Another way to assess the efficiency of resources required for Colorado’s Public Defense system is to compare it with the resources supporting District Attorneys and law enforcement activities in general.

Table 37, as follows, includes the results of a 2012 survey of prosecution and supporting law enforcement funding. This table provides a comparison of funding available statewide to criminal justice 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 – district attorney offices have both local funding and State General Fund dollars, as well as federal grant funding. Complementing \$123.6 million in district attorney local funding are \$5.7 million in State General Funding, including \$336,880 available through DOC to prosecute capital cases in prison, \$2.3 million appropriated through the Judicial Department to offset mandated costs of district attorney offices, \$1.3 million in resources provided in support of District Attorney salaries, and \$1.7 million in Public Defender funds provided in support of district attorney for Discovery production and operations expenses. Additionally, district attorney offices received \$7.8 million in federal grant support that year.

**Table 37A – Comparison of Criminal Justice versus OSPD Funding
(Total Direct DA Funding)**

Comparison of Colorado DA Funding and Staffing and OSPD					
District	Name	2012 Budget	FTE	Federal Grants*	Total Funds
1st	Jefferson	19,572,963	175.3	564,755	20,137,718
2nd	Denver	18,108,600	193.7	1,506,327	19,614,927
3rd	Las Animas	588,200	14.0	146,500	734,700
4th	El Paso	10,539,364	200.0	314,080	10,853,444
5th	Summit	3,078,085	36.0	269,387	3,347,472
6th	La Plata	2,089,534	25.0	279,221	2,368,755
7th	Montrose	1,553,487	39.0	331,308	1,884,795
8th	Larimer	7,331,379	86.0	481,445	7,812,824
9th	Garfield	3,204,180	35.0	245,025	3,449,205
10th	Pueblo	3,924,338	61.0	298,661	4,222,999
11th	Park	1,533,765	23.0	250,921	1,784,686
12th	Alamosa	897,949	16.5	361,148	1,259,097
13th	Morgan	1,346,474	22.0	381,191	1,727,665
14th	Routt	1,473,248	20.4	162,697	1,635,945
15th	Prowers	412,624	6.0	60,709	473,333
16th	Otero	596,517	11.0	189,170	785,687
17th	Adams	14,907,443	160.0	314,334	15,221,777
18th	Arapahoe	19,023,000	192.0	462,142	19,485,142
19th	Weld	4,893,934	67.0	240,261	5,134,195
20th	Boulder	4,600,232	62.7	367,053	4,967,285
21st	Mesa	3,244,702	44.0	179,273	3,423,975
22nd	Montezuma	718,180	14.0	237,606	955,786
	CDAC	-	-	111,095	111,095
	DOC payments to DAs for capital cases in prisons	366,880	-	-	366,880
	State Expenditure on DA Salaries (DOL)	1,340,383	-	-	1,340,383
	OSPD Payments to DAs for Discovery	1,701,378	-	-	1,701,378
	Judicial Department Mandated Cost Reimbursements to DAs	2,264,449	-	-	2,264,449
	Total DA Funds	129,311,288	1,503.6	7,754,309	137,065,597
	OSPD Total Proportionate Requirement	85,636,615	995.8	5,135,304	90,771,919
	FY 2013 OSPD Budget (Excludes funds provided to DAs)	61,296,637	656.4	-	61,296,637
	Proportionate Deficit of PD Resources	(24,339,978)	(339.4)	(5,135,304)	(29,475,282)
	% Deficit	-28.4%	-34.1%	-100.0%	-32.5%

Total funding provided directly to district attorney offices is approximately \$137.1 million in 2013 as compared to \$85.6 million (62 percent of total DA resources) available to the Public Defender (\$63 million) and the Alternate Defense Counsel (\$22.6 million). The combined OSPD and ADC resources will support 77 percent of all criminal cases this year, including near 98 percent of all felony cases, the most resource intensive share of the State's criminal caseload. When Public Defender funding is proportionately adjusted to its share of caseload, The Office's funding and staffing are exceeded by that of the District Attorneys by an advantage favoring the DAs of approximately \$29.5 million and 339.4 FTE.

Furthermore, prosecutorial efforts also enjoy direct investigative and legal support from Executive Branch agencies such as the Department of Public Safety (CBI) and the Department Of Law Criminal Division equivalent to an additional investment by the State of \$55.8 million in support of criminal prosecution activities. This makes the total resources available to prosecution activities equal to \$176.9 million, a further compounded, significant inequity between the resources made available to both the prosecution and the defense in criminal justice activities. When total, combined state agency funding and FTE that support prosecution activities are adjusted to the Public Defender's share of caseload, funding and staffing, these resources all together exceed that available to the Public Defender's Office by \$55.8 million and 542.1 FTE. This is equal to an extraordinary resource advantage of 48 percent in funding just to handle an additional 23 percent of the State's criminal caseload, including only 2 percent more of the State's total Felony cases, which the Public Defender is not carrying.

**Table 37B – Comparison of Criminal Justice versus OSPD Funding
(Total Direct and Indirect Funding of District Attorney Resources)**

<u>State Agency/Dept Support of County Prosecution of Criminal Caseload</u>					
	Agency	2012 Budget	FTE	Federal Grants*	Total Funds
	CBI	28,194,603	214.6	850,511	29,045,114
	Dept of Law (criminal)	9,429,811	91.5	1,342,165	10,771,976
Total Prosecution and State Crim. Investigation incl. DAs		166,935,702	1,809.7	9,946,985	176,882,687
Proportionate case share adjustment		110,553,445	1,198.5	6,587,407	117,140,852
FY 2009 OSPD Budget		61,296,637	656.4	-	61,296,637
Proportionate Deficit of PD Resources		(49,256,808)	(542.1)	(6,587,407)	(55,844,215)
% Deficit		-44.6%	-45.2%	-100.0%	-47.7%
Corrections (total budget)		736,199,728	6,022.9	1,014,328	737,214,056
Probation		117,053,384	1,213.4	2,800,000	119,853,384
Total Law Enforcement (non-police/sheriff)		1,149,500,102	10,549.6	21,515,622	1,171,015,724

BASE RESOURCES

RECENT STAFFING CHANGES

In FY 2013, The Office received 6.1 total FTE to address the final installment of the workload impact of H.B. 07-1054 (5.1 FTE, \$282,079) and to complete the staffing of the Denver Sobriety Court (1.0 FTE, \$89,706).

TOTAL RESOURCE IMPACT

REQUIREMENT TO ACHIEVE 100% STAFFING

If the current long-term growth trends that developed from 2000 through 2012 continue, it is expected that The Office's indigent criminal defense caseload will be near 131 thousand active cases by the year 2014. In order to meet 100 percent of the minimum caseload standards for representation of FY 2013-14⁸² closed case levels and to ensure the Public Defender is effectively serving its clients, the Public Defender would need to acquire (above its FY 2013-14 base request of 658.6 FTE) an additional 168.5 FTE. This includes 53.0 trial office and appellate attorneys plus necessary support staff at annualized cost of about 11.1 million dollars. The total estimated cost to fully fund the Office is 82.9 million dollars, including \$11.1 million dollars (13.4 percent of the total) to acquire 100 percent of minimum staffing requirements.

The summary 100% staffing requirements described above are provided in more detail below. Total staffing needs consist of:

- 470.1 Attorney FTE
- 179.1 Investigator FTE
- 138.8 Legal Assistant FTE
- 39.0 State Administration/Direction FTE

Table 38-Total Staffing Needed for FY14 as adjusted by Current / Request Year Staff Allocations

<u>Staffing Needs</u>	<u>Total Resource Rqt</u>	<u>FY 13 Staff Allocation</u>	<u>Net Need FY14 Base</u>	<u>FY 14 Request</u>	<u>Net Need FY14</u>
Total Attorney Need As of June 30, 2012	470.1	416.0	54.1	1.1	53.0
Total Investigators Required	179.1	112.3	66.8	0.5	66.3
Total Legal Assistant Need	138.8	93.2	45.7	0.4	45.3
Central Office Support Staff Req.	39.0	34.9	4.1	0.2	3.9
Grand Total	827.0	656.4	170.6	2.2	168.5
FY 2014 Total Request	\$71,802,170			658.6	827.1
				% FTE Shortfall	20.4%
Additional Amt for 100% Staffing	\$11,107,309	(FY15 Fully Annualized Amount)			
Total FY14 Need to Meet 100% Staffing	\$82,909,479				

⁸² See page 57, Caseload Standards, and page 79 Comparable National and State Caseload and Staffing Standards.

**Table 39 - Current Total Resource Requirement for FY 2013-14
To Meet 100% of Minimum Case Staffing Standards**

Funding for 100% Staffing Requirements	No. of Mos.		FY 2013-14 Full Year Annualized Funding			
	Total FTE	Long Bill FTE	Per Unit Amt	FY14 Jun-Dec	FY14 Jan-May	Total
Staffing						
Attorneys	53.0	53.0	[4685,5116]	1,898,036	1,355,740	3,253,776
Investigators/Paralegals/Mitigation	66.3	66.3	3,143	1,458,666	1,041,905	2,500,571
Legal Assitants	45.3	45.3	1,960	621,516	443,940	1,065,456
Central Administrative Support	3.9	3.9	5,091	138,984	99,275	238,259
Total Staffing / Subtotal Gross Salary	168.5	168.5		4,117,203	2,940,859	7,058,062
PERA @ 7.65% (Jun 2012), 10.15% (Jul '12 to May '13)				417,896	298,497	716,393
FICA @ 1.45 %				59,699	42,642	102,341
Total Staffing Request		168.5		4,594,798	3,281,998	7,876,796
			Rate			
HLD @ FY 14 ave \$7,138.15 pfte rate (per August 2012 DPA rates)	Positions	169	7,138			1,206,347
STD @ .19%				7,823	5,588	13,411
AED @ 3.4, 3.8, 4.2 %				156,454	123,516	279,970
SAED @ 3.0, 3.5, 4.0 %				144,102	117,634	261,736
Subtotal Personal Services		168.5				9,638,260
			Rates			
Operating pp \$500 Genl Op, \$450 Tele.	FTE	168.5	950			160,075
Travel [(Est Costs/FTE Usage) times (1+proj case)] times Req FTE	FTE	168.5	834			140,479
Attorney Registration Fees	Positions	53.0	180			9,540
Capital Outlay \$4,703 pp per OSPB Budget Instructions	Positions	169.0	4,703			-
Rent pfte ave cost per sq foot	Positions	169.0	6,914			1,168,495
Subtotal Operating						1,469,049
	Total FTE	Long Bill FTE			Total FTE	
Total Decision Item Amount	168.5	168.5			168.5	11,107,309

Table 39 above provides the annualized calculations of salary and operating expenses, 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 2013-14 Budget Request of 658.6 FTE and \$71.8 million. If funded as detailed herein, 100% funding would provide for 827.1 FTE and \$82.9 million (General Fund).

TOTAL RESOURCE IMPACT

REQUIREMENT TO ACHIEVE 100% ATTORNEY PAY PARITY

In total, to fully address the current pay disparity carried by Public Defender attorneys, the Office would require \$5.8 million as detailed in **Table 40** below.

Table 40 – Total Amount to Achieve Attorney Pay Parity with the FY 2012 Market

Attorney Parity Request	
\$ 4,869,506	Salaries
\$ 494,254	PERA
\$ 70,608	FICA
\$ 9,252	STD
\$ 175,303	AED
\$ 158,259	SAED
\$ 5,777,182	Total Request

This increase would address pay inconsistencies in two ways:

First, it would correctly classify attorneys to the appropriate benchmark position level that is commensurate with their years of experience and level of responsibility. These attorneys represent individuals who have progressed to higher skill and responsibility levels as attorneys 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, 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 associated with their benchmark position level.

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APPENDIX: DATA TABLES

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OSPD Case Ratios	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Est.	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
Appropriated Trial Office Public Defenders	174.0	358.7	378.4	381.3	382.4	117.44%	119.11%	119.74%	6.22%
Total Case Ratio	372	263	248	256	267	-33.48%	-31.29%	-28.38%	-3.34%
Trial & Pretrial Case Ratio	194	146	135	141	150	-30.67%	-27.23%	-22.97%	-3.01%
Other Proceedings Case Ratio	178	117	113	114	117	-36.56%	-35.72%	-34.30%	-3.72%

OSPD Closed Trial & Pretrial Caseload vs. Other Proceedings and Total	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
All Closed OSPD Cases (Tr/Prtri+Other)	64,779	94,219	93,692	97,527	101,946	44.63%	50.55%	57.38%	3.12%
All Tr/Pretri Cases	33,824	52,346	50,991	53,930	57,253	50.75%	59.44%	69.27%	3.48%
Tr./PreTri. Portion of Total Caseload	52.2%	55.6%	54.4%	55.3%	56.2%	4.23%	5.90%	7.56%	0.35%
Other Proceedings Only	30,955	41,873	42,701	43,597	44,693	37.95%	40.84%	44.38%	2.72%
Other Procs. Portion of Total Caseload	47.8%	44.4%	45.6%	44.7%	43.8%	-4.62%	-6.45%	-8.26%	-0.39%

OSPD Opened Cases Trial & Pretrial Caseload vs. Other Proceedings and Total	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Proj.	FY 2014 Proj.	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
All New OSPD Cases (Tr/Prtri+Other)	65,689	94,693	95,109	97,507	102,330	44.79%	48.44%	55.78%	3.13%
All Tr/Pretri Cases	42,586	63,537	53,878	55,448	58,280	26.52%	30.20%	36.85%	1.98%
Tr./PreTri. Portion of Total Caseload	64.8%	67.1%	56.6%	56.9%	57.0%	-12.62%	-12.28%	-12.15%	-1.12%
Other Proceedings Only	23,103	31,156	41,231	42,059	44,050	78.47%	82.05%	90.67%	4.95%
Other Procs. Portion of Total Caseload	35.2%	32.9%	43.4%	43.1%	43.0%	23.26%	22.64%	22.40%	1.76%

OSPD Active Cases Trial & Pretrial Caseload vs. Other Proceedings and Total	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Proj.	FY 2014 Proj.	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
All Active OSPD Cases (Tr/Prtri+Other)	83,212	122,949	120,498	125,381	131,010	44.81%	50.68%	57.44%	3.13%
All Tr/Pretri Cases	44,725	73,287	70,619	74,886	79,691	57.90%	67.44%	78.18%	3.88%
Tr./PreTri. Portion of Total Caseload	53.7%	59.6%	58.6%	59.7%	60.8%	9.04%	11.12%	13.17%	0.72%
Other Proceedings Only	38,487	49,662	49,879	50,495	51,319	29.60%	31.20%	33.34%	2.18%
Other Procs. Portion of Total Caseload	46.3%	40.4%	41.4%	40.3%	39.2%	-10.50%	-12.93%	-15.31%	-0.92%

All OSPD Closed Case Ratios by Type of Case to Total OSPD Cases	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
OSPD Total Closed Cases & Proceedings	64,779	94,219	93,692	97,527	101,946	44.63%	50.55%	57.38%	3.12%
OSPD Total Felony Terminated Cases	35,999	44,603	43,894	44,466	45,151	21.93%	23.52%	25.42%	1.67%
Ratio of OSPD Felony Cases to Total All OSPD Cases	55.57%	47.34%	46.85%	45.59%	44.29%	-15.70%	-17.96%	-20.30%	-1.41%
OSPD Total MISD Terminated Cases & Proceedings	18,535	41,445	42,148	45,584	49,460	127.40%	145.93%	166.85%	7.09%
Ratio of OSPD MISD Cases to Total All OSPD Cases	28.61%	43.99%	44.99%	46.74%	48.52%	57.22%	63.35%	69.56%	3.84%
OSPD Total JUV Terminated Cases & Proceedings	10,245	8,171	7,650	7,478	7,334	-25.33%	-27.01%	-28.41%	-2.40%
Ratio of OSPD JUV Cases to Total All OSPD Cases	15.82%	8.67%	8.17%	7.67%	7.19%	-48.37%	-51.52%	-54.51%	-5.36%

All Closed OSPD Trial/Pretrial Cases by Case Type w/ Ratio to All Tri/Prtrl	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
OSPD Total Closed Cases	64,779	94,219	93,692	97,527	101,946	44.63%	50.55%	57.38%	3.12%
Total Trial & Pretrial Closings	33,824	52,346	50,991	53,930	57,253	50.75%	59.44%	69.27%	3.48%
Ttl Tri/Prtrl Ratio of All Cases	52.2%	55.6%	54.4%	55.3%	56.2%	4.23%	5.90%	7.56%	0.35%
OSPD Felony Tri/Pretrl	16,726	20,758	20,062	20,627	21,264	19.94%	23.32%	27.13%	1.53%
OSPD Felony Tri/Pretrl ratio to All Tri/Prtrl	49.45%	39.66%	39.34%	38.25%	37.14%	-20.44%	-22.65%	-24.89%	-1.89%
OSPD Misdemeanor Tri/Pretrl	12,544	27,921	27,736	30,169	32,907	121.11%	140.51%	162.33%	6.84%
OSPD Misdemeanor Tri/Pretrl Ratio to All Tri/Prtrl	37.09%	53.34%	54.39%	55.94%	57.48%	46.67%	50.84%	54.98%	3.24%
OSPD Juvenile Tri/Pretrl	4,554	3,667	3,193	3,134	3,082	-29.89%	-31.18%	-32.32%	-2.92%
OSPD Juvenile Tri/Pretrl Ratio to All Tri/Prtrl	13.46%	7.01%	6.26%	5.81%	5.38%	-53.49%	-56.84%	-60.02%	-6.18%

Comparisons of Closings By Case Type: Court Totals (DAs Cases) vs. OSPD w/ Proportionate Shares	FY 2000 Actual	FY 2011 Actual	FY 2012 Est.	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
State Courts Total									
All Terminated Criminal Cases & Proceedings--No Traffic	164,764	145,779	144,267	142,778	141,314	-12.44%	-13.34%	-14.23%	-1.08%
OSPD Total									
All Terminated Criminal Cases & Proceedings--No Traffic	64,779	94,219	93,692	97,528	101,945	44.63%	50.55%	57.37%	3.12%
Ratio of OSPD Total Criminal Cases to State Courts Total Criminal Cases	39.3%	64.6%	64.9%	68.3%	72.1%	65.18%	73.74%	83.49%	4.27%
Felony Terminated Cases & Proceedings of the Court	56,047	53,175	52,703	52,235	51,771	-5.97%	-6.80%	-7.63%	-0.89%
OSPD Total									
Felony Terminated Cases & Proceedings	35,999	44,603	43,894	44,466	45,151	21.93%	23.52%	25.42%	1.67%
Ratio of Total OSPD Felony Cases to Total State Courts Felony Cases	64.2%	83.9%	83.3%	85.1%	87.2%	29.67%	32.53%	35.78%	2.19%
Misd.. Terminated Cases of Court	90,948	81,318	80,692	80,070	79,454	-11.28%	-11.96%	-12.64%	-0.77%
OSPD Misdemeanor Cases	18,535	41,445	42,148	45,584	49,460	127.40%	145.93%	166.85%	7.09%
Ratio of OSPD Misd. Cases to Total State Courts Misd. Cases	20.38%	50.97%	52.23%	56.93%	62.25%	156.30%	179.34%	205.45%	8.16%
Juv. Terminated Cases of Court	17,769	11,286	10,872	10,473	10,089	-38.82%	-41.06%	-43.22%	-3.67%
OSPD Juvenile	10,245	8,171	7,650	7,478	7,334	-25.33%	-27.01%	-28.41%	-2.40%
Ratio of OSPD JUV Cases to Total State Courts JUV Cases	57.66%	72.40%	70.37%	71.40%	72.70%	22.04%	23.84%	26.08%	1.67%

Court Terminated Cases	FY 2000 Actual	FY 2011 Actual	FY 2012 Est.	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
Court Terminated Criminal Cases w/ Traffic	479,491	408,639	403,551	398,526	393,563	-15.84%	-16.89%	-17.92%	-1.25%
Court Terminated Criminal Cases--No traffic	164,764	145,779	144,204	142,646	141,104	-12.48%	-13.42%	-14.36%	-1.08%
Felony Terminated Cases of Court	56,047	53,175	52,703	52,235	51,771	-5.97%	-6.80%	-7.63%	-0.89%
Court FEL ratio	34.0%	36.5%	36.5%	36.6%	36.7%	7.44%	7.65%	7.86%	0.19%
Misd. Terminated Cases of Court	90,948	81,318	80,692	80,070	79,454	-11.28%	-11.96%	-12.64%	-0.77%
Court Misd ratio	55.2%	55.8%	56.0%	56.1%	56.3%	1.37%	1.69%	2.01%	0.31%
JUV Terminated Cases of Court	17,769	11,286	10,872	10,473	10,089	-38.82%	-41.06%	-43.22%	-3.67%
Court JUV ratio	10.8%	7.7%	7.5%	7.3%	7.1%	-30.09%	-31.92%	-33.70%	-2.62%

CDOC Admissions	FY 2000 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
CDOC Admissions	6,853	9,935	9,111	9,330	9,554	32.95%	36.14%	39.41%	2.40%

CDOC Daily Incarcerated Population	FY 2000 Actual	FY 2011 Actual	FY 2012	FY 2013 Proj	FY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
CDOC Daily Incarcerated Population	15,441	22,814	21,037	21,586	22,150	36.24%	39.80%	43.45%	2.61%

Colorado Poverty Level	CY 2000	CY 2011 Est	CY 2012 Est	CY 2013 Proj	CY 2014 Proj	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
125%	481,038	844,986	889,070	935,454	984,258	84.82%	68.55%	61.85%	5.22%
Total Pop	4,338,801	5,119,779	5,196,177	5,285,509	5,380,606	19.76%	18.92%	19.44%	1.62%
Ratio of CO 125% Poverty Pop to Total CO Pop Poverty Pop	11.1%	16.5%	17.1%	17.7%	18.3%	54.33%	41.73%	35.50%	3.54%
Ratio of CO 125% Poverty Pop to US 125% Poverty Pop	1.2%	1.3%	1.3%	1.4%	1.4%	8.81%	11.55%	7.15%	1.31%

US Poverty Level	CY 2000	CY 2011 Est	CY 2012 Est	CY 2013 Est	CY 2014 Est	Cumulative Growth by 2012	Cumulative Growth by 2013	Cumulative Growth by 2014	Annual Compound Rate of Growth
125%	38,817,500	63,488,466	65,936,180	68,478,262	71,118,351	69.86%	51.10%	51.05%	3.86%
Total Pop	282,171,957	312,167,338	315,627,061	319,125,127	322,661,963	11.86%	11.94%	12.11%	1.11%
Ratio of US 125% Poverty Pop to Total US Pop Poverty Pop	13.8%	20.3%	20.9%	21.5%	22.0%	51.86%	34.98%	34.73%	2.72%

Data Source Notes:

OSPD Case Stats:	From OSPD Closed, New Opened and Active (concurrent) Case Statistics (FY 2000 to FY 2011)								
State Criminal Stats									
State (Judicial):	http://www.courts.state.co.us/Administration/Unit.cfm?Unit=annrep								
and Denver Courts:	http://www.denvergov.org/CountyCourt/AnnualReports/tabid/383411/Default.aspx								
DOC Stats:	http://www.doc.state.co.us/gsr								
Colorado Pop Data:	http://www.colorado.gov/cs/Satellite?c=Page&childpagename=DOLA-Main%2FCBONLayout&cid=1251593346834&pagename=CBONWrapper								
Colorado Poverty Data:	http://www.census.gov/hhes/www/cpstables/032011/pov/new46_100125_01.htm								
US Poverty Data:	http://www.census.gov/hhes/www/cpstables/032011/pov/new27_001.htm								

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