



JUDICIAL BRANCH

**OFFICE OF THE  
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2022-2023

July 01, 2022

**PERFORMANCE PLAN**

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## 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, overcharging, 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 youth where the OSPD has an ethical conflict of interest. The OADC contracts with investigators, paralegals, forensic social workers, forensic clinical advocates, legal researchers, case assistants and resource 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. Today, in every courtroom in Colorado, there are OADC contract lawyers available to be appointed and create teams to represent clients in both delinquency and criminal cases.

### Effective Court Appointed Counsel Teams

Prior to the issuance of a contract, whether for an attorney or non-attorney professional, the OADC reviews a thorough application package for each applicant and conducts a personal interview with qualified candidates. Each attorney, investigator, forensic social worker, and forensic clinical advocate contractor is placed on a contract renewal cycle. During the renewal process, each contractor completes a renewal application and is personally interviewed. The OADC requests feedback from judicial officers and staff, and visits courtrooms across the state to monitor and evaluate the contractor's level of practice. The OADC has a rigorous training program for lawyers, investigators, paralegals, and social workers. Trainings are generally webcasted to allow contractors throughout state to attend and have almost exclusively been conducted via Zoom since the pandemic began in 2020. All contractors have access to a multitude of legal and technical resources including the Legal and Social Sciences eLibrary; legal research and motion drafting assistance; and 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 10<sup>th</sup> 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 as COCCA (Colorado Organized Crime Control Act), self-defense, character evidence, restitution claims, CRE 404(b) evidence, researching legislative history, sex offenses, out-of-state subpoenas, habitual criminal sentencing, proportionality review materials, and post-conviction and ineffective assistance of counsel claims. The OADC also co-sponsors the Colorado Juvenile Defense Manual, which released a 5<sup>th</sup> edition in April 2022.

Pursuant to SB18-203, the OADC is evaluating municipal court-appointed counsel in certain municipalities 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 ensures 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 judicial officers, court staff, and court-appointed counsel, court observations of attorneys, and a review of relevant documents. When complete, the evaluation is provided to the municipality. Court-appointed counsel in municipal courts are 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. To date, the OADC also maintains contracts with the following municipalities to provide court-appointed counsel services pursuant to CRS 21-2-103(1)(c):

- City and County of Denver (conflict counsel only)
- City of Aurora (conflict counsel only)
- City of Westminster
- City of Northglenn

### Controlling Case Costs

The OADC has several key functions in controlling case costs. These functions are monitored and reviewed monthly by the Agency's executive staff.

- **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 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.
- **Team Resources:** The Agency continues to explore innovative ways to control costs using a variety of team resources, such as its in-house appellate and post-conviction case management process, including legal researchers, case assistants and interns on teams, assisting with eDiscovery in certain case types and jurisdictions, and continuing to expand the use of social workers and resource advocates on teams.

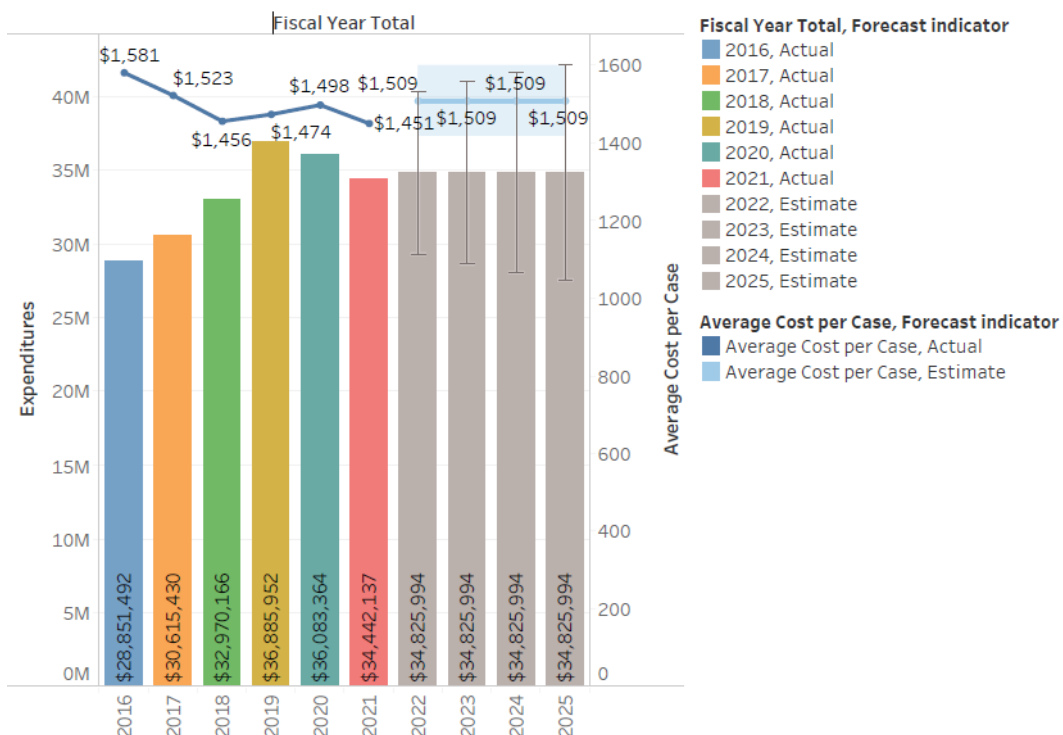
### III. Performance Measures & Goals

#### (New) Performance Measure A: Contain Case Costs

The OADC analyzes its total annual expenditures and average cost per case monthly and strives to find innovative and effective strategies to contain those costs. The below chart shows those amounts from FY16 to FY22 (as of June 15<sup>th</sup>, 2022) and its estimated numbers for FY23-25. The OADC is dedicated to the practice of holistic defense, which is driven by multi-disciplinary legal teams, not just individual lawyers. The OADC works diligently to encourage contractors to build holistic and diverse legal teams that incorporate social workers, investigators, paralegals, case assistants, and more. This practice not only provides stronger legal advocacy for OADC clients, but also reduces costs, since lawyers receive the highest hourly rate.

Due to the many factors that can affect both the Average Case Cost and Total Year-end Expenditures, it remains a struggle for the OADC to estimate these numbers accurately and consistently for future fiscal years. Some of the factors that contribute to this struggle include: Hourly Contractor Rate Adjustments (which occurred in FY19 and is occurring again in FY23), year-end caseload and expenditure fluctuations, and, in recent years, the disruption to courtroom accessibility and client visitation due to the COVID-19 pandemic. This last struggle can be seen below by the uncharacteristic decrease to the Agency’s expenditures during FY20, FY21, and FY22. Because it is unclear what further impact the COVID-19 pandemic might have on the state and the OADC, the projections below show a range of total possible fiscal year expenditures ranging from \$27M to \$42.5M, and total average case cost from \$1,400 to \$1,600.

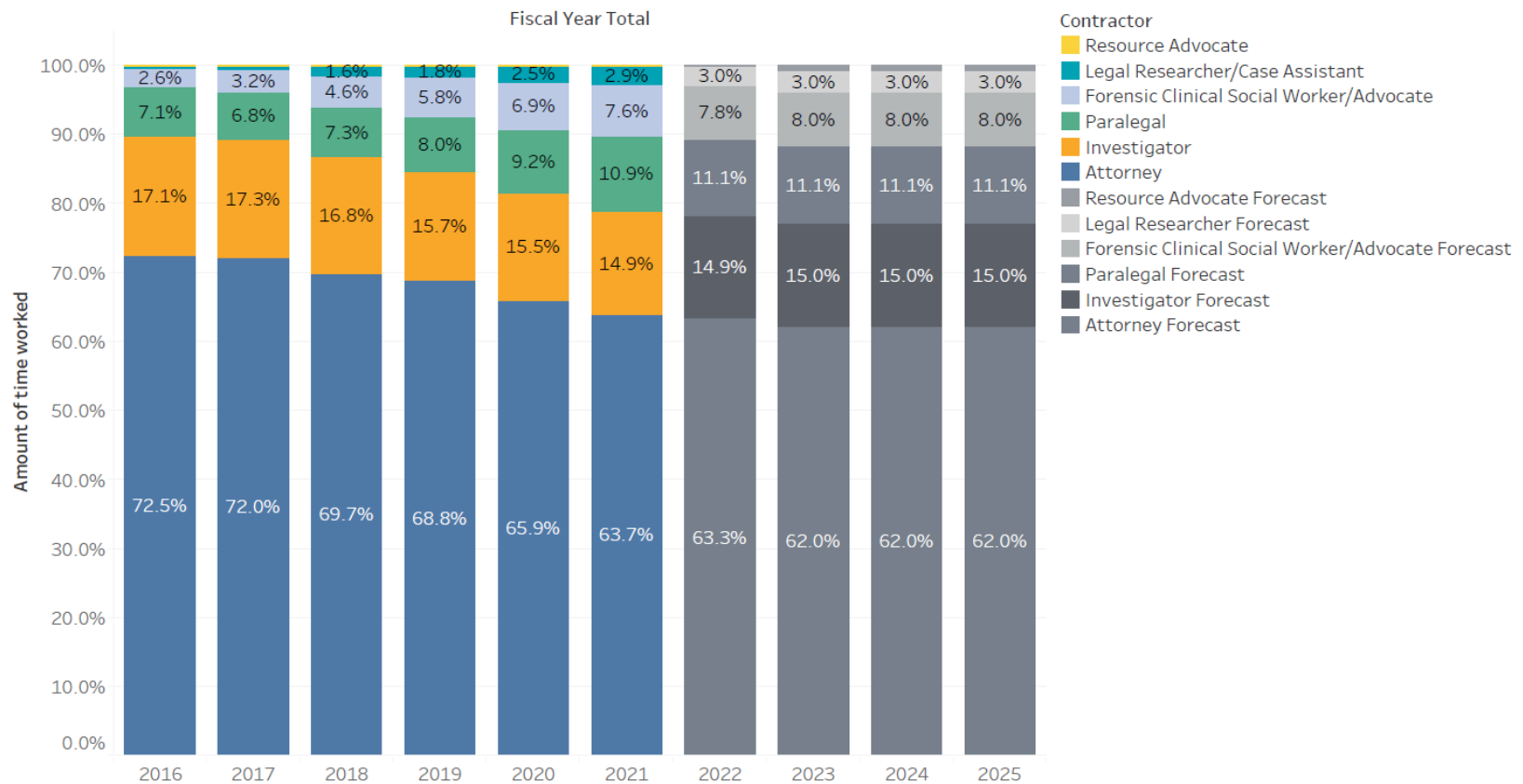
Expenditures and Average Case Cost - Forecast



**(New) Performance Measure B: Providing Multidisciplinary Legal Teams for OADC clients**

The OADC is dedicated to the practice of holistic defense, and empowering contractors to build and maintain strong and supportive teams to best serve their clients. The chart below shows the overall percentage of hours spent on an average OADC case by varying team members. For example, the proportion of attorney time dropped 9% from 72.5% in FY16 to 63.7% in FY21 and a reciprocating percentage increase in other contractor time. The OADC hopes to see these holistic teams continue to grow in the upcoming years, however due to the continual uncertainty of the COVID-19 pandemic impact on courtroom accessibility and client visitation, the OADC is proposing a flatter forecast to mirror the FY22 percentages as of 06/16/22 for the time being.

Contractor Hours Percent of Total



## IV. Strategies

### Continuing to grow and support Holistic Defense Representation for OADC Clients

To continue moving towards a holistic defense team model of practice, the OADC has concentrated on growing the forensic social work program and has incorporated a new type of contractor called a resource advocate.

OADC staff received significant feedback from attorneys regarding their need for more case management and resource identification for clients in addition to the invaluable advocacy of mitigation investigation and client support provided by forensic social workers. Holistic defense requires defense teams to expand their focus beyond the discrete legal matter at hand to address factors that impact recidivism and criminal system involvement such as lack of housing, unemployment, and more. Access to stable housing or treatment opportunities can be the difference between a client remaining in jail or detention and pre-trial release or a potential community-based sentence instead of jail, prison, or commitment. To further advance the OADC's focus on holistic public defense and support the Agency's mission, the OADC is working to make multidisciplinary teams the norm to address "enmeshed" consequences to incarceration and conviction/adjudication such as loss of housing, inability to find employment, and loss of benefits.

The availability of Forensic Social Workers/clinical advocates and resource advocates will increase the number of clients that are helped and continue to move teams towards a more holistic approach to defending clients. We believe this will allow the OADC to help an even higher volume of clients in a cost-effective way.

### Improved and Cost-Effective Research Tools

The OADC continues 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 youth justice 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. The OADC also provides free Westlaw and EBSCO (legal and social science research databases) to its contractors.

### 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 for all bills. The Agency also utilizes segregation of duties, second level approvals, and an executive review of over-the-maximum requests. Annual 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 in August of 2021 regarding Notary Letters Required for Department of Correction Facilities.

### The OADC In-house Team Member Evaluations

The Agency conducted staff evaluations in May 2022. The Agency continued its evaluation approach by conducting '360 degree' evaluations, in which 16 FTE team members rated each other on various job quality and performance questions. Each team member also rated themselves, 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 FY22 the OADC did not request a rate increase for its contractors.

#### Performance Measure B: Contain Case Costs:

The Agency continues to work towards containing its average cost per case and keep ancillary costs per case to a minimum.

	FY22 Projected	FY22 Actual
Average cost per case	\$ 1,474	\$ 1,369 *
Keep ancillary costs per case to a minimum	\$ 67	\$ 62 *

*\* as of 06/16/22*

#### Performance Measure C: Provide High-Quality Annual Trainings:

As can be seen by the chart below, the agency provided 57 trainings, consisting of 276.5 hours, and reaching 2,399 attendees.

	FY22 Projected	FY22 Actual
Total trainings	51	57
Total hours	267	276.5
Total attendees	2,650	2,399

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

As the chart below demonstrates, the Agency continues to exceed its goals for Total number of Documents, however, was lower in Users per month.

	FY22 Projected	FY22 Actual
Total number of documents	7,854	9,949
Users per month	5,928	5,085

*\* as of 06/16/22*

**Performance Measure E: Monitor and Evaluate Contractors:**

The Agency met its goal of evaluating 100% of renewing attorneys and investigators.

	FY22 Projected	FY22 Actual
Evaluate renewing attorney applicants	100%	100%
Evaluate renewing investigator applicants	100%	100%

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

The Agency’s social worker program continues to expand as seen in the chart below. The Social Worker Coordinator (SWC) and the Social Work Outreach Coordinator (SWOC) continue to formalize procedures and policies that build capacity to serve more clients. The SWOC continues to leverage key relationships with universities to work with interns and has begun contracting with Resource Advocates, case managers with expertise in local area resources to enhance the connection of clients to services in the community.

	FY22 Projected	FY22 Actual
Number of cases with social workers	624	916
Number of social worker contractors	44	55
Number of social worker interns	6	5

**Performance Measure G: Strengthen the OADC’s Youth Defense Division:**

The OADC implemented a Youth Defense Division in FY17, ensuring that only those attorneys with the requisite training, experience, and expertise are appointed to represent children in delinquency and adult court. Though fewer defense teams utilized the expertise of an education advocate this year than anticipated, this is likely due to the significant overall decrease in case filings against children during the pandemic as well as the disruption to education for all Colorado’s children during that time.

	FY22 Projected	FY22 Actual
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in youth representation.	100%	100%
Incorporate a social worker into youth defense teams where appropriate.	114	175
Provide specialized education law assistance to youth defense teams where appropriate.	42	31*

*\* as of 06/16/22*

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

In 2021, 59 municipalities were accepted into the Municipal Court Program and the OADC attempted evaluations of each municipality. From those 59 municipalities, 52 submitted evaluation forms and 33 virtual interviews with court staff and 32 virtual interviews with municipal court-appointed counsel were conducted. These interviews, as well as a review of submitted documentation resulted in 52 successful evaluations. The remaining 7 municipalities received an unsuccessful evaluation report as their court-appointed counsel did not submit to the evaluation process. In addition to the Municipal Court Program, the OADC contracts with four (4)

municipalities to provide court-appointed counsel services. OADC contractors are currently providing alternate defense counsel services in Denver and Aurora, as well as primary counsel services in Westminster and Northglenn.

	FY22 Projected	FY22 Actual
Municipalities requesting OADC attorney evaluations	56	59
Municipalities visited that requested OADC services	56	6 *

*\* This number is low due to the pandemic, but hopefully will increase over the year.*