

# Performance Plan

July 01, 2022



**Office of the State Public Defender**

**MEGAN A. RING**  
**Colorado State Public Defender**

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# Strategic Component

## **Mission**

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

### ***OSPD Enabling Legislation:***

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

## **Vision**

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

## **History**

In 1963, the United States Supreme Court decided *Gideon v. Wainwright*, 372 U.S. 335 (1963), ensuring the indigent accused the right to representation of counsel in criminal cases. That same year, the Colorado General Assembly passed the Colorado Defender Act in response to the *Gideon* decision. This Act authorized Colorado counties to either establish a public defender office or remain under the previous ad hoc system of appointing counsel for indigent citizens accused of criminal offenses. Four county public defender offices were established under the Act in Denver, Brighton, Pueblo and Durango.

In 1969, the State Legislature passed the Administrative Re-Organization Act. Pursuant to this Act, the State began to oversee the court system, which assumed responsibility for the appointment and funding of counsel for indigent people. The Office of the State Public Defender was created by statute and became an independent state agency in 1970.

## **Description**

The Office of the State Public Defender (OSPD) is a single purpose program devoted to providing effective criminal defense representation to indigent persons charged with crimes. Our clients are indigent people facing the possibility of incarceration who are unable to afford private counsel and, without counsel, would be denied their constitutional right to representation throughout the criminal proceedings. Attorneys and a team of legal support staff are necessary to provide effective representation of counsel as mandated by the federal and state constitutions, Colorado Revised Statutes, Colorado Court Rules, American Bar Association standards, and the Colorado Rules of Professional Conduct. The OSPD system is the most efficient means of providing this representation.

The OSPD is an independent agency within the Judicial Branch of Colorado state government. The courts appoint the OSPD when a person qualifies for services pursuant to statute, applicable case law, and Chief Justice Directives.

In order to fulfill our responsibility in criminal proceedings, OSPD operates as a single purpose program handling cases at the trial court level and the appellate court level. The OSPD maintains 21 regional trial offices which cover the State's 22 judicial districts and 64 counties. See, *Trial Office Map on page 4*. The OSPD appellate office handles statewide indigent criminal cases heard at the Court of Appeals and the Supreme Court. The staff in these offices are entirely devoted to representing clients in cases as assigned by the courts. System-wide administrative and support functions for these offices are handled centrally through the State Administrative Office in Denver. See, *OSPD Functional Organization Chart on page 6*.

Megan A. Ring directs the Colorado State Public Defender system. The State Administrative Office houses the leadership team for the system. OSPD's mission and performance expectations are guided and monitored by this leadership team. The office coordinates all support functions to assist our regional trial offices and the Appellate Division in providing competent and zealous legal services to our clients. The administrative functions delivered by the administrative office include:

- Program direction, analysis and planning, including statistical compilation and development.
- Workforce development, training personnel, policy, compensation analysis, and practice development.
- Payroll and benefits coordination and administration.
- Legislative affairs and statutory analysis.
- Intergovernmental and intragovernmental affairs.
- Budget analysis, development, allocation and management.
- Financial management analysis tracking, transaction processing, procurement and accounting.
- Facilities, planning development and lease negotiation.
- Contracts and grants management.
- IT support and development.
- Human Resources.
- Development, distribution and maintenance of the agency's computer information and telecommunications systems.

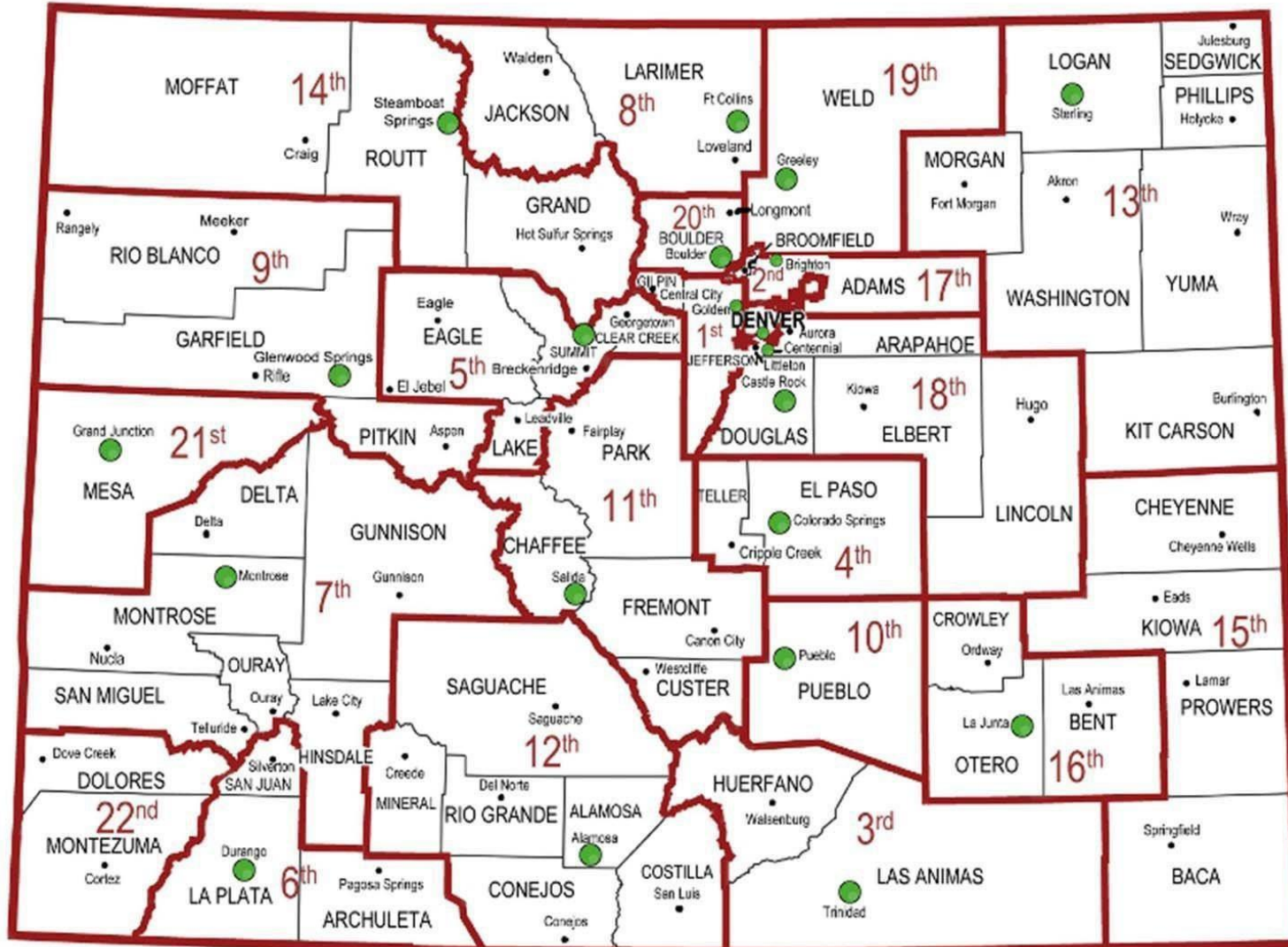
To support the OSPD in meeting the needs of its clients for the FY 2022-23 projected caseload, the legislature appropriated the OSPD \$130,021,877, and 1050 FTE. This is comprised of approximately 577 attorneys, 173 investigators, 69 paralegals, 23 social workers, 154 administrative assistants, and 54 centralized management and support positions. In addition, to support OSPD clients in the digital age, the OSPD was appropriated \$4,110,754 in IT capital to address the proliferation of electronic records and digital media that has impacted the workload, storage costs, and strategies across the criminal legal system. See, *Organization Chart on page 6*.

## **Constitutional, Statutory and Other Authority**

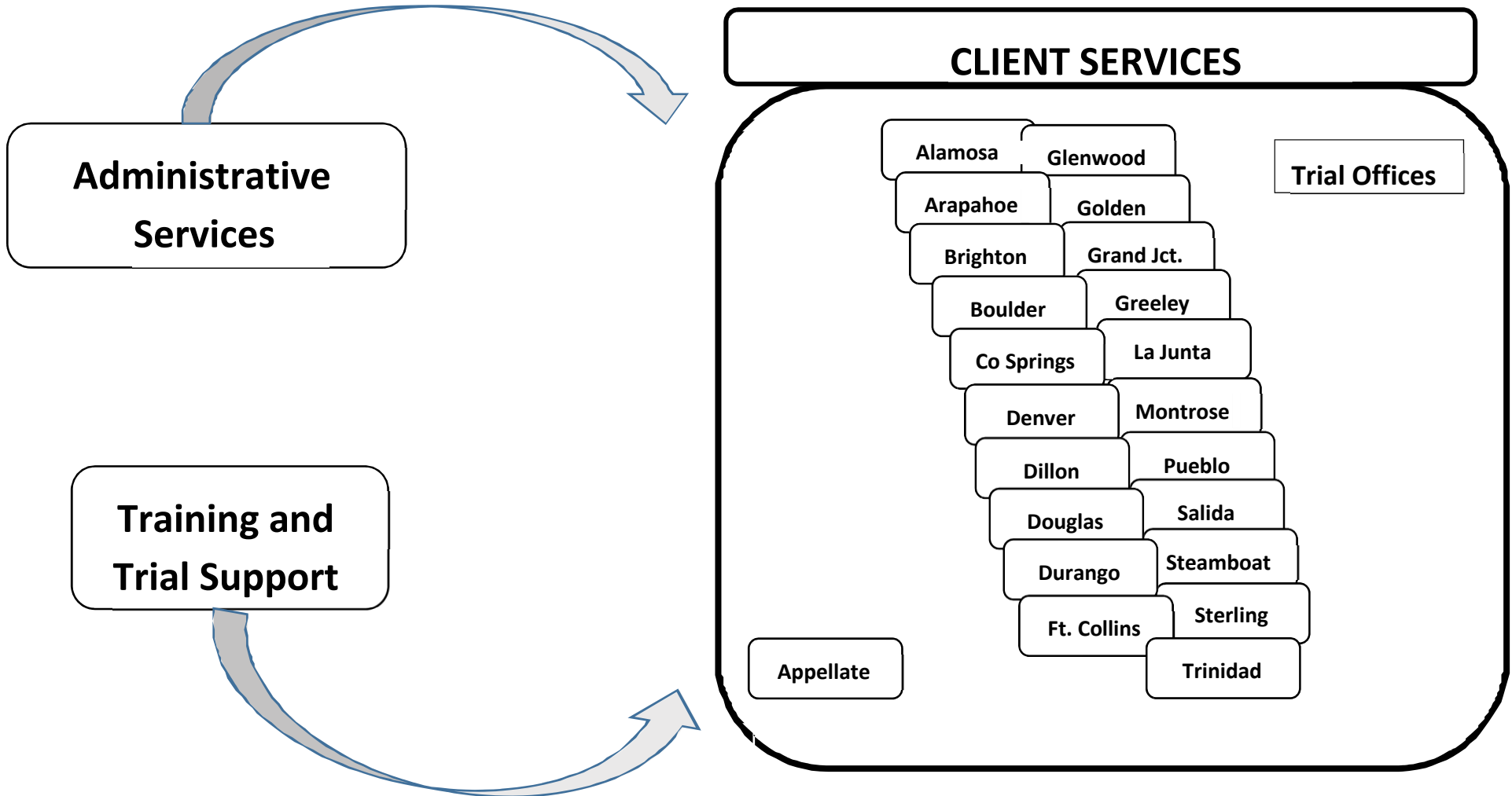
Constitutional, statutory and other authority for the OSPD system and its work is established pursuant to:

- U.S. Const. amend. VI;
- Colo. Const. art. II, §16;
- C.R.S. §§ 21-1-101 to 21-1-107;
- Chief Justice Directive 04-04;
- ABA Criminal Justice Standards;
- 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 (2008);
- *Nikander v. District Court*, 711 P.2d 1260 (Colo. 1986);
- *Allen v. People*, 157 Colo. 582, 404 P.2d 266 (1965);
- *In Re Gault*, 387 U.S. 1 (1967); and
- *Powell v. Alabama*, 287 U.S. 45 (1932).

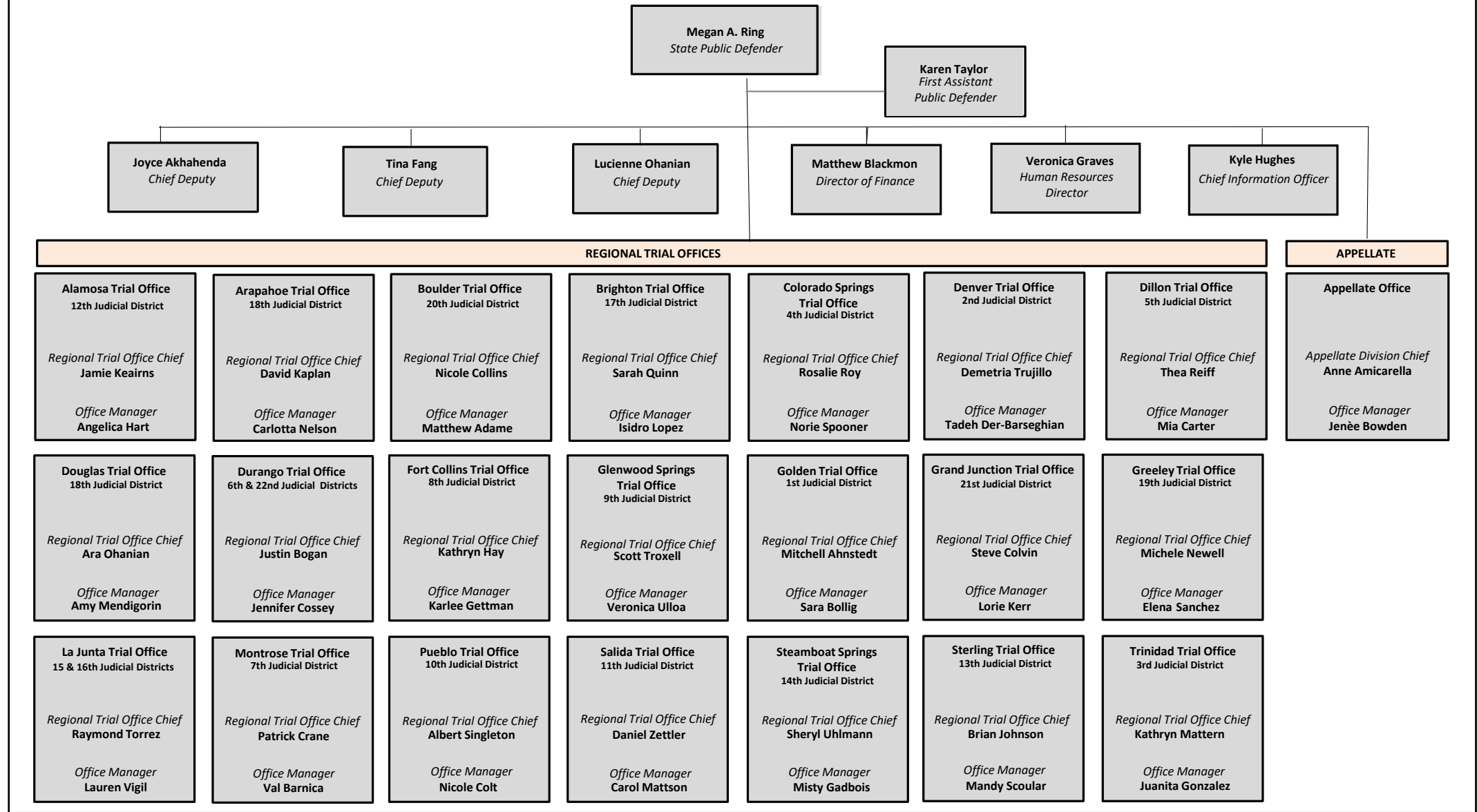
# Trial Office Map



# COLORADO STATE PUBLIC DEFENDER



**Office of the State Public Defender Organizational Chart**

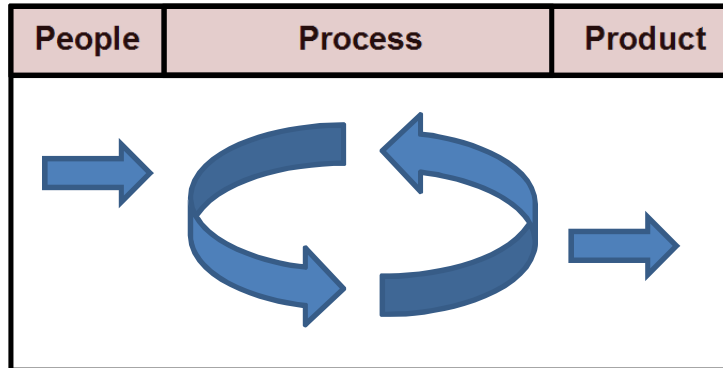




# Operational Component/Processes

## Goals, Strategies and Measures

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



To this end, we have developed three overarching goals, five strategies and nineteen measures, all focused on improving service to our clients. We continue to analyze and further refine the concepts included in this document throughout the year using a variety of methods.

Our goals, strategies and measures all tie directly to our vision and our mission. Furthermore, as part of our organizational infrastructure planning, these components are continually reviewed and further refined.

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### **Goals:**

1. Provide effective attorney services and advocacy in both the trial and appellate courts throughout the state of Colorado for indigent clients.
2. Hire and retain a sufficient number of quality staff to effectively manage the ever-increasing workload in each office in the state.
3. Provide a high quality and quantity of staff development, training, technology support and other resources to adapt our response to the constantly changing criminal legal system so that our advocacy and legal services are commensurate with those available for non-indigent persons as is required by our statute.

### **Strategies:**

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

## Measures:

### Input

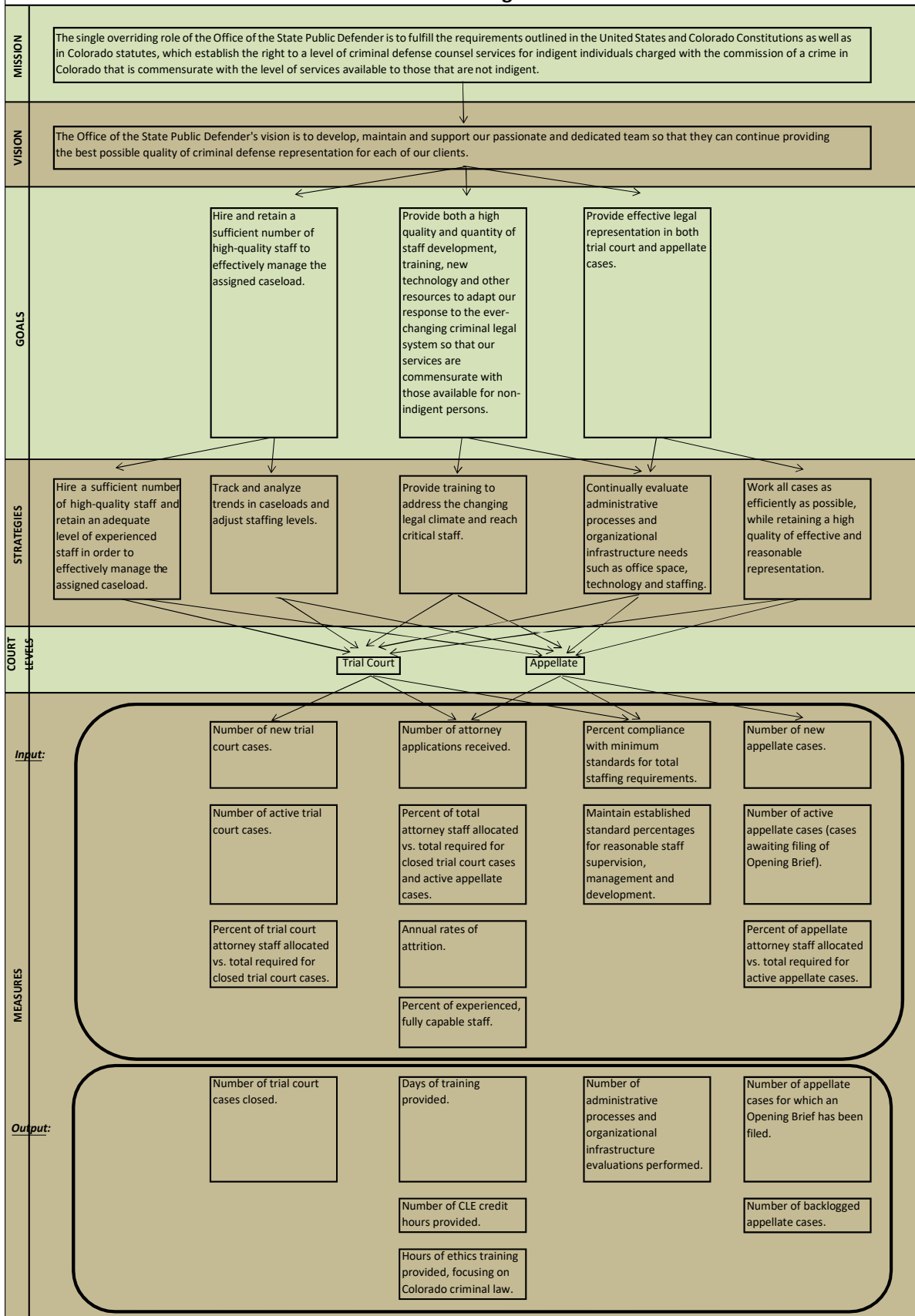
1. Number of new trial court cases.
2. Number of active trial court cases.
3. Percent of trial court attorney staff allocated vs. total required for closed trial court cases.
4. Number of attorney applications received.
5. Percent of total attorney staff allocated versus total required for closed trial court cases and active appellate cases.
6. Annual rates of attrition.
7. Percent of experienced, fully capable staff.
8. Percent compliance with minimum standards for total staffing requirements.
9. Established standard percentages for reasonable staff supervision, management and development.
10. Number of new appellate cases.
11. Number of active appellate cases (cases awaiting filing of Opening Brief).
12. Percent of appellate attorney staff allocated vs. total required for active appellate cases.

### Output

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

To see a pictorial representation of the relationships among our mission, vision, goals, strategies and measures, see *Performance Planning Structure* on page 9.

# Performance Planning Structure



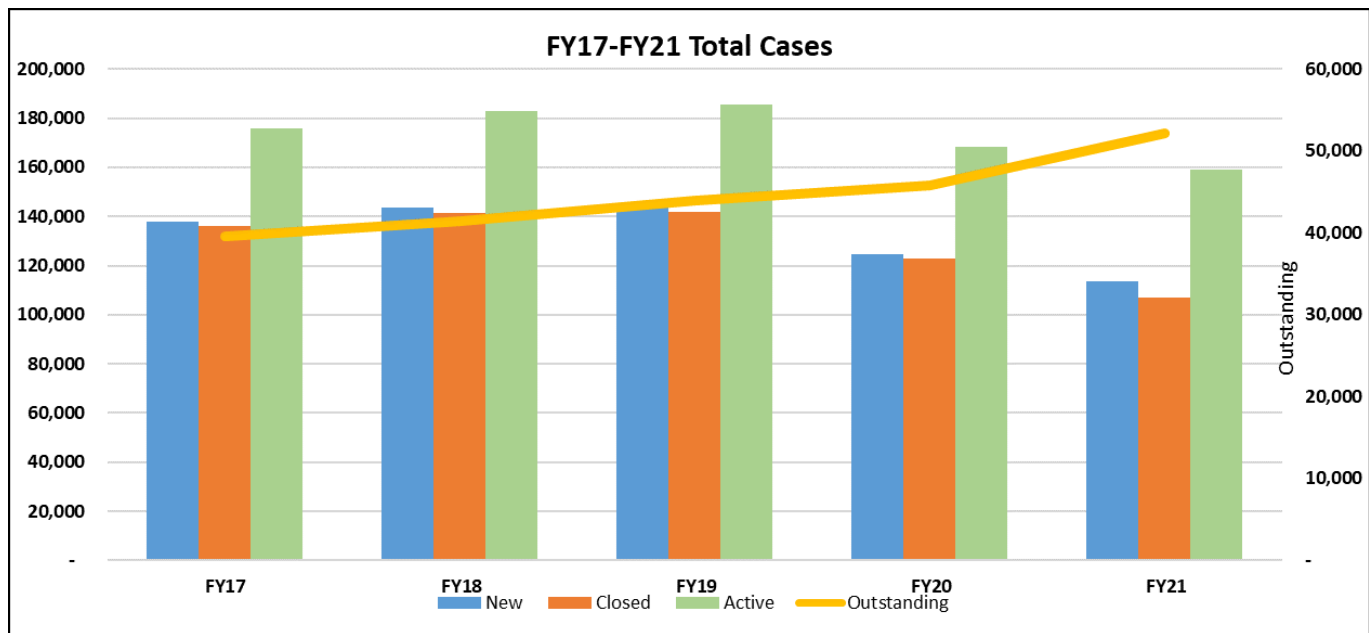
**REGIONAL TRIAL OFFICE**  
**CASELOAD**

**OVERALL OSPD CASE TRENDS**

**Total Cases.** The Office of the State Public Defender tracks and monitors its caseload in four distinct categories: new, closed, active, and outstanding cases.

At the end of FY 2019-20, the COVID-19 pandemic and the Stay-At-Home orders forced the OSPD to quickly react to a world where much of the work of representing clients became virtual. As the pandemic accelerated, the number of new OSPD cases dropped significantly in the spring of 2020. By the fourth quarter of FY 2019-20, the decline had reached approximately 50 percent. Although the number of cases started to rebound, the impacts of the pandemic continued through FY 2020-21.

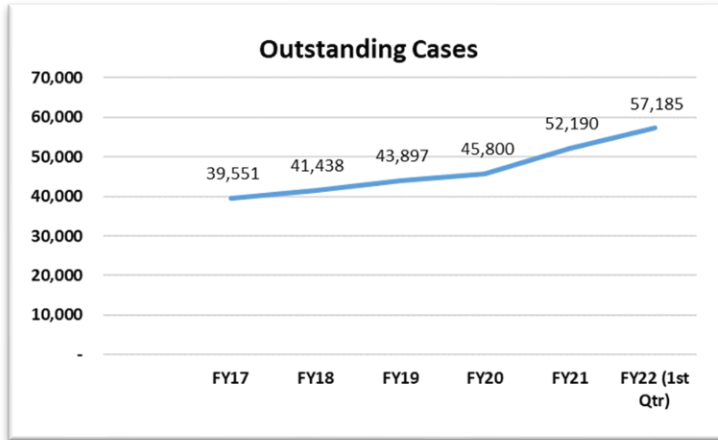
In FY 2020-21, the OSPD actively worked on 159,292 cases. Active caseload incorporates all cases in which the OSPD has or is actively representing clients in a given year: the total new cases, plus cases closed during the year and the remaining unfinished cases from prior years that are carried forward into the current year. The OSPD was appointed on 113,453 new cases, closed 107,099 cases and at the end of FY 2020-21, the OSPD had 52,190 outstanding cases.



**Outstanding Cases.** As the chart above shows, going back to FY17, as the number of new cases increased, there was a corresponding increase in the outstanding cases. While over the past 15 months the number of active, new and closed cases has dropped from previous years, the number of outstanding cases has increased as seen in the trend line. Since FY 2016-17, the number of outstanding cases has increased 32 percent from 39,551 in FY17 to 52,190 cases at the end of FY21, with 14 percent of that increase happening just in the last

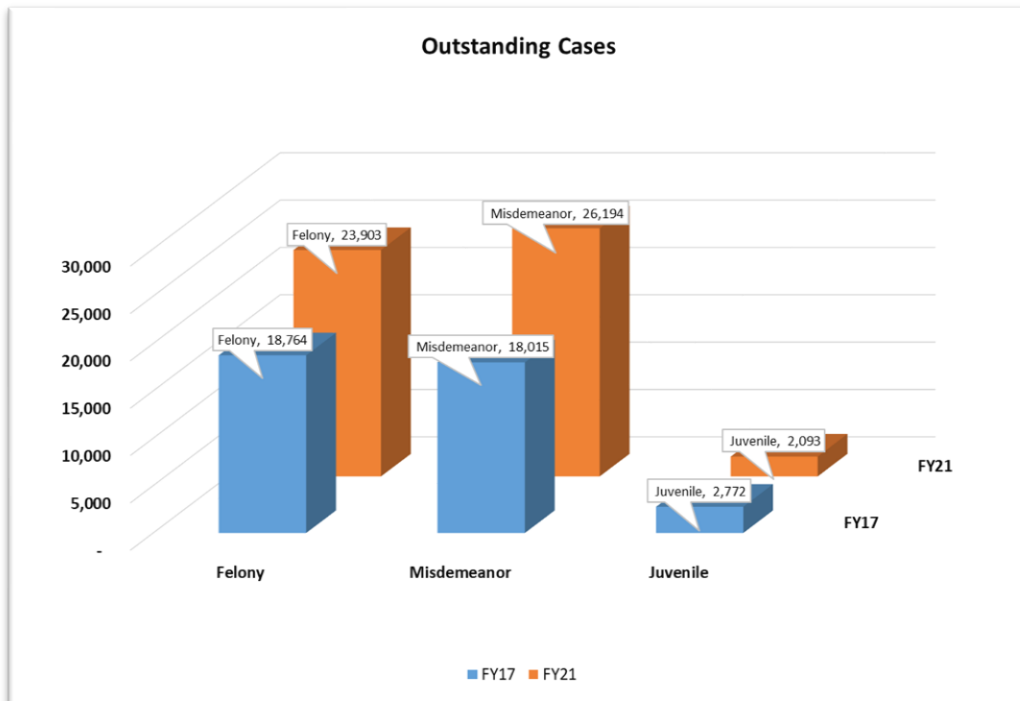
year.

Furthermore, as Colorado begins to emerge from the pandemic, the number of cases is trending up. As of September 2021, the first quarter of FY 2021-22 showed new cases up approximately 20% over the same time frame of the prior year and revealed a total of 57,185 outstanding cases - a 10 percent increase in just three months.



Even more concerning, while the number of new cases is continuing its upward trend, the number of cases closed within the first quarter of FY22 remains low. If these numbers are consistent for the remainder of FY2021-22, the OSPD will continue to experience an increase in outstanding cases and this will have a major impact on the workload the OSPD is carrying.

The predominant increase in outstanding cases is in felony and misdemeanor cases, which accounts for 95% of our total cases and is shown in the chart below.

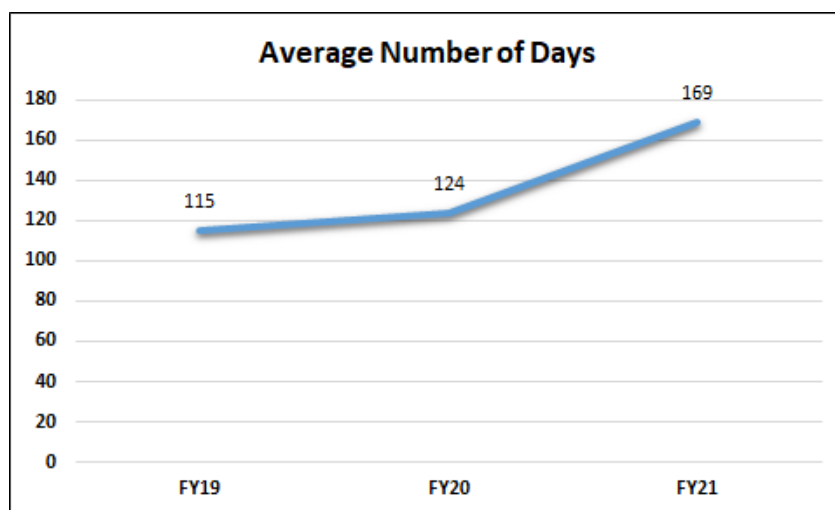


As the pandemic continued into 2021, cases continued to take longer to handle for a variety of reasons, contributing to this increase in outstanding cases.

For example:

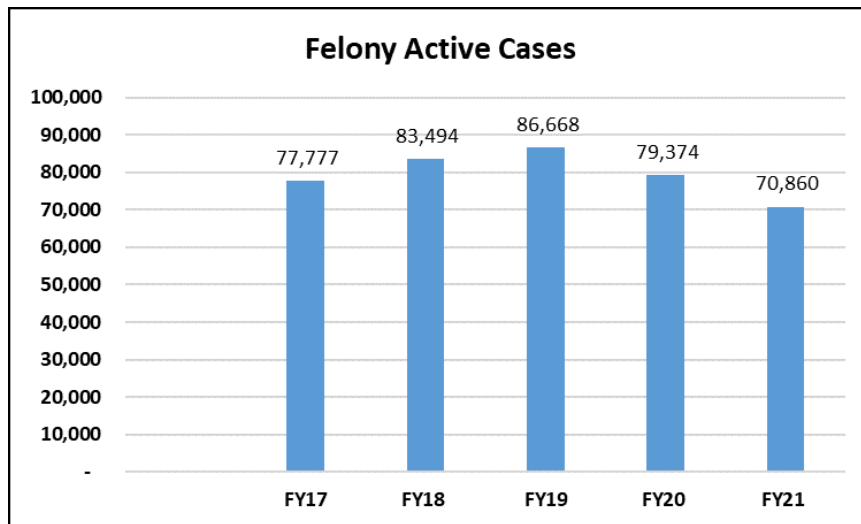
- Meeting with clients in custody remained a challenge. Depending on the detention facility's COVID protocols, facility outbreak status and the COVID-positive or COVID-exposed status of the individual clients, clients may not be able to meet with their attorney. Disruptions in safe in-person visits and a lack of confidentiality in many video or phone visits meant attorney-client relationships suffered and building those relationships creates additional work and time spent on a case.
- Electronic communication was and is still required in many situations as face-to-face meetings with clients, witnesses, prosecutors and other interested parties can be hard to achieve while the pandemic continues. Ultimately, communication via email is often not as effective or efficient as in-person communication. For example, pre-pandemic when all parties were regularly in court, many cases were resolved in the courtroom or in discussions right outside the courtroom. Cases that would have previously been resolved in those settings can take weeks of back-and-forth to resolve. Furthermore, getting clients discovery to review has continued to be challenging during the pandemic, especially with large electronic files like body-worn camera video.
- Throughout much of the pandemic, as with the society at large, staff report that a greater percentage of clients are dealing with mental health issues, which means it can take more time to effectively represent the client and determine whether the client's competency is an issue.

The chart below shows we have experienced a dramatic 48 percent increase in the average days it takes to close a case when compared to FY 2018-19.



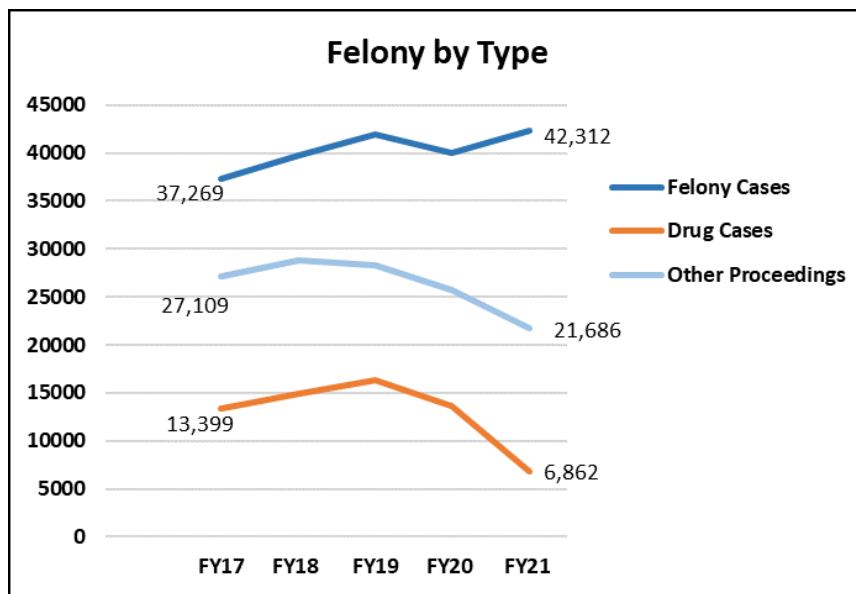
**Felony Cases.** Through FY 2018-19, the OSPD experienced significant increases in active felony cases reaching 86,668 cases, which was over a 50 percent increase since FY 2011-12. In FY 2019-20 the number of cases dropped to 79,374 and by the end of FY 2020-21, the OSPD had 70,860 active felony cases.

Although felony cases make up approximately 45 percent of our trial cases, they require 66 percent of our trial FTE resources.



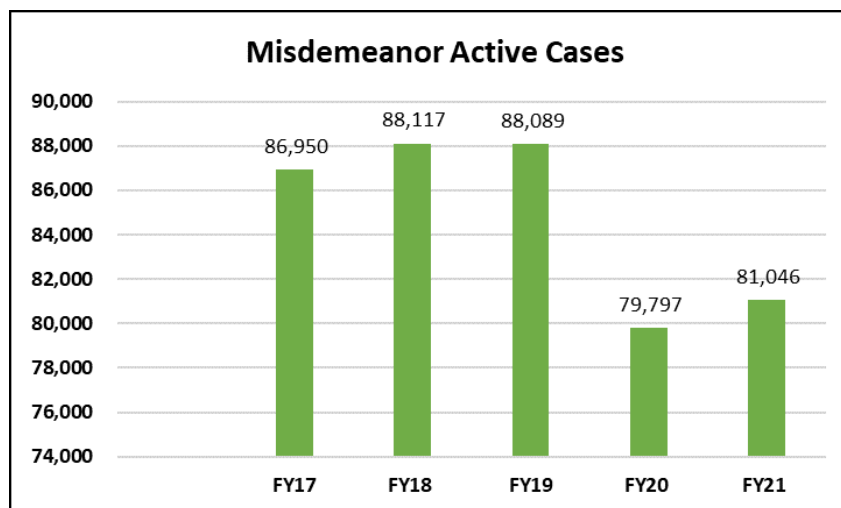
While it appears felony cases are on the downturn, this decrease is somewhat misleading and is likely the result of a couple of changes. First, in March 2020, House Bill 19-1263, reducing the penalty for certain violations pursuant to the “Uniform Controlled Substances Act of 2013,” took effect and reduced the classification of possession drug charges. As a result, cases historically charged as a drug felony (DF4) are now charged as misdemeanors. Second, the number of Other Proceedings handled by OSPD, which consists largely of revocations, have declined over the past couple of years. The drop in jail admissions and reduced in-person probation activities that occurred during the pandemic as well as fewer technical violations being pursued contributed to a drop in revocation numbers across the state.

After taking into account the above changes and analyzing the remaining cases, the reality is that certain felony cases continue to increase. Specifically, many OSPD offices have experienced a significant increase in the number of higher-level felony cases including homicides, sexual assaults, class 2 felonies, and cases involving crimes of violence. Since FY17, the OSPD has experienced a nearly 14 percent increase in these types of active cases, from 37,269 to 42,312 cases this past year. This has a tremendous impact on the agency since these cases require the greatest attorney experience, effort, time, and dedication of resources.



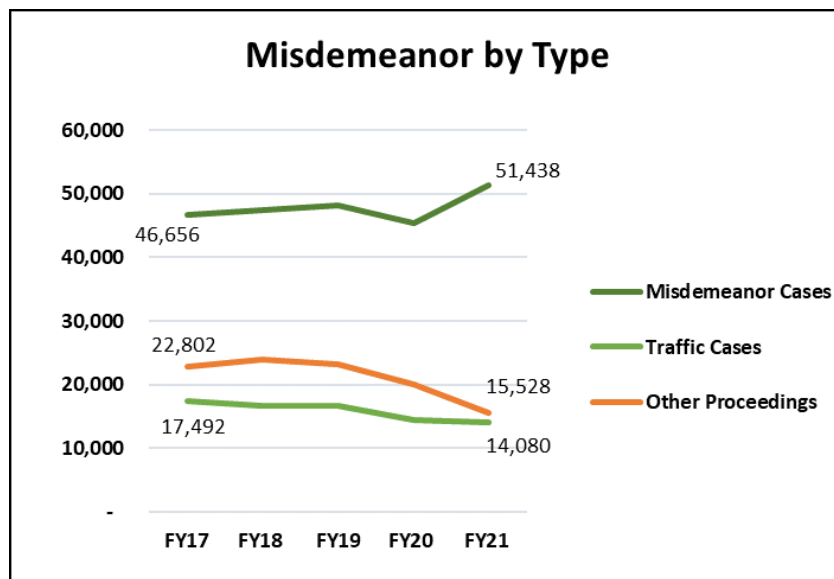
**Misdemeanor Cases.** In FY 2019-20, misdemeanor caseloads seemed to have stabilized with the OSPD handling 88,089 cases. Caseloads were consistent through the first eight months of FY 2019-20 but were similarly impacted by COVID and dropped in the final 3 months of the fiscal year resulting in 79,797 active cases in FY 2019-20. In FY 2020-21, the OSPD had 81,046 active misdemeanor cases, a slight increase over the previous year.

Misdemeanor cases represent about 50 percent of our total cases and require about 29 percent of our trial FTE resources.



As discussed in the felony section above, House Bill 19-1263 changed the classification of possession drug charges (DF4) from a felony to a misdemeanor and that change has impacted the number of active misdemeanor cases. When separating out the Traffic and Other Proceedings cases, the remaining higher level misdemeanor cases have increased from 45,387 cases in FY 2019-20 to 51,438 cases this past year. The chart below shows this change.

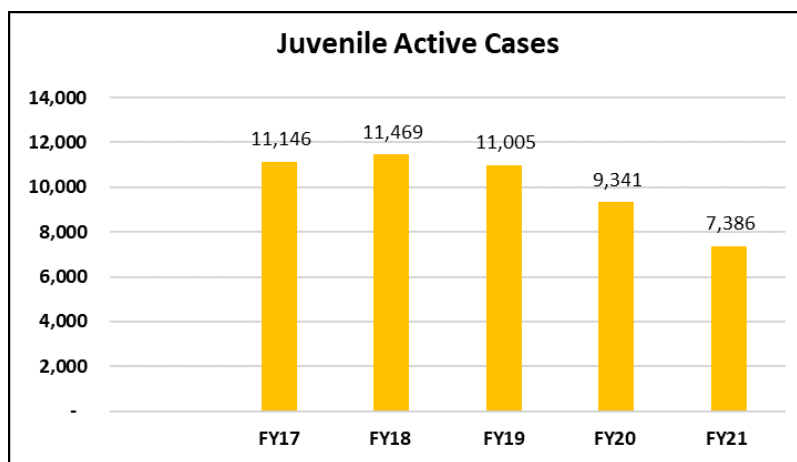




**Juvenile Cases.** Through FY 2018-19, the OSPD had experienced an increase in its juvenile caseload. The increase resulted from House Bill 14-1032, which requires the OSPD to be present at detention hearings, allows the court to appoint the OSPD when the parents refuse to provide counsel, allows the court to appoint the OSPD when the court deems it to be in the best interest of the child, and intentionally makes it more difficult for juveniles to waive counsel. The number of active juvenile cases peaked at 11,469 in FY 2017-18. In FY 2019-20, the OSPD saw a decrease in the number of active juvenile cases handled, down to 9,341 last year and down to 7,386 in FY 2020-21.

With schools holding classes primarily remotely during the heart of the pandemic, there was a decrease in the number of school-related filings. Lower-level cases have also dropped, which appears to be the result of less enforcement of tagging/graffiti cases, trespass cases, placement-related cases and other lower-level misdemeanors. As children are returning to school, we anticipate these cases will go back up to pre-pandemic levels.

Juvenile cases represent about 5 percent of our total cases and require about 5 percent of our trial FTE resources.



## OSPD Trial Office - Outstanding Cases

FY17-FY21

CASE TYPE	FY17 O/S	FY18 O/S	FY19 O/S	FY20 O/S	FY21 O/S	FY21 % O/S Cases
Felony 1	168	181	179	190	231	0.4%
Felony 2	207	184	188	237	299	0.6%
Sex Assault Felony 2, 3, 4, 5 or 6	1,057	1,036	1,130	1,110	1,211	2.3%
Felony 3 or 4 (COV)	1,453	1,643	1,719	1,832	2,172	4.2%
Felony 3 or 4 (non-COV)	3,115	3,307	3,461	3,844	4,381	8.4%
Felony 5 or 6	4,057	4,649	4,658	5,127	6,869	13.2%
DUI Felony 4	426	374	412	453	460	0.9%
Drug Felony 1, 2, 3 or 4	3,015	3,377	3,734	2,865	1,969	3.8%
<b>Felony Cases</b>	<b>13,498</b>	<b>14,751</b>	<b>15,481</b>	<b>15,658</b>	<b>17,592</b>	<b>33.7%</b>
Misc. Proceedings	1,533	1,473	1,517	1,297	1,169	2.2%
Revocations	3,708	3,920	4,060	4,440	5,108	9.8%
Appeals	25	19	30	27	34	0.1%
<b>Felony Other Proceedings</b>	<b>5,266</b>	<b>5,412</b>	<b>5,607</b>	<b>5,764</b>	<b>6,311</b>	<b>12.1%</b>
<b>Total Felony</b>	<b>18,764</b>	<b>20,163</b>	<b>21,088</b>	<b>21,422</b>	<b>23,903</b>	<b>45.8%</b>
Misdemeanor Sex Offense	297	150	362	389	423	0.8%
Misdemeanor 1	4,659	4,734	5,174	6,031	8,164	15.6%
Misdemeanor 2 or 3	2,808	3,279	3,685	4,116	5,115	9.8%
Misdemeanor DUI	2,487	2,575	2,675	2,971	3,364	6.4%
Misdemeanor Traffic/Other	3,968	3,546	3,990	3,825	5,066	9.7%
<b>Misdemeanor Cases</b>	<b>14,219</b>	<b>14,284</b>	<b>15,886</b>	<b>17,332</b>	<b>22,132</b>	<b>42.4%</b>
Misc. Proceedings	715	946	797	689	324	0.6%
Revocations	2,875	2,844	3,053	3,305	3,638	7.0%
Appeals	206	207	213	183	100	0.2%
<b>Misdemeanor Other Proceedings</b>	<b>3,796</b>	<b>3,997</b>	<b>4,063</b>	<b>4,177</b>	<b>4,062</b>	<b>7.8%</b>
<b>Total Misdemeanor</b>	<b>18,015</b>	<b>18,281</b>	<b>19,949</b>	<b>21,509</b>	<b>26,194</b>	<b>50.2%</b>
Juvenile Sex Offense	219	145	239	249	217	0.4%
Juvenile Felony	782	948	868	993	718	1.4%
Juvenile Misdemeanor	907	1,024	1,001	1,046	691	1.3%
<b>Juvenile Cases</b>	<b>1,908</b>	<b>2,117</b>	<b>2,108</b>	<b>2,288</b>	<b>1,626</b>	<b>3.1%</b>
Misc. Proceedings	259	278	210	96	65	0.1%
Revocations	590	576	534	481	396	0.8%
Appeals	15	23	8	4	6	0.0%
<b>Juvenile Other Proceedings</b>	<b>864</b>	<b>877</b>	<b>752</b>	<b>581</b>	<b>467</b>	<b>0.9%</b>
<b>Total Juvenile</b>	<b>2,772</b>	<b>2,994</b>	<b>2,860</b>	<b>2,869</b>	<b>2,093</b>	<b>4.0%</b>
<b>Summary</b>						
<b>Total Cases</b>	<b>29,625</b>	<b>31,152</b>	<b>33,475</b>	<b>35,278</b>	<b>41,350</b>	<b>79.2%</b>
Total Misc. Proceedings	2,507	2,697	2,524	2,082	1,558	3.0%
Total Revocations	7,173	7,340	7,647	8,226	9,142	17.5%
Total Appeals	246	249	251	214	140	0.3%
<b>Total Other Proceedings</b>	<b>9,926</b>	<b>10,286</b>	<b>10,422</b>	<b>10,522</b>	<b>10,840</b>	<b>20.8%</b>
<b>Grand Total Outstanding Cases</b>	<b>39,551</b>	<b>41,438</b>	<b>43,897</b>	<b>45,800</b>	<b>52,190</b>	<b>100.0%</b>

## OSPД Trial Office - Active Cases

FY17-FY21

CASE TYPE	FY17 Active	FY18 Active	FY19 Active	FY20 Active	FY21 Active	FY21 % Active
Felony 1	309	325	360	368	381	0.2%
Felony 2	518	586	515	527	649	0.4%
Sex Assault Felony 2, 3, 4, 5 or 6	2,722	2,744	2,863	2,762	2,720	1.7%
Felony 3 or 4 (COV)	4,345	5,224	5,372	5,119	5,509	3.5%
Felony 3 or 4 (non-COV)	11,940	12,304	13,111	12,603	12,339	7.7%
Felony 5 or 6	16,317	17,386	18,600	17,533	19,603	12.3%
DUI Felony 4	1,118	1,165	1,172	1,115	1,111	0.7%
Drug Felony 1, 2, 3 or 4	13,399	14,886	16,327	13,591	6,862	4.3%
<b>Felony Cases</b>	<b>50,668</b>	<b>54,620</b>	<b>58,320</b>	<b>53,618</b>	<b>49,174</b>	<b>30.9%</b>
Misc. Proceedings	6,468	6,884	6,745	6,092	4,447	2.8%
Revocations	20,585	21,937	21,539	19,592	17,168	10.8%
Appeals	56	53	64	72	71	0.0%
<b>Felony Other Proceedings</b>	<b>27,109</b>	<b>28,874</b>	<b>28,348</b>	<b>25,756</b>	<b>21,686</b>	<b>13.6%</b>
<b>Total Felony</b>	<b>77,777</b>	<b>83,494</b>	<b>86,668</b>	<b>79,374</b>	<b>70,860</b>	<b>44.5%</b>
Misdemeanor Sex Offense	959	1,053	1,008	1,025	988	0.6%
Misdemeanor 1	20,956	20,663	20,979	20,259	25,180	15.8%
Misdemeanor 2 or 3	15,876	16,366	17,035	15,613	16,657	10.5%
Misdemeanor DUI	8,865	9,413	9,083	8,490	8,613	5.4%
Misdemeanor Traffic/Other	17,492	16,650	16,719	14,445	14,080	8.8%
<b>Misdemeanor Cases</b>	<b>64,148</b>	<b>64,145</b>	<b>64,824</b>	<b>59,832</b>	<b>65,518</b>	<b>41.1%</b>
Misc. Proceedings	3,463	4,057	3,579	3,300	1,832	1.2%
Revocations	18,947	19,502	19,267	16,283	13,429	8.4%
Appeals	392	413	419	382	267	0.2%
<b>Misdemeanor Other Proceedings</b>	<b>22,802</b>	<b>23,972</b>	<b>23,265</b>	<b>19,965</b>	<b>15,528</b>	<b>9.7%</b>
<b>Total Misdemeanor</b>	<b>86,950</b>	<b>88,117</b>	<b>88,089</b>	<b>79,797</b>	<b>81,046</b>	<b>50.9%</b>
Juvenile Sex Offense	503	574	594	538	469	0.3%
Juvenile Felony	3,052	3,077	3,294	2,958	2,465	1.5%
Juvenile Misdemeanor	3,463	3,431	3,570	3,176	2,463	1.5%
<b>Juvenile Cases</b>	<b>7,018</b>	<b>7,082</b>	<b>7,458</b>	<b>6,672</b>	<b>5,397</b>	<b>3.4%</b>
Misc. Proceedings	1,185	1,513	911	739	426	0.3%
Revocations	2,916	2,826	2,594	1,918	1,550	1.0%
Appeals	27	48	42	12	13	0.0%
<b>Juvenile Other Proceedings</b>	<b>4,128</b>	<b>4,387</b>	<b>3,547</b>	<b>2,669</b>	<b>1,989</b>	<b>1.2%</b>
<b>Total Juvenile</b>	<b>11,146</b>	<b>11,469</b>	<b>11,005</b>	<b>9,341</b>	<b>7,386</b>	<b>4.6%</b>
<b>Summary</b>						
<b>Total Cases</b>	<b>121,834</b>	<b>125,847</b>	<b>130,602</b>	<b>120,122</b>	<b>120,089</b>	<b>75.4%</b>
Total Misc. Proceedings	11,116	12,454	11,235	10,131	6,705	4.2%
Total Revocations	42,448	44,265	43,400	37,793	32,147	20.2%
Total Appeals	475	514	525	466	351	0.2%
<b>Total Other Proceedings</b>	<b>54,039</b>	<b>57,233</b>	<b>55,160</b>	<b>48,390</b>	<b>39,203</b>	<b>24.6%</b>
<b>Grand Total Active Cases</b>	<b>175,873</b>	<b>183,080</b>	<b>185,762</b>	<b>168,512</b>	<b>159,292</b>	<b>100.0%</b>

## OSPD Trial Office - New Cases

FY17-FY21

CASE TYPE	FY17 New	FY18 New	FY19 New	FY20 New	FY21 New	FY21 % New Cases
Felony 1	190	157	182	189	192	0.2%
Felony 2	348	377	319	339	414	0.4%
Sex Assault Felony 2, 3, 4, 5 or 6	1,779	1,682	1,782	1,603	1,575	1.4%
Felony 3 or 4 (COV)	3,144	3,620	3,558	3,381	3,676	3.2%
Felony 3 or 4 (non-COV)	9,050	9,360	9,834	9,184	8,502	7.5%
Felony 5 or 6	12,631	13,342	14,104	12,885	14,493	12.8%
DUI Felony 4	801	741	787	703	655	0.6%
Drug Felony 1, 2, 3 or 4	10,681	11,873	12,980	9,876	3,997	3.5%
<b>Felony Cases</b>	<b>38,624</b>	<b>41,152</b>	<b>43,546</b>	<b>38,160</b>	<b>33,504</b>	<b>29.5%</b>
Misc. Proceedings	5,224	5,374	5,285	4,589	3,160	2.8%
Revocations	16,952	18,225	17,590	15,516	12,704	11.2%
Appeals	32	19	47	42	45	0.0%
<b>Felony Other Proceedings</b>	<b>22,208</b>	<b>23,618</b>	<b>22,922</b>	<b>20,147</b>	<b>15,909</b>	<b>14.0%</b>
<b>Total Felony</b>	<b>60,832</b>	<b>64,770</b>	<b>66,468</b>	<b>58,307</b>	<b>49,413</b>	<b>43.6%</b>
Misdemeanor Sex Offense	640	755	656	658	595	0.5%
Misdemeanor 1	16,085	16,008	16,412	15,049	19,134	16.9%
Misdemeanor 2 or 3	12,892	13,249	13,740	11,941	12,562	11.1%
Misdemeanor DUI	6,122	6,756	6,606	5,814	5,634	5.0%
Misdemeanor Traffic/Other	13,566	13,178	13,077	10,472	10,253	9.0%
<b>Misdemeanor Cases</b>	<b>49,305</b>	<b>49,946</b>	<b>50,491</b>	<b>43,934</b>	<b>48,178</b>	<b>42.5%</b>
Misc. Proceedings	2,793	3,347	2,654	2,509	1,160	1.0%
Revocations	16,216	16,624	16,394	13,207	10,106	8.9%
Appeals	225	208	211	163	85	0.1%
<b>Misdemeanor Other Proceedings</b>	<b>19,234</b>	<b>20,179</b>	<b>19,259</b>	<b>15,879</b>	<b>11,351</b>	<b>10.0%</b>
<b>Total Misdemeanor</b>	<b>68,539</b>	<b>70,125</b>	<b>69,750</b>	<b>59,813</b>	<b>59,529</b>	<b>52.5%</b>
Juvenile Sex Offense	287	342	328	299	218	0.2%
Juvenile Felony	2,263	2,285	2,438	2,088	1,470	1.3%
Juvenile Misdemeanor	2,534	2,518	2,564	2,165	1,420	1.3%
<b>Juvenile Cases</b>	<b>5,084</b>	<b>5,145</b>	<b>5,330</b>	<b>4,552</b>	<b>3,108</b>	<b>2.7%</b>
Misc. Proceedings	985	1,258	638	525	333	0.3%
Revocations	2,317	2,222	2,014	1,385	1,061	0.9%
Appeals	20	32	19	4	9	0.0%
<b>Juvenile Other Proceedings</b>	<b>3,322</b>	<b>3,512</b>	<b>2,671</b>	<b>1,914</b>	<b>1,403</b>	<b>1.2%</b>
<b>Total Juvenile</b>	<b>8,406</b>	<b>8,657</b>	<b>8,001</b>	<b>6,466</b>	<b>4,511</b>	<b>4.0%</b>
<b>Summary</b>						
<b>Total Cases</b>	<b>93,013</b>	<b>96,242</b>	<b>99,367</b>	<b>86,646</b>	<b>84,790</b>	<b>74.7%</b>
Total Misc. Proceedings	9,002	9,926	8,577	7,623	4,653	4.1%
Total Revocations	35,485	37,115	35,998	30,108	23,871	21.0%
Total Appeals	277	269	277	209	139	0.1%
<b>Total Other Proceedings</b>	<b>44,764</b>	<b>47,310</b>	<b>44,852</b>	<b>37,940</b>	<b>28,663</b>	<b>25.3%</b>
<b>Grand Total New Cases</b>	<b>137,777</b>	<b>143,552</b>	<b>144,219</b>	<b>124,586</b>	<b>113,453</b>	<b>100.0%</b>

## OSPD Trial Office - Closed Cases

FY17-FY21

CASE TYPE	FY17 Closed	FY18 Closed	FY19 Closed	FY20 Closed	FY21 Closed	FY21 % Closed
Felony 1	104	118	141	147	113	0.1%
Felony 2	235	285	272	217	282	0.3%
Sex Assault Felony 2, 3, 4, 5 or 6	1,610	1,704	1,676	1,578	1,449	1.4%
Felony 3 or 4 (COV)	2,712	3,398	3,419	3,120	3,175	3.0%
Felony 3 or 4 (non-COV)	8,040	8,108	8,878	7,874	7,164	6.7%
Felony 5 or 6	11,414	12,080	12,914	11,405	11,692	10.9%
DUI Felony 4	683	782	742	645	644	0.6%
Drug Felony 1, 2, 3 or 4	9,495	10,669	11,524	9,871	4,489	4.2%
<b>Felony Cases</b>	<b>34,293</b>	<b>37,144</b>	<b>39,566</b>	<b>34,857</b>	<b>29,008</b>	<b>27.1%</b>
Misc. Proceedings	4,935	5,410	5,229	4,795	3,278	3.1%
Revocations	16,876	18,017	17,479	15,152	12,062	11.3%
Appeals	31	32	34	45	37	0.0%
Partial Service	2,877	2,682	3,274	3,104	2,568	2.4%
<b>Felony Other Proceedings</b>	<b>24,719</b>	<b>26,141</b>	<b>26,016</b>	<b>23,096</b>	<b>17,945</b>	<b>16.8%</b>
<b>Total Felony</b>	<b>59,012</b>	<b>63,285</b>	<b>65,582</b>	<b>57,953</b>	<b>46,953</b>	<b>43.8%</b>
Misdemeanor Sex Offense	631	687	636	627	556	0.5%
Misdemeanor 1	15,821	15,581	15,219	13,511	15,990	14.9%
Misdemeanor 2 or 3	12,367	12,659	12,886	10,949	10,874	10.2%
Misdemeanor DUI	6,336	6,776	6,344	5,450	5,169	4.8%
Misdemeanor Traffic/Other	13,632	12,897	12,486	10,349	8,588	8.0%
<b>Misdemeanor Cases</b>	<b>48,787</b>	<b>48,600</b>	<b>47,571</b>	<b>40,886</b>	<b>41,177</b>	<b>38.4%</b>
Misc. Proceedings	2,768	3,111	2,780	2,610	1,511	1.4%
Revocations	16,073	16,646	16,214	12,978	9,790	9.1%
Appeals	186	206	206	199	167	0.2%
Partial Service	1,121	1,209	1,368	1,615	2,211	2.1%
<b>Misdemeanor Other Proceedings</b>	<b>20,148</b>	<b>21,172</b>	<b>20,568</b>	<b>17,402</b>	<b>13,679</b>	<b>12.8%</b>
<b>Total Misdemeanor</b>	<b>68,935</b>	<b>69,772</b>	<b>68,139</b>	<b>58,288</b>	<b>54,856</b>	<b>51.2%</b>
Juvenile Sex Offense	279	294	344	279	238	0.2%
Juvenile Felony	2,003	1,989	2,095	1,710	1,574	1.5%
Juvenile Misdemeanor	2,389	2,269	2,338	1,929	1,665	1.6%
<b>Juvenile Cases</b>	<b>4,671</b>	<b>4,552</b>	<b>4,777</b>	<b>3,918</b>	<b>3,477</b>	<b>3.2%</b>
Misc. Proceedings	926	1,235	701	639	361	0.3%
Revocations	2,326	2,251	2,060	1,438	1,153	1.1%
Appeals	12	25	34	8	7	0.0%
Partial Service	439	391	583	468	292	0.3%
<b>Juvenile Other Proceedings</b>	<b>3,703</b>	<b>3,902</b>	<b>3,378</b>	<b>2,553</b>	<b>1,813</b>	<b>1.7%</b>
<b>Total Juvenile</b>	<b>8,374</b>	<b>8,454</b>	<b>8,155</b>	<b>6,471</b>	<b>5,290</b>	<b>4.9%</b>
<b>Summary</b>						
<b>Total Cases</b>	<b>87,751</b>	<b>90,296</b>	<b>91,914</b>	<b>79,661</b>	<b>73,662</b>	<b>68.8%</b>
Total Misc. Proceedings	8,629	9,756	8,710	8,044	5,150	4.8%
Total Revocations	35,275	36,914	35,753	29,568	23,005	21.5%
Total Appeals	229	263	274	252	211	0.2%
Total Partial Service	4,437	4,282	5,225	5,187	5,071	4.7%
<b>Total Other Proceedings</b>	<b>48,570</b>	<b>51,215</b>	<b>49,962</b>	<b>43,051</b>	<b>33,437</b>	<b>31.2%</b>
<b>Grand Total Closed Cases</b>	<b>136,321</b>	<b>141,511</b>	<b>141,876</b>	<b>122,712</b>	<b>107,099</b>	<b>100.0%</b>

## MISCELLANEOUS HEARINGS

As a result of House Bill 13-1210, the *Rothgery* bill, and House Bill 14-1032, the Juvenile Defense bill, OSPD began tracking the number of both felony and misdemeanor advisement/bond hearings along with juvenile detention hearings. These statistics are shown separately below and are not included in the Other Proceedings category.

Advisement/Bond Hearings and Juvenile Detention Hearings	17 New	FY18	FY19	FY20	FY21
Advisement/Bond, Felony	35,882	38,570	42,416	37,719	27,050
Advisement/Bond, Misdemeanor	33,802	35,457	34,503	30,720	24,726
Juvenile Detention Hearings	4,006	3,625	3,338	2,069	789

## CASE WITHDRAWALS

In specific situations, the OSPD will request to withdraw from a case either as the result of a conflict of interest or for non-conflict reasons, such as private counsel entering or OSPD clients deciding to proceed *pro se*.

OSPD Trial Office Withdrawals						
FY17-FY21						
	FY17	FY18	FY19	FY20	FY21	Avg FY17 to
<b>New Cases</b>	<b>137,777</b>	<b>143,552</b>	<b>144,219</b>	<b>124,586</b>	<b>113,453</b>	
Conflicts						
Co-Defendant	4,637	4,386	4,853	4,006	3,156	
Witness	4,604	5,112	5,664	5,676	6,603	
Other	913	1,074	1,465	1,519	1,551	
<b>Total</b>	<b>10,154</b>	<b>10,572</b>	<b>11,982</b>	<b>11,201</b>	<b>11,310</b>	
% of New Cases	7.4%	7.4%	8.3%	9.0%	10.0%	8.4%
Non-Conflicts						
Private Counsel	2,553	2,447	2,645	2,454	2,368	
Pro Se	482	491	502	378	313	
Other	963	960	1,076	859	942	
<b>Total</b>	<b>3,998</b>	<b>3,898</b>	<b>4,223</b>	<b>3,691</b>	<b>3,623</b>	
% of New Cases	2.9%	2.7%	2.9%	3.0%	3.2%	2.9%
<b>Total</b>	<b>14,152</b>	<b>14,470</b>	<b>16,205</b>	<b>14,892</b>	<b>14,933</b>	
% of New Cases	10.3%	10.1%	11.2%	12.0%	13.2%	11.3%

**Conflict Withdrawals.** A conflict of interest occurs in situations where the OSPD represents a co-defendant or a person who is a witness in the case, or other circumstances as identified in the Colorado Rules of Professional Conduct. The withdrawal rate due to a conflict has increased slightly to 10 percent this past year.

Year	Adult			Juvenile			Total		
	New Cases	Conflicts	% of new	New Cases	Conflicts	% of new	New Cases	Conflicts	% of new
FY17	129,371	9,129	7.1%	8,406	1,025	12.2%	137,777	10,154	7.4%
FY18	134,895	9,601	7.1%	8,657	971	11.2%	143,552	10,572	7.4%
FY19	136,218	10,650	7.8%	8,001	1,332	16.6%	144,219	11,982	8.3%
FY20	118,120	10,123	8.6%	6,466	1,078	16.7%	124,586	11,201	9.0%
FY21	108,942	10,589	9.7%	4,511	721	16.0%	113,453	11,310	10.0%

## APPELLATE DIVISION CASELOAD

### APPELLATE CASE TRENDS

**Appellate Cases.** The Office of the State Public Defender maintains a centralized Appellate Division (the Division) that represents indigent clients in felony appeals from every jurisdiction in the state, regardless of who may have represented them in prior court proceedings (e.g., court-appointed counsel, Alternate Defense Counsel and private attorneys). The Division is expected to handle a total of 1,627 cases in FY 2021-22, of which 737 are in phase one and 890 are in phase two.

- Phase one is where an initial OSPD brief has not yet been filed and is the phase during which the most resources are required. We estimate the Division will see 450 new cases, along with 287 cases carried over from previous years.
- Phase two is the continuation of the case through the appeals process, which can take several years to complete.

<b>APPELLATE DIVISION</b>									
<b>FISCAL YEAR</b>	<b>New Appeals</b>	<b>Briefs Filed by PD</b>	<b>Cases Resolved Other Ways</b>	<b>Appeals Closed in Phase 1</b>	<b>Cases awaiting filing of initial brief</b>	<b>Standard Caseload per NLADA</b>	<b>Cases in excess of NLADA standards</b>	<b>Cases Phase 2 (after OB filed)</b>	<b>Total Active Felony Cases</b>
FY 14	573	367	127	495	749	279	470	1000	2341
FY 15	533	422	122	544	738	363	375	985	2282
FY 16	511	486	141	627	622	359	263	1049	2234
FY 17	525	459	101	560	587	351	236	879	2196
FY 18	523	421	150	571	539	351	188	820	1989
FY 19	563	381	118	499	603	368	235	761	1922
FY 20	514	454	133	587	530	368	162	816	1878
FY 21	256	433	66	499	287	308	0	890	1602
FY 22 Est.	450	358	109	466	271	288	0	898	1627
FY 23 Est.	535	394	129	523	283	317	0	892	1704
FY 24 Est.	552	394	133	527	307	317	0	886	1727
FY 25 Est.	568	394	138	532	342	317	25	880	1761

#### Phase One:

The chart above references the appellate caseload standards that have been published by the National Legal Aid & Defender Association (“NLADA”) for appellate defender offices since 1980. In FY 2013-14, the number of backlog cases (those awaiting an initial brief) peaked at 749, the highest ever experienced, exceeding the NLADA standard caseload for the Division by 470 cases. The following year, the Division requested and received additional FTEs and funding to help lower this number and has been successful in doing so, dropping to 530 cases as of FY 2019-20, which was the lowest level in over a decade. Over the past year, with the delay in felony cases being tried due to the COVID-19 pandemic, new appellate cases assigned to the Division have dropped by nearly 50%. As a result, the Division has made great strides in working through the backlog of cases. The number of cases awaiting the filing of the initial brief is at a manageable level of 287 cases which is more in line with the NLADA standards.

This is expected to be a short reprieve, however, as it is projected that as the trial courts open fully back up, felony cases will be resolved and appellate cases will follow the same general trend and will once again increase, returning to pre-COVID levels in FY 2022-23.

Historically, the NLADA standards have been based on the complexity of the appeal and/or the number of pages on the record. Typically, the more serious the case, the more complex it would be and have more pages of record to be reviewed. Standards per the NLADA are based on the assumption that an attorney can handle 22 cases per year based on an average of 500 pages on the record. In FY 2020-21 the Division was seeing an average of 1400 pages per case and when adjusted using the NLADA 500 page base, attorneys would be expected to carry 7.9 cases per year.

Recently, the Division has noticed a significant increase in the incoming number of large or complex appeals, which are typically cases resulting in first-degree murder convictions with life sentences, or cases involving eight days or more of trial. Such cases usually involve lengthy records and numerous appellate issues and are thus more time consuming than other appeals. This may be the result of trial courts prioritizing more serious cases as trials have resumed after pauses during the pandemic. In the first quarter of FY2021-22, the Division experienced a 40-50% increase in such appeals. If that pace continues throughout the year, it could have a significant impact on the Division's workload, even if the number of overall appeals remains below normal levels. As of the beginning of FY 2021-22, although the current caseload is manageable, the Division is facing attorney turnover and currently has five vacant positions. The Division hopes to fill these spots by the end of the fiscal year which will be necessary when caseloads return to pre-pandemic levels.

Phase Two:

After an opening brief is filed, the case remains active as it progresses through the appellate process and the work involved extends well into subsequent years. During this second phase, numerous briefs, pleadings and oral arguments (see table below) are completed in accordance with appellate court deadlines, some of which require an attorney to work on things other than opening briefs. For example, court deadlines for briefs and petitions in the Colorado Supreme Court often must take precedence over briefs due in the Colorado Court of Appeals. As a result, appellate attorneys frequently pause work on briefs in the Court of Appeals in order to prioritize filings with the Supreme Court. While this may incur some delay in the filing of opening briefs in the Court of Appeals, it has also had the effect of more timely reduction of the cases pending in the second phase of the appeal. The Division estimates there are currently 890 cases at various stages within this process (phase two).

<b>Briefs, Pleadings &amp; Arguments</b>	
Reply Briefs	392
Petition for Rehearing	65
Cert Petitions	250
35B Filed	76
Oral Arguments	64

In addition to representing clients in felony appeals statewide, the Division also assists in the appellate process for both county court and juvenile appeals. This past year, staff consulted or worked on over 172 cases, handled roughly 90 queries from juvenile attorneys in the trial offices, and held numerous statewide trainings, enabling trial offices to achieve improved administrative efficiencies as well as increased representational effectiveness.



# Performance Measures

		FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
		(actual)	(actual)	(projected)	(projected)	(projected)
<b>MEASURE 1:</b>						
	<b>Target</b>	<b>147,479</b>	<b>119,229</b>	<b>136,144</b>	<b>140,228</b>	<b>144,435</b>
Number of new trial court cases.		Actual	124,586	113,453		
<b>MEASURE 2:</b>						
	<b>Target</b>	<b>189,760</b>	<b>165,029</b>	<b>175,221</b>	<b>180,478</b>	<b>185,892</b>
Number of active trial court cases.		Actual	168,512	159,292		
<b>MEASURE 3:</b>						
	<b>Target</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Percent of trial court attorney staff allocated vs. total required for closed trial court cases.		Actual	82%	80%		
<b>MEASURE 4:</b>						
	<b>Target</b>	<b>500</b>	<b>500</b>	<b>500</b>	<b>500</b>	<b>500</b>
Number of attorney applications received.		Actual	524	500		
<b>MEASURE 5:</b>						
	<b>Target</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Percent of total attorney staff allocated vs. total required for closed trial court cases and appellate cases.		Actual	82%	81%		
<b>MEASURE 6:</b>						
	<b>Target</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>
Annual rates of attrition:						
	Attorneys	Actual	12%	15%		
	Investigators	Actual	7%	9%		
	Administrative Assistants	Actual	22%	19%		
	Total All Employees	Actual	12%	14%		
<b>MEASURE 7:</b>						
	<b>Target</b>	<b>70%</b>	<b>70%</b>	<b>70%</b>	<b>70%</b>	<b>70%</b>
Percent of experienced, fully capable staff (journey level or higher):						
	Attorneys	Actual	37%	39%		
	Investigators	Actual	56%	57%		
	Administrative Assistants	Actual	43%	41%		
	Total All Employees	Actual	43%	45%		
<b>MEASURE 8:</b>						
	<b>Target</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Percent compliance with minimum standards for total staffing requirements.		Actual	83%	83%		

		FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24
		(actual)	(actual)	(projected)	(projected)	(projected)
<b>MEASURE 9:</b>	<b>Target</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>
Maintain established standard percentages for reasonable staff supervision, management and development.	Actual	10%	10%			
<b>MEASURE 10:</b>	<b>Target</b>	<b>574</b>	<b>524</b>	<b>450</b>	<b>535</b>	<b>552</b>
Number of new appellate cases.	Actual	514	256			
<b>MEASURE 11:</b>	<b>Target</b>	<b>1,938</b>	<b>1,870</b>	<b>1,627</b>	<b>1,704</b>	<b>1,726</b>
Number of active appellate cases.	Actual	1,878	1,602			
<b>MEASURE 12:</b>	<b>Target</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Percent of appellate attorney staff allocated vs. total required for appellate cases awaiting filing of initial brief.	Actual	81%	85%			
<b>MEASURE 13:</b>	<b>Target</b>	<b>145,337</b>	<b>105,353</b>	<b>129,507</b>	<b>133,392</b>	<b>137,394</b>
Number of trial court cases closed.	Actual	122,712	107,099			
<b>MEASURE 14:</b>	<b>Target</b>	<b>144</b>	<b>132</b>	<b>132</b>	<b>132</b>	<b>132</b>
Days of training provided.	Actual	144	69			
<b>MEASURE 15:</b>	<b>Target</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>
Number of CLE credits provided to all attorneys.	Actual	21	12			
<b>MEASURE 16:</b>	<b>Target</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
Hours of ethics training provided, focusing on Colorado criminal law.	Actual	6	2.2			
<b>MEASURE 17:</b>	<b>Target</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>15</b>
Number of administrative processes and organizational infrastructure evaluations performed.	Actual	12	15			
<b>MEASURE 18:</b>	<b>Target</b>	<b>447</b>	<b>447</b>	<b>358</b>	<b>394</b>	<b>394</b>
Number of appellate cases for which an Opening Brief has been filed.	Actual	454	433			
<b>MEASURE 19:</b>	<b>Target</b>	<b>592</b>	<b>490</b>	<b>271</b>	<b>283</b>	<b>307</b>
Number of backlogged appellate cases.	Actual	530	287			