



JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2021-2022

July 01, 2021

PERFORMANCE PLAN

Table of Contents

I. Agency Overview	
Background	2
Statutory Mandate/Directive	2
Mission	2
II. Major Functions of the Department	
Statewide Representation	3
Effective Court Appointed Counsel	3
Controller Case Costs	4
III. Performance Measures & Goals	
Ensure Adequate Contractor Rates	4
Contain Case Costs	4
Proved High-Quality Annual Trainings	5
Proved Cost-Effective Research Tools and Assistance	5
Monitor and Evaluate Contractors	6
Strengthen OADC's Social Worker Program	7
Strengthen OADC's Juvenile Division	8
Implement and Manage the Municipal Court Program	9
IV. Strategies	
Increase Compensation Rates	10
Provide Ongoing Trainings	10
Conducting Periodic Evaluations	10
Improved and Cost-Effective Research Tools	10
Institute Paperless Administrative Efficiency	10
Ancillary Services to Reduce Attorney Hours	11
Fraud, Waste, & Abuse Prevention	11
V. Performance Evaluations	
Contractor Survey and Evaluation	11
The OADC Staff Evaluations	11
Evaluation of Prior Year Performance	12

I. Agency Overview

Background

The United States and Colorado Constitutions provide every accused person with the right to legal representation by counsel in criminal prosecutions. [U.S. Const., amend. VI](#); [Colo. Const., art. II, §16](#). This constitutional right means that counsel will be provided at state expense for indigent persons in all cases in which incarceration is a possible penalty.

The Office of the Alternate Defense Counsel (OADC) was established pursuant to [C.R.S. § 21-2-101, et seq.](#) as an independent governmental Agency of the State of Colorado Judicial Branch. The OADC is funded to provide legal representation for indigent persons in criminal and juvenile delinquency cases in which the Office of the State Public Defender (OSPD) has an ethical conflict of interest.

Statutory Mandate/Directive

The Office of the Alternate Defense Counsel is mandated by statute to “provide to indigent persons accused of crimes, *legal services 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. § 21-2-101\(1\)](#) (emphasis added).

Mission Statement

The mission of the Office of the Alternate Defense Counsel (OADC), through the practice of holistic public defense, is to help adults and children who the government has charged with criminal and delinquent offenses. The OADC's holistic practice model fosters ethical, informed, and standard-driven best practices in public defense. The OADC allocates resources in a manner intentionally designed to rebalance the disparate power wielded by the government in the criminal legal system. We advocate for every client's inherent worth and dignity by centering the client's experiences and voice to achieve the best legal outcome.

The OADC is dedicated to zealous, client-centered advocacy rooted in social justice, integrity, and humility. We recognize that we are working within a broken and racist criminal legal system. Public defense advocates play an essential role in challenging bias and disparity within the courtroom, within our offices, and within ourselves. There is a disparate presence of violent policing, over-charging, and harsher sentencing outcomes for Colorado's people of color and other vulnerable populations. The OADC is unwavering in its support of decarceration, the decriminalization of youth, and equity within the criminal legal system.

II. Major Functions of the Agency

Statewide Representation

The OADC contracts with over 900 private lawyers and other professionals across Colorado to represent indigent adults and children where the OSPD has an ethical conflict of interest. The OADC contracts with investigators, paralegals, and forensic social workers/clinical advocates to work alongside attorneys to form interdisciplinary defense teams. Experts and other ancillary services are also available to defense teams through the OADC. The Agency is committed to ensuring that contractors have the tools to practice holistic representation of the highest quality possible. Today, in every courtroom in Colorado, there are OADC contract lawyers available to accept court appointments in both delinquency and adult criminal cases.

Effective Court Appointed Counsel Teams

Prior to the issuance of any contract the OADC reviews the application and attachments and conducts a personal interview with the applicant. Following this process, the contractor is either granted or denied a contract with the agency. This includes all attorneys, investigators, and social workers. Each contractor is on a contract renewal cycle. During the renewal process the OADC requests and receives feedback from judicial districts and visits courtrooms across the state to monitor and evaluate the level of practice. The OADC has a rigorous training program for lawyers, investigators, paralegals, and social workers. This training is generally webcasted to allow contractors all over the state to attend. All contractors have access to a multitude of legal and technical resources including the Legal and Juvenile eLibrary; legal research and motion drafting assistance; weekly case law summaries (both written and podcast versions) of new relevant legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10th Circuit of the United States Court of Appeals, and the United States Supreme Court. The OADC has created comprehensive manuals on complex but frequently used subject matter such COCCA (Colorado Organized Crime Control Act), self-defense, character evidence, restitution claims, CRE 404(b) evidence, researching legislative history, sex offenders, out-of-state subpoenas, habitual criminal sentencing, proportionality review materials and post-conviction and ineffective assistance of counsel claims. The OADC also co-authored the 4th edition of the Juvenile Defense Manual, which was released in April 2020, as well as its addendum, released in April 2021.

Pursuant to SB18-203, the OADC is evaluating municipal court-appointed counsel through the Municipal Court Program. In a similar approach to the process already in place by the OADC to contract with effective counsel, this program will ensure that indigent defendants in municipal courts are represented free from any political considerations or private interest and that such representation is effective, high quality, ethical, conflict-free and constitutionally sound. The evaluation process includes interviews with relevant municipal court staff and court-appointed counsel, court observations, and a review of relevant documents. When complete, the evaluation is provided to the municipality. Court-appointed counsel in municipal courts is also afforded the opportunity to attend trainings and have access to the same legal resources as OADC contract attorneys. Beginning January 1, 2021, the OADC also began contracting with the Denver Municipal Court to provide contract attorneys for the cases where the Office of the Municipal Defender had a conflict.

Controlling Case Costs

The OADC has several key functions in controlling case costs including average cost per case analysis, providing cost effective research tools, and offering ancillary services on cases. These functions are monitored and reviewed monthly by the executive staff of the Agency.

- **Average cost per case:** Historical analysis, combined with current trends, allow the agency to monitor for isolated anomalies that affect costs and provide forecasts for the upcoming budget request cycle.
- **Cost effective research tools:** Another tool the OADC uses in controlling case costs is the Legal, Juvenile eLibrary. This web-based repository streamlines case related research, thereby lowering case costs. In 2020, the OADC added enhanced Boolean search commands, culled outdated materials, and added updated and new materials.
- **Ancillary services:** The Agency continues to explore innovative ways to control costs using ancillary services, including its in-house appellate and post-conviction case management system, utilizing legal researchers, case assistants and interns, assisting with eDiscovery in certain case types and jurisdictions, and continually expanding its social worker program.

III. Performance Measures & Goals

Performance Measure A: Ensure Adequate Contractor Rates

For the FY20–21 Budget Request the OADC submitted a Decision Item requesting a 5% increase in contractor hourly rates. The Joint Budget Committee originally approved the request but later withdrew their decision due to statewide budgetary cuts related to the COVID-19 pandemic. The OADC will re-submit a Decision Item request for the FY23 Budget Request to increase its contractor hourly rates.

		FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
OADC average hourly Attorney Rates	Target	\$80	\$80	\$85	\$85	undetermined	undetermined
	Actual	\$80	\$80	\$85			

Performance Measure B: Contain Case Costs

The OADC analyzes its cost per case monthly and strives to find innovative and effective strategies to contain those costs.

		FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
Average Cost per Case	Target	\$1,523	\$1,456	\$1,456	\$1,474	\$1,498	\$1,498
	Actual	\$1,474	\$1,498	\$1,398*			
Keep ancillary costs per case to a minimum.	Target	\$107	\$91	\$91	\$67	\$70	\$70
	Actual	\$67	\$70	\$57*			

* as of 06/28/21

Performance Measure C: Provide High-Quality Annual Trainings

The Agency has developed three basic components to its training program.

1. Assess and determine the types of training needed for the OADC contractors.
2. Develop, organize, and present trainings for the OADC lawyers, investigators, paralegals, and social workers.
3. Facilitate access to training for contractors throughout the state by providing in-person, virtual, Home Study, and webcasted trainings.

	FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
Total Trainings	31	51	66	51	51	51
Total Hours	244	267	210	267	267	267
Total Attendees	1,351	2,650	2,731	2,650	2,650	2,650

Performance Measure D: Provide Cost-Effective Research Tools and Assistance

To advance quality and efficiency in OADC contractors, the Agency recognized the need for providing cost-effective research tools and resources. To accomplish this the Agency is:

1. Improving and expanding its eLibrary.
2. Providing legal research, motion drafting, and other assistance to contractors, using lawyers and non-lawyers.
3. Providing weekly emailed case law summaries of new criminal legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10th Circuit of the United States Court of Appeals, and the United States Supreme Court.
4. Providing a weekly podcast discussing recent cases of interest, practice pointers and contractor wellness issues.
5. Analyzing and introducing best practice applications to OADC contractors.
6. Creating comprehensive manuals on complex but frequently used subject matter such as COCCA (Colorado Organized Crime Control Act), self-defense, character evidence, restitution claims, CRE 404(b) evidence, researching legislative history, sex offenders, out-of-state subpoenas, habitual criminal sentencing, proportionality review materials and post-conviction and ineffective assistance of counsel claims. The OADC also co-authored the 4th edition of the Juvenile Defense Manual, which was released in April 2020, as well as its addendum, released in April 2021.
7. Providing access to online subscription research services including Westlaw (legal research) and EBSCO (Psychology and Behavioral Sciences Collection and the Sociology Index).

		FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
On-Line Research Tools and Resources to the OADC Contractors*	Target docs	7,000	7,500	7,541	7,854	8,482	8,482
	Actual docs	7,541	7,854	8,482**			
	Target hits	1,700	2,000	4,952	5,928	6,692	6,692
	Actual hits	4,952	5,928	6,692**			

* Including Juvenile, and Mental Health specific materials

** as of 06/28/21

Performance Measure E: Monitor and Evaluate Contractors

The OADC has a process to ensure that all OADC lawyers, investigators, and social workers are under a current contract. This process includes interviewing and evaluating potential and renewing current contract attorneys, investigators, and social workers. To accomplish this the Agency:

1. Has created a database to track all attorney, investigator, and social worker contractors, including contract renewal dates. The agency is moving this database from Access based to the cloud.
2. Requests renewal applications from contractors, interviews and evaluates contractors, and renews contracts if appropriate.
3. Solicits feedback from judicial districts about the OADC lawyers.
4. Verifies attorney status with the Office of Attorney Regulation and Social Workers with DORA?
5. Monitors and evaluates courtroom practices through in-court observations.
6. Reviews written submissions from contractors and provides feedback as needed.
7. Mandates testing for investigators before initial contract issuance.
8. Conducts audits and time-efficiency studies of selected OADC contractors.
9. Runs reports on OADC contractors using the Court Appointed Attorney Payment System (CAAPS).
10. Requires at least 5 hours of juvenile or defense specific CLE/CE training per year.

		FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
Evaluate Renewing Attorney Applicants	Target	100%	100%	100%	100%	100%	100%
	Actual	100%	100%	100%			
Evaluate Renewing Investigator Applicants	Target	100%	100%	100%	100%	100%	100%
	Actual	100%	100%	100%			
Court Room Observations	Target	75	75	75	75	75	75
	Actual	96	39	55			
Mock Oral Arguments	Target	12	12	12	12	13	13
	Actual	9	6	13			
Oral Arguments	Target	16	16	16	16	16	16
	Actual	10	6	15			
Review Pleadings	Target	150	150	150	150	150	150
	Actual	180	158	129			

Performance Measure F: Strengthen OADC’s Social Worker Program

To facilitate the use of social workers in juvenile and criminal defense the Agency provides contractors with the following:

1. Contract Social Workers and Contract Forensic Clinical Advocates
2. Access to EBSCO Research Database
3. Social Worker and Forensic Clinical Advocate related trainings.
4. Continue to Incorporate Social Work into OADC’s main website.
5. Develop a model to incorporate Peer and Client Advocates on individual cases

OADC will continue to develop a landing page within the main website for use by social workers and attorneys to learn about the program and how to incorporate social workers on individual cases.

		FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
Number of Cases with Social Workers	Target	300	350	496	624	1,100	1,100
	Actual	496	678	713*			
Number of Social Worker Contractors	Target	21	24	32	44	55	55
	Actual	32	44	49			
Number of Social Worker Interns	Target	4	5	5	6	6	6
	Actual	3	5	5			

** as of 06/15/21*

Performance Measure G: Strengthen the OADC’s Juvenile Division

Since FY17, the OADC has maintained a specialized Juvenile Division of attorneys with the skills, knowledge, and experience necessary to competently represent children in delinquency and adult court. The OADC provides training specific to representing children, both on its own and through collaboration with other agencies and organizations, including an annual Excellence in Juvenile Defense Conference. The OADC assists contract attorneys in forming holistic defense teams, that may include social workers, forensic clinical advocates, investigators, paralegals, legal researchers, and experts in education advocacy, appeals, and other complex areas of law. The Juvenile Defense Coordinator observes Juvenile Division contract attorneys in court, and screens new and renewing contractors. The Coordinator also represents the OADC’s contractors and clients in various policy initiatives and stakeholder meetings.

		FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	Target	25	25	26	100%	100%	100%
	Actual	26	18	18			
Incorporate a social worker into juvenile defense teams/cases where appropriate.	Target	50	60	112	114	125	125
	Actual	112	114	125			
Provide specialized education law assistance to juvenile defense teams where appropriate.	Target	20	25	40	42	52	52
	Actual	40	42	52			

Performance Measure H: Implement and Manage the Municipal Court Program

To ensure that indigent defendants in Colorado’s municipal courts receive representation free from political and judicial influence and that such representation is effective, high quality, ethical, conflict-free, and constitutionally sound, the OADC acquired a new position that is implementing its Municipal Court Program. The Program is evaluating the selection process of court-appointed counsel in municipalities and the independence and competence of those attorneys. Evaluations began January 1, 2020. Evaluation reports are provided to each Municipal Court in the program. To accomplish this, the Agency:

1. Evaluates the selection of court-appointed counsel by a municipality.
2. Evaluates municipal court-appointed counsel to determine whether services are being provided free from political and judicial influence and meet minimum constitutional standards.
3. Contracts with municipal courts to provide constitutionally adequate counsel.
4. Contracts with lawyers to provide representation in Denver Municipal Court.

		FY19 Actual	FY20 Actual	FY21 Actual	FY22 Request	FY23 Anticipated	FY24 Anticipated
Municipalities Requesting OADC Attorney Evaluations	Target	50	50	50	56	56	56
	Actual	37	56	56			
Evaluation of Municipalities requesting services	Target	na	56	56	56	56	56
	Actual	na	56	0 ***			
Evaluation of Court-Appointed Attorneys	Target	na	112	33%	33%	33%	33%
	Actual	na	81*	11%***			
Municipalities visited that requested OADC services	Target	100%	100%	100%	100%	100%	100%
	Actual	97%	13% **	2% **			
Municipalities Contracting with OADC for court-appointed services	Target	na	na	0	0	1	1
	Actual	na	na	1			

**The remaining attorneys are OADC contractors that do not require an evaluation and where not up for renewal in FY20.*

***These numbers are low due to COVID-19 closures of municipal courts.*

****Evaluations are due at the end of the calendar year.*

IV. Strategies

Increase Compensation Rates

As mentioned in the Performance Measures and Goals section of this plan, the OADC submitted a Decision Item requesting a 5% increase to its contractor hourly rates for the FY20-21 budget. The Joint Budget Committee originally approved the request but later withdrew their decision due to statewide budgetary cuts due to the COVID-19 pandemic. The OADC will re-submit a Decision Item request for the FY23 Budget Request to increase its contractor hourly rates.

Provide Ongoing Trainings

The Performance Measures and Goals section provides a list of the OADC's commitment to trainings in the upcoming 3 fiscal years. The types of trainings provided are based on an assessment of the needs of the OADC contractors. Despite COVID-19, the OADC successfully exceeded its training and attendees' goals but did not meet its hour's goal.

Conducting Periodic Evaluations

Section V (Recent Performance Evaluations) outlines several tools that the Agency uses to evaluate its programs. The Agency's billing system overhaul, which went into effect on July 23, 2015, continues to enhance the Agency's ability to monitor and evaluate its contractors.

Improved and Cost-Effective Research Tools

As described in the Performance Measures and Goals, the OADC will continue to provide resources and technology to its contractors. A highly utilized resource that the Agency has developed is a centralized, online legal research and information platform called the eLibrary that continues to expand and assist many of the Agency's contractors. This asset is imperative to the Agency because it reduces average case costs by streamlining research time for contractors while simultaneously improving the effectiveness of representation. This eLibrary has expanded to include a separate juvenile and social sciences section and will eventually include a separate mental health section. In 2020, the OADC added enhanced Boolean search commands, culled outdated materials, and added updated and new materials.

Paperless and Administrative Efficiencies

The Agency's revamped web-based billing system (CAAPS) went live on July 23, 2015. Each individual contractor bill is reviewed online for reasonableness and accuracy. This overhaul continues to enhance the Agency's monitoring capabilities, benefiting not only internal auditing procedures but also the annual fiscal note process and individual contractors' payment monitoring options. The Agency has also acquired a data analytics software called Tableau to further assist with reporting and forecasting efficiencies.

Ancillary Services to Reduce Attorney Hours

To increase the quality and efficiency of OADC contract attorneys, the Agency has implemented and continues to seek out measures that reduce billable attorney hours and associated ancillary costs. These measures include:

1. Continuing the in-house appellate case management system that streamlines OADC appellate cases from inception through transmittal of the record on appeal.
2. Continuing the in-house post-conviction case management system to include triage and per-case fee contracting.
3. Attorney access to electronic court records pursuant to HB 08-1264.
4. Expanding and promoting the eLibrary.
5. Providing legal research, motion drafting, and other case related assistance.
6. Evaluating contractor efficiency and auditing billing.
7. Closely monitoring requests for expert assistance.
8. Identifying and promoting technologies that increase contractor efficiency.

Fraud, Waste, & Abuse Prevention

The OADC diligently monitors all financial transactions. In addition to the annual audit performed by the Office of the State Auditor, the Agency reviews all payments, ensuring appropriate documentation and support, utilizing segregation of duties, second level approvals, and executive review of over-the-maximum requests. Quarterly vendor totals are also audited for anomalies. The Agency verifies monthly payroll through the state financial and payment processing system.

V. Performance Evaluation

Contractor Survey and Evaluations

This year the Agency conducted a survey regarding the OADC's billing system, CAAPS.

The OADC Staff Evaluations

The Agency conducted its employee self-evaluations in June 2021. This year the Agency approached the process a little differently and conducted '360 degree' evaluations, in which 15 FTE staff members rated each other on various job quality and performance questions. Each staff member also completed a self-evaluation, and met with their supervisor to discuss the results, concerns, and overall performance of each employee.

Evaluation of Prior Year Performance

Performance Measure A: Ensure Adequate Contractor Rates:

In FY21 the OADC did not request a rate increase for its contractors.

Performance Measure B: Contain Case Costs:

The Agency continues to contain its average cost per case and keep ancillary costs per case to a minimum. (See chart on page 4 of 13)

Performance Measure C: Provide High-Quality Annual Trainings:

As can be seen by the chart below, the agency provided 66 trainings, consisting of 210 hours, and reaching 2,731 attendees, an increase from the projected 1,351.

	FY21 Projected	FY21 Actual
Total Trainings	31	66
Total Hours	244	210
Total Attendees	1,351	2,731

Performance Measure D: Provide Cost-Effective Research Tools and Assistance:

As the chart below demonstrates, the Agency continues to exceed its goals in this area.

	FY21 Projected	FY21 Actual
Total Number of Documents	7,541	8,482**
Users per month	4,952	6,692**

** as of 06/28/21

Performance Measure E: Monitor and Evaluate Contractors:

The Agency met its goal of evaluating 100% of renewing attorneys and investigators and exceeded its goal of Mock Oral Arguments by 1 as seen below.

	FY21 Projected	FY21 Actual
Evaluate Renewing Attorney Applicants	100%	100%
Evaluate Renewing Investigator Applicants	100%	100%
Court Room Observations	75	55*
Mock Oral Arguments	12	13
Oral Arguments	16	15*
Review Pleadings	150	129*

*The OADC usually does a significant number of observations, oral arguments, and pleadings review, but due to COVID-19, these numbers were limited this year.

Performance Measure F: Strengthen OADC’s Social Worker Program:

The Agency’s Social Worker program has continued to expand as seen in the chart below. Since the hiring of a full-time Social Worker Coordinator in September 2016, the Agency expanded the number of Social Worker contractors, and therefore the number of cases with social workers. The JBC approved the OADC’s request for a Social Worker Outreach Coordinator for FY19-20, and that position was filled on July 1, 2019.

	FY21 Projected	FY21 Actual
Number of Cases with Social Workers	496	713*
Number of Social Worker Contractors	32	49
Number of Social Worker Interns	5	5

** as of 06/25/21*

Performance Measure G: Strengthen the OADC’s Juvenile Division:

The OADC successfully implemented a Juvenile Division in FY17 and anticipates that the efficacy of this program will continue to increase as it moves forward.

	FY21 Projected	FY21 Actual
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	26	18
Incorporate a social worker into juvenile defense teams where appropriate.	112	125
Provide specialized education law assistance to juvenile defense teams where appropriate.	40	52

Performance Measure H: Implement and Manage the Municipal Court Program:

Pursuant to SB18-203, the OADC is evaluating municipal court-appointed counsel through the Municipal Court Program. In a similar approach to the process already in place by the OADC to contract with effective counsel, this program will ensure that indigent defendants in municipal courts are represented free from any political considerations or private interest and that such representation is effective, high quality, ethical, conflict-free and constitutionally sound. The evaluation process includes interviews with relevant municipal court staff and court-appointed counsel, court observations, and a review of relevant documents. When complete, the evaluation is provided to the municipality. Court-appointed counsel in municipal courts is also afforded the opportunity to attend trainings and have access to the same legal resources as OADC contract attorneys. Beginning January 1, 2021, the OADC also began contracting with the Denver Municipal Court to provide contract attorneys for the cases where the Office of the Municipal Defender has a conflict.

	FY21 Projected	FY21 Actual
Municipalities Requesting OADC Attorney Evaluations	50	56
Municipalities visited that requested OADC services	100%	2%**

***These numbers are low due to COVID-19 closures of municipal courts.*