



JUDICIAL BRANCH
OFFICE OF THE
ALTERNATE DEFENSE COUNSEL

Overview, Strategic Plan & Performance
Measures

Lindy Frolich, Alternate Defense Counsel Director

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State of Colorado

Office of the Alternate Defense Counsel

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October 31, 2013

To the Citizens and Legislators of the State of Colorado:

Each person accused of a crime has a constitutional right to be represented by counsel at each critical stage of the action against him or her. This right only has meaning if counsel is competent, effective, and zealous. This constitutional right applies not only to the wealthy in the United States, but also to the poor. ***The Office of the Alternate Defense Counsel (OADC) was created by the Colorado Legislature (C.R.S. § 21-2-101, et. seq) to provide state wide representation in criminal and juvenile delinquency cases when the Office of the State Public Defender (OSPD) has a conflict of interest and therefore cannot ethically represent the indigent defendant or juvenile.*** The OADC has become a nationally recognized model that other states look to when designing or improving their system for appointing counsel to represent indigent defendants and juveniles. Both the director and deputy director have been invited to other states to present the Colorado model for court-appointed counsel programs, and have worked with other states to initiate similar programs. OADC continues to explore and implement strategies to control case costs while providing effective court-appointed counsel.

Today, in every courtroom in Colorado, there are OADC contract lawyers available to accept court appointments. Before the creation of the OADC in 1996, there was no standardized method for court appointments. Lawyers were randomly appointed by the court and payments were administered by the OSPD. An indigent defendant or juvenile delinquent might receive court-appointed counsel with little or no experience, or counsel with significant experience. There was no training, no oversight, and very little accountability.

During its formative years the OADC focused on establishing the infrastructure needed to develop a systematic method for appointing counsel. As the agency began formalizing the process of court-appointed counsel, the priority was to insure competent, qualified counsel state wide. Since its inception the agency has strived to provide competent, effective representation for indigent defendants while keeping administrative costs low.

From 1996 until 2007, the agency's caseload increased from approximately 7,000 cases per year to more than 13,000. Once the infrastructure was well-established, the doors were open to explore ways to become more efficient. In order to keep administrative costs low and use state resources to pay contractors directly, the OADC began developing its automated payment system, WEBPAY, in FY02. By FY05, all regular contractors were billing on line and continue to do so today. The agency continues to refine this system to further simplify contractor billing while improving data collection. The agency continues to work toward a paperless billing system.

The OADC has identified those costs that are truly uncontrollable, such as the extraordinary cost of death penalty cases or caseload increases, and delineated areas that can be impacted by increased efficiencies. At the beginning of the recent budget crisis, in 2009, OADC immediately put into place additional cost saving measures. Many of these are listed in previous budgets as well as this budget. Through this budgetary crisis, OADC has kept case costs down and lawyer hours constant.

Last year the legislature enacted a pay equity measure that increased the salaries of the OSPD and the Department of Law. Because there have been no requests for rate increases since 2009, OADC lawyer contractors are \$10 per hour behind the hourly rate increase endorsed by the JBC in 2005. This year OADC is requesting a much overdue rate increase for all of its contractors. The agency's goal is to continue to explore new ways to increase the efficiency of court-appointed counsel representation while maintaining quality representation.

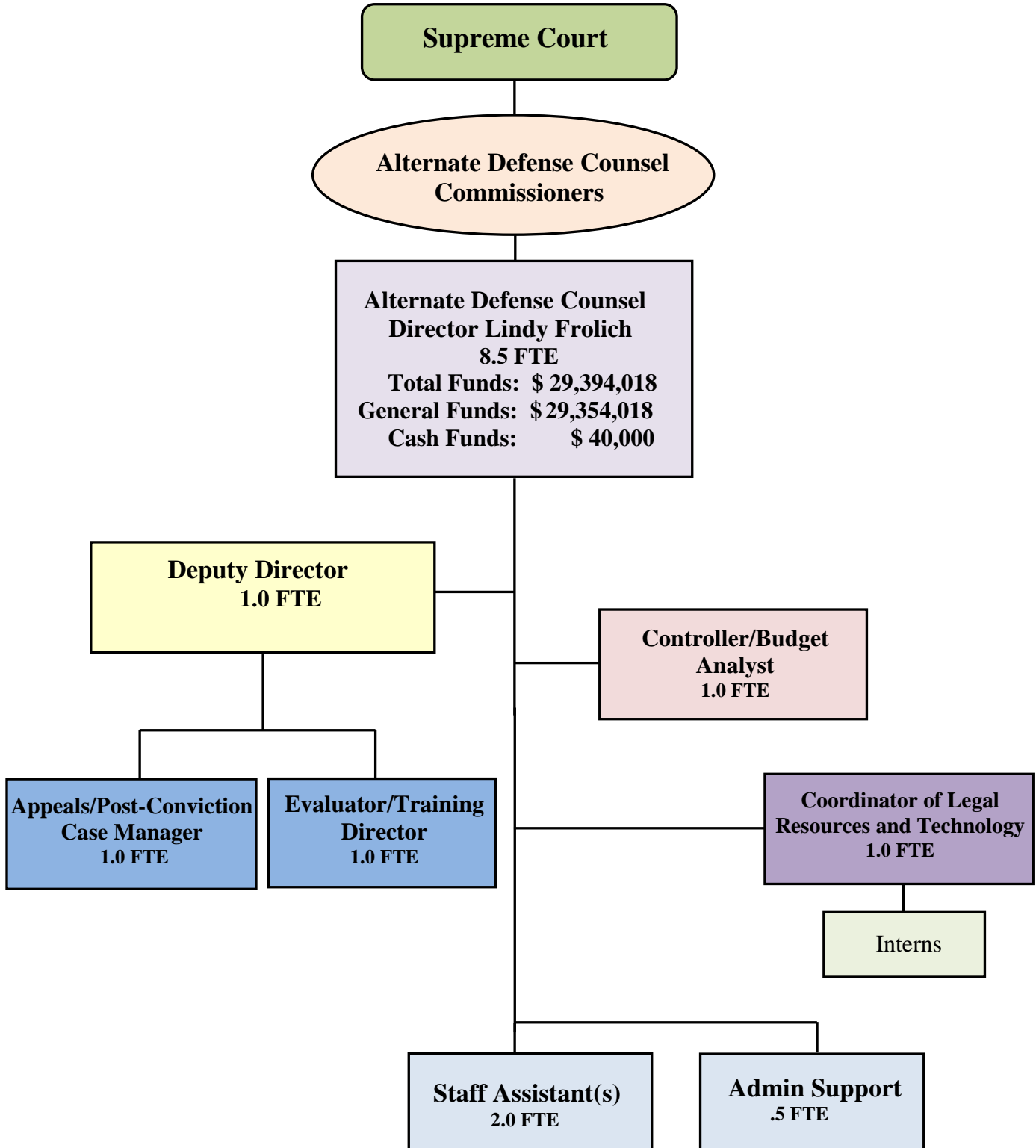
Sincerely,

A handwritten signature in purple ink, appearing to read 'Lindy Frolich'.

Lindy Frolich
Director

II. Agency Overview

Organizational Chart Judicial Branch Office of the Alternate Defense Counsel



The Office of the Alternate Defense Counsel

Background

The United States and Colorado Constitutions provide every accused person with the right to be represented by counsel in criminal prosecutions. U.S. Const., amend. VI; Colo. Const., art. II, §16. This constitutional right has been interpreted to mean 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 where 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

The mission of the Office of the Alternate Defense Counsel is to provide indigent individuals (adults and juveniles) charged with crimes the best legal representation possible. This representation *must* uphold the federal and state constitutional and statutory mandates, ethical rules, and nationwide standards of practice for defense lawyers. As a state agency, the OADC strives to achieve this mission by balancing its commitment to insuring that indigent defendants and juveniles receive high quality, effective legal services with its responsibility to the taxpayers of the State of Colorado.

Vision

- ★ *To foster high-quality, cost-effective legal representation for indigent defendants and juveniles through exemplary training, thorough evaluation, and the effective use of modern technology.*

PRIOR YEAR LEGISLATION

HB 13-1210 makes Colorado law consistent with recent United States Supreme Court decisions regarding the right to legal counsel during all critical stages of a criminal case, including plea negotiations. It repeals the statute that requires an indigent person charged with a misdemeanor, petty offense, motor vehicle or traffic offense to meet with the prosecuting attorney before legal counsel is appointed. This bill is significant in providing counsel not only for plea negotiations but also for bond determinations.

SB13-250 created a separate sentencing grid for drug offenses. The sentencing distinction between serious drug dealers and drug users is much more defined. The new scheme emphasizes treatment over incarceration for the drug abuser and addict. The statute includes:

- Expanded opportunities for the drug offender to avoid a felony conviction. Current law makes drug offenders eligible for a deferred judgment, which enables an offender to avoid a permanent criminal conviction if the offender successfully completes a probationary period. The new law allows a repeat drug offender who possesses a small amount of a Schedule I or II drug to avoid a felony conviction and earn a misdemeanor conviction if the offender completes probation or community corrections with substance abuse treatment.
- Courts are also required to consider and exhaust all treatment options before incarceration.
- Courts may continue a defendant's treatment and deferred judgment over the prosecution's objection if continuation would meet the goals of sentencing in any case, i.e. rehabilitation and integration.
- Decreased the sentencing ranges for all drug offenses and time periods of parole.
- Expanded funding for treatment by requiring that savings in corrections be reallocated to expand treatment and recovery services to people involved in the criminal justice system.
- Comprehensive data collection and a report to the General Assembly by December 31, 2016 on the impact of SB 13-250 in order to ensure that the changes are working to improve outcomes in the criminal justice system.

HB13-1156 creates prefiling diversion programs for adults statewide and creates a state grant program so district attorneys can apply for funding to create or expand an adult prefiling diversion program. The district attorney is required to develop eligibility guidelines and may enter into a diversion agreement with a defendant for up to two years without filing a criminal case against the defendant so long as the defendant complies successfully with treatment and other terms of the diversion agreement.

HB13-1160 is a comprehensive overhaul of the current theft statute amending the criminal penalties for theft and repealing theft of rental property and theft by receiving as separate statutes and incorporating these crimes into the theft statute. It also changes the penalties for various offense levels by increasing the dollar amounts that determine whether the offense is a misdemeanor or a felony, and at what level.

HOT TOPICS

JUVENILE LIFE WITHOUT PAROLE (JLWOP)

In the case of *Miller v. Alabama*, 132 S.Ct. 2455 (June 25, 2012), the United States Supreme Court held it is unconstitutional to sentence juveniles charged as adults to a mandatory sentence of life without the possibility of parole. In Colorado there are 50 individuals sentenced to a mandatory life without the possibility of parole for an offense that was committed when they were juveniles. OADC contractors have been appointed to every case where the OSPD has declared a conflict. In recognition of the unique nature of this United States Supreme Court mandate, the OADC has been actively working with the Colorado Juvenile Defender Coalition (CJDC) to insure that the OADC contractors are adequately trained and informed on how to handle these resentencing hearings effectively and efficiently.

STATEWIDE JUVENILE LAW ASSESSMENT

The National Juvenile Defender Center (NJDC) released its Colorado Assessment of Access to Counsel and Quality Representation in Juvenile Delinquency Proceedings in January, 2013. Partially as a result of this Assessment, the legislature enacted HJR13-1019 which created a legislative interim committee to study the role of defense counsel in the juvenile justice system. This committee's report to the Legislative Council is due in November 2013. The OADC is currently working on addressing areas of concern mentioned in the assessment to insure improved representation for juveniles in Colorado.

EVIDENCE BASED SMARTER SENTENCING

The 2011 Legislature addressed this issue in two ways: 1) by amending the sentencing statute; and 2) by changing the requirements of presentence reports issued by Probation Services. Evidence Based Decision Making (EBDM) in the criminal justice system is recognized across the nation for producing safer communities while more effectively using scarce resources. Colorado's Mesa County is in the implementation phase of an intense EBDM plan of the National Institute of Corrections (NIC) nationwide technical assistance grant. More information is available at www.ebdmoneless.org. NIC has recently requested applications from *states* that are interested in statewide efforts to bring EBDM to the entire state system of criminal justice.

OADC continues its pilot sentencing project in Mesa County (21st Judicial District). This project includes specific training on EBDM and additional resources designed to use EBDM data and methods to promote smarter sentencing decisions. In addition, OADC has begun statewide training on this important topic and has made the social science research available in its Brief and Motions Bank.

DISCOVERY

The OADC is participating in the Discovery Task Force created by SB13-246, that will prepare a final report by January 31, 2014. This report shall include recommendations for legislation, technology inserts, and non-legislative processes that would improve the criminal discovery process.

COST SAVING MEASURES

Over the past several years, OADC has instituted several cost savings measures. These include, paperless discovery, shared discovery resources in multi-codefendant grand jury cases, and on site scanning of Department of Corrections records, district court files and files located at OSPD offices throughout the state. In addition, OADC has developed and instituted an in-house case management system for appeals and post-conviction cases, that includes a one person interface system with all judicial districts clerks, court reporters and appellate court staff members. Each of these measures has produced cost savings. The newly hired Coordinator of Legal Research and Technology is a similar cost savings measure. The coordinated centralization and dissemination of reliable up-to-date legal information to all OADC contractors will increase cost savings.

IMMIGRATION

The number of post-conviction cases based on inadequate advice regarding immigration consequences has increased, especially in light of *Padilla v. Kentucky*, 130 S.Ct. 1473 (March 31, 2010). The *Padilla* case mandates that criminal defense lawyers properly advise defendants of the possible immigration consequences related to their case. Immigration law is highly technical, specialized and constantly changing. Judges, prosecutors and defense lawyers are inadequately prepared to keep abreast of all the immigration consequences in criminal cases. The OADC continues to contract with a criminal defense lawyer who specializes in immigration law to consult with OADC contractors to insure compliance with *Padilla*.

CASES THAT MAY AFFECT OADC

DEFENDANT'S RIGHT TO COUNSEL

Rothgery v. Gillespie County, Texas, 128 S.Ct. 2578 U.S. (June 23, 2008). In *Rothgery*, the United States Supreme Court held that a criminal defendant's initial appearance before a judge marks the beginning of the proceedings against him and triggers the defendant's Sixth Amendment right to counsel whether or not a prosecutor is aware of or involved in that appearance.

People v. Nozolino, 298 P.3d 915 (Colo. 2013). In *Nozolino*, the Colorado Supreme Court held that a criminal defendant has the right to continue with his court-appointed counsel when there is a waivable conflict and must be given an opportunity to waive that ethical conflict. (The OSPD was dismissed as counsel in a murder case for an ethical conflict of interest even though the client requested an opportunity to waive any conflict and continue with the public defender's office.)

PROHIBITION AGAINST SENTENCING JUVENILES TO LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE (JLWOP)

Graham v. Florida, 130 S.Ct. 2011 (May 17, 2010). The Eighth Amendment prohibits imposition of a life without parole (LWOP) sentence on juvenile offenders who did not commit a homicide. States are not required to release juvenile offenders during their lifetime; however, when juvenile non-homicide offenders are sentenced to LWOP, states must provide a meaningful opportunity for release.

Miller v. Alabama, 132 S.Ct. 2455 (June 25, 2012). The United States Supreme Court granted a new sentencing hearing to two state prisoners convicted of murders that occurred when the defendants were under 18 years of age. The Court held that a mandatory sentence of life without parole (LWOP) for juveniles who commit homicide is unconstitutional.

People v. Tate, No. 07CA2467 (Colo. App. Sept. 13, 2012), as modified on denial of reh'g (Nov. 1, 2012), cert. granted, 12SC932, 2013 WL 3323179 (Colo. July 1, 2013) (unpublished). The Court of Appeals found the JLWOP sentence unconstitutional, and remanded for a resentencing hearing pursuant to *Miller v. Alabama*, 132 S.Ct. 2455 (2012). This case has been appealed to the Colorado Supreme Court and the summary of the issue on review is: “Whether, after *Miller v. Alabama*, 132 S.Ct. 2455 (2012), invalidated mandatory life without parole for juveniles, the court of appeals erred by remanding the defendant's case for resentencing instead of upholding the defendant's life sentence and remanding the case to reflect that the defendant will be eligible for parole after forty calendar years.”

People v. Banks, 2012 COA 157, reh'g denied (Nov. 29, 2012), cert. granted, 12SC1022, 2013 WL 3168752 (Colo. June 24, 2013) (published). The Court of Appeals found the JLWOP sentence unconstitutional, but remanded for the juvenile to be sentenced to life with the possibility of parole after 40 years. This case has also been appealed to the Colorado Supreme Court and the summary of the issues on review are: “Whether, after *Miller v. Alabama*, 132 S.Ct. 2455 (2012), the Eighth Amendment to the U.S. Constitution is violated by the imposition on a juvenile of a sentence of mandatory life sentence with the potential for parole after forty years,” and “Whether the court of appeals exceeded its judicial authority by re-writing the criminal sentence statutes in a way not authorized or compelled by Colorado statutes or sound “severability” analysis.”

INEFFECTIVE ASSISTANCE OF COUNSEL

Immigration Consequences:

Padilla v. Kentucky, 130 S.Ct. 1473 (March 31, 2010). A habeas petitioner can bring a claim for ineffective assistance of counsel where he would not have pled guilty but for the failure of his attorney to advise him of the immigration consequences of the plea. An attorney's duties include advising a defendant about the collateral consequences of the plea. The attorney's failure to advise a non-citizen defendant of the immigration consequences of pleading guilty to a crime can constitute ineffective assistance of counsel under the Sixth Amendment.

People v. Kazadi, 291 P.3d 16 (Colo. 2012). A Crim. P. 35(c) petition cannot be filed to attack a deferred judgment and sentence. Mr. Kazadi pleaded guilty in exchange for a deferred judgment and sentence (“DJS”) on the felony count, and received a final sentence on the misdemeanor. After he was taken into custody by ICE to face removal proceedings, he filed a postconviction motion challenging his guilty plea on ineffective assistance of counsel grounds, raising a *Kentucky v. Padilla* claim that his counsel failed to correctly advise him of the deportation consequences of his plea. Because he received a deferred judgment on the felony count, the Colorado Supreme Court agreed that he cannot file a Crim. P. 35(c) motion on the felony because his conviction is technically not final, however, he can file a Rule 35(c) motion on the misdemeanor (because it is final), and he can file a motion to withdraw the guilty plea under Crim. P. 32(d). This case was remanded for further proceedings, i.e. a simultaneous Crim. P. 35(c) on the misdemeanor and a Crim. P. 32(d) on the felony.

A number of trial court orders denying post convictions motions have been reversed on appeal on the issue of faulty advisement of immigration consequences. *See People v. Tolossa*, 11CA0148 (Colo. App. June 28, 2012) and *People v. Trevizo-Estrada*, 10CA2568 (April 19, 2012), (both reversing denial of Crim. P. 35(c) motions).

Plea Bargain Stage Of Case:

Missouri v. Frye, 132 S.Ct. 1399 and *Lafler v. Cooper*, 132 S.Ct. 1376 (March 21, 2012). The Sixth Amendment right to the effective assistance of counsel extends to negotiation and consideration of plea offers. Conviction at trial does not necessarily preclude a finding of prejudice, but the issues of both prejudice and remedy are complex and case-specific.

Right To Counsel Post Conviction Stage:

Martinez v. Ryan, 132 S.Ct. 1309 (March 20, 2012). “Where, under state law, ineffective assistance of trial counsel claims must be raised in an initial review collateral proceeding, a procedural default will not bar a federal habeas court from hearing those claims if, in the initial review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.”

DISCOVERY ISSUE

People v. Krueger, 12CA80, (Colo. App. May 10, 2012). A criminal defendant does not have a right to review all discovery material. Counsel’s decision to limit the client’s access to selected discovery materials does not create a conflict warranting substitution of counsel.

CONFRONTATION CLAUSE ISSUES

Williams v. Illinois, 132 S.Ct. 2221 (June 18, 2012). The confrontation clause was not violated when a DNA expert testified about results of DNA testing performed by another analyst who did not testify. Cellmark lab analyzed DNA from a rape victim’s swab and developed a male profile. The Cellmark employee did not testify and that report was not introduced. Instead, the analyst who analyzed the defendant’s DNA sample testified that his DNA matched the sample tested by the Cellmark technician. Four justices held that this did not violate the Sixth Amendment, because the Cellmark report was not entered into evidence and was not admitted for the truth of the matter asserted but rather was used as a premise for the prosecutor’s question. A fifth Justice rejected this analysis in its entirety but concurred based only on his view of what constitutes testimonial evidence. The four dissenters believed that the Cellmark report was offered for the truth of the matter asserted, was testimonial, and was a crucial link in the State’s case and would find a confrontation clause violation.

People v. Casias, 12CA117, 2012 (Colo.App. July 19, 2012). The court of appeals found the trial court did not abuse its discretion by requiring a defense expert to testify in person and not *via* video-conferencing. As such, defense counsel will be required to have defense experts in the trial courtroom more frequently.

NO “CONDITIONAL” PLEA BARGAINS IN COLORADO

In three cases, *Neuhaus v. People*, 289 P.3d 19 (Colo. Nov. 19, 2012)(Arapahoe County), *People v. Hoffman*, 289 P.3d 24 (Colo. Nov. 19, 2012)(Mesa County), and *Escobedo v. People*, 289 P.3d 25 (Colo. Nov. 19, 2012) (Denver County), the Colorado Supreme Court banned the practice of

“conditional plea bargaining” in Colorado because there is no statute or rule that provides for it. In the federal system – and in most jurisdictions in Colorado prior to these decisions – if the prosecution and the judge agreed to the procedure, the defendant could enter a guilty plea but still take a very limited appeal on one particular issue that was important to him. The most common example is drug cases: The defendant files a motion to suppress the evidence based on Fourth Amendment grounds that he believes his constitutional rights to be free of unreasonable searches or seizures was violated. If the defendant loses the motion, his or her conviction is usually assured. The defendant who loses the suppression motion enters a plea bargain with the caveat that he or she can appeal that one limited issue. It is a waste of judicial resources to take the case through an entire trial, just to preserve the right to appeal the search and seizure motion. This is a highly efficient, fair procedure that has been used in Colorado for years even though there is not a specific rule providing for it.

SEXUALLY VIOLENT PREDATOR DESIGNATION

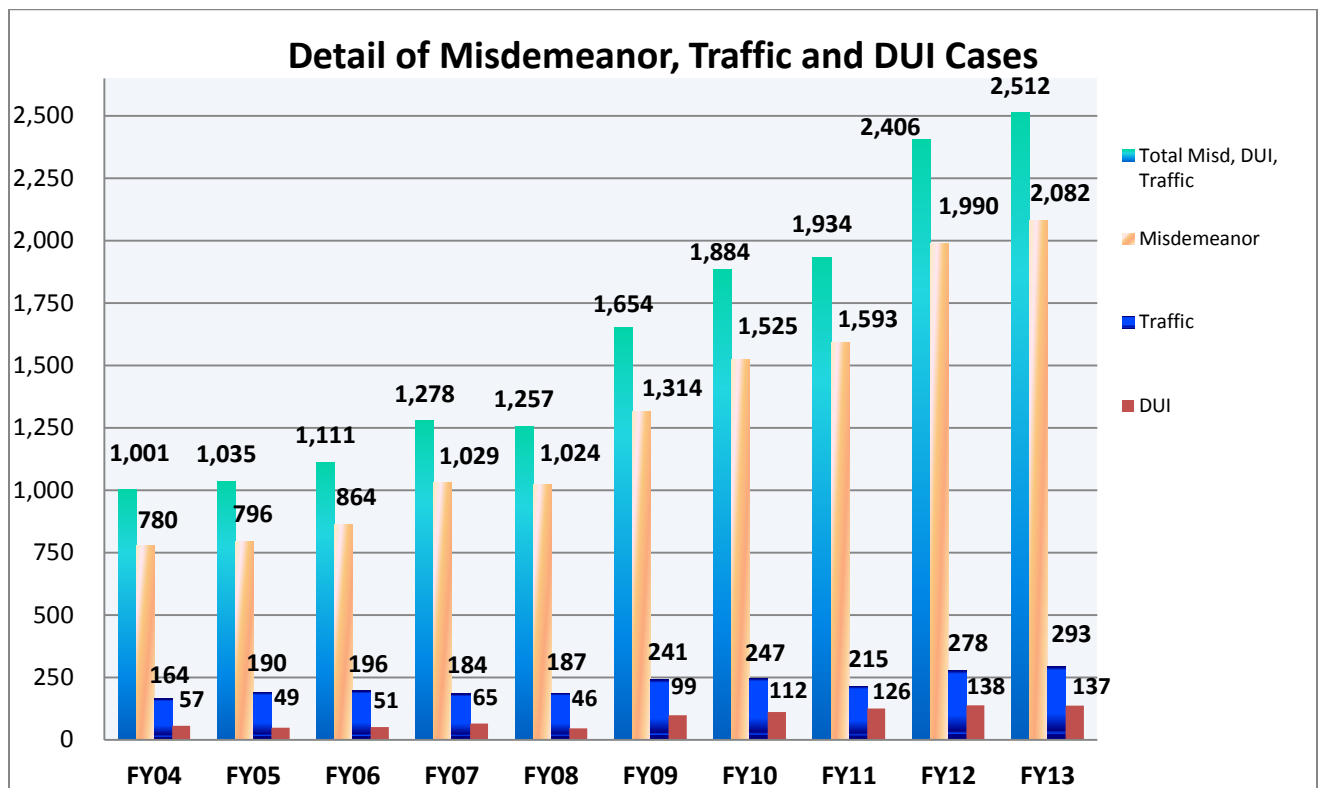
The Colorado Supreme Court continues to take and decide cases regarding SVP designation, making increasingly complex this area of law and emphasizing the need to ensure that counsel have sufficient training and resources to handle this area of law. SVP designation is a status that a judge can make at the conclusion of a case involving a sex assault related crime. It triggers reporting requirements and other forms of supervision. This designation comes as part of the criminal case, so OADC lawyers must be trained on this area of law and have sufficient investigative and attorney resources to litigate issues that arise. Notably, there were a very large number of reported cases about SVP designation and sex offender registration this year – no less than 5 out of the Colorado Supreme Court and at least 7 out of the Colorado Court of Appeals. In five cases issued simultaneously on July 1, 2013, the Colorado Supreme Court set forth detailed requirements and factors that trial courts must consider in deciding whether to make an SVP designation. In three cases they affirmed the SVP designation, but they reversed it in two others. *Allen v. People*, 2013 CO 44, *People v. Gallegos*, 2013 CO 45, *Uribe-Sanchez v. People*, 2013 CO 46, *Candelaria v. People*, 2013 CO 47, and *People v. Hunter*, 2013 CO 48. The Colorado Supreme Court has already granted certiorari on yet another case to be decided in the coming year. Sometimes, the sheer volume of cases coming out on a general topic is the tip of the iceberg, meaning that there may be many more cases that are being litigated around the state on these topics that may not result in a published opinion, but which have an impact on resources.

WORK LOAD INDICATORS

Additional information not previously noted:

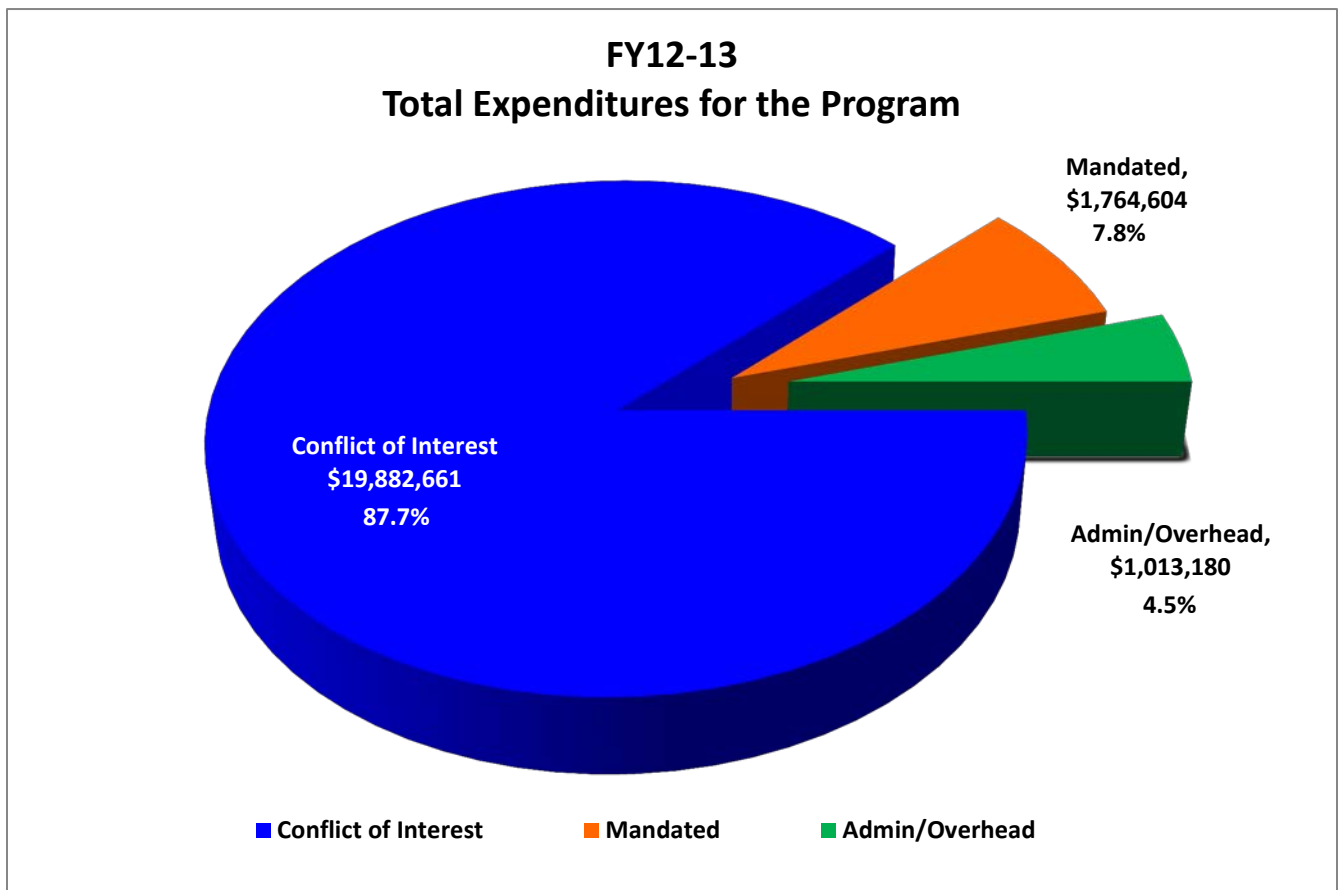
Total Caseload and Case Type

<i>Trial Case Types:</i>	FY08 Actual	FY09 Actual	FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Budget	FY15 Request
<i>F1 Death Penalty</i>	4	4	4	3	2	2	2	2
<i>F1 Non-Death Penalty</i>	150	145	145	126	111	104	118	118
<i>F2-F3</i>	2,642	2,532	2,604	2,409	2,323	2,533	2,671	2,671
<i>F4-F6</i>	4,372	4,028	3,894	3,754	4,064	4,512	4,717	4,717
<i>Juvenile</i>	1,528	1,803	1,808	1,542	1,496	1,235	1,507	1,507
<i>Adult Probation</i>	2	2	1	1	1	0	0	0
<i>Mis DUI Traffic</i>	1,257	1,654	1,884	1,934	2,406	2,512	2,708	2,708
<i>35b & 35c</i>	0	0	0	0	0	0	0	0
Total Trial Cases	9,955	10,168	10,340	9,769	10,403	10,898	11,724	11,724
Appeal Cases	708	765	725	717	691	697	708	708
35b/35c & Post Conviction	523	492	489	429	471	461	460	460
Other Special Proceedings	896	1,049	1,040	963	1,020	1,234	1,587	1,587
Total Cases	12,082	12,474	12,594	11,878	12,585	13,290	14,479	14,479
	-7.69%	3.24%	0.96%	-5.69%	5.95%	5.60%	8.95%	0.00%



Total Case Payment Transactions Processed by the Agency:

	FY08 Actual	FY09 Actual	FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Budget	FY15 Request
Caseload	12,082	12,474	12,594	11,878	12,585	13,290	14,479	14,479
Transactions	38,390	41,524	42,819	39,794	43,327	46,144	52,512	52,512
Average Case Transactions	3.18	3.33	3.40	3.35	3.44	3.47	3.63	3.63



III. Agency Objectives and Performance Plan

Objectives

I. PROVIDE COMPETENT LEGAL REPRESENTATION STATE-WIDE FOR INDIGENT DEFENDANTS AND JUVENILES.

The OADC contracts with approximately 400 private lawyers across Colorado to represent indigent defendants where the OSPD has a conflict of interest. Each of these lawyers is an independent contractor. Investigators, paralegals, experts, and other ancillary services are available to these lawyers through the OADC. The agency is committed to insuring that the representation is of the highest quality possible.

II. PROVIDE COST-EFFECTIVE LEGAL REPRESENTATION STATE-WIDE FOR INDIGENT DEFENDANTS AND JUVENILES.

The OADC has no control over the number of criminal and juvenile cases filed or prosecutors' charging decisions. However, the OADC is constantly seeking ways to contain the average cost per case.

Strategies

- Increase current compensation rates for all contractors.
- Monitor and contain total hours per case and ancillary costs.
- Provide statewide training for lawyers, investigators, paralegals and court personnel.
- Provide cost effective research tools and resources to OADC contractors to promote effectiveness and efficiency.
- Evaluate, monitor, and audit contractors on an ongoing basis.

Core Objectives & Performance Measures

Performance Measure A.		FY 06 Actual	FY 07 Actual	FY 08 Actual	FY 09-13 Actual	FY 14 Budget	FY15 Request
Increase compensation rates for contractors. Initial goal set in FY04-05 was to reach competitive rates by FY08-09 of \$75 per hour for lawyers.	Target	\$55	\$60	\$67.50	\$75	\$75	\$75
	Actual	\$47 *	\$57	\$60	\$65	\$65	<i>Pending Approval</i>

* No funding received for rate increase

Strategy:

The American Bar Association (ABA) Standards require that court-appointed attorney compensation be “reasonable” and “adequate.” The federal courts have indicated that they believe

courts should pay court-appointed attorneys a rate that covers overhead and provides reasonable remuneration. In FY04, the Joint Budget Committee (JBC) recommended that the judicial agencies work together to have Court Appointed Counsel hourly rates consistent within the judicial branch. In fiscal year 2004-2005, a judicial department study recommended an hourly rate of \$71 per hour for attorney contractors. Because of the great disparity between \$47 per hour and \$71 per hour, the JBC recommended a five year implementation plan to secure a rate of \$75 per hour. The agencies have continued to pursue these hourly increases as the State of Colorado general fund has allowed. The OADC did not request an hourly rate increase for fiscal-years 2010-2014 due to the state of the economy.

Evaluation of Prior Year Performance:

For the last five fiscal years, the OADC has not requested a rate increase due to the uncertainty of the economy and state budget shortfalls. Earlier rate increases assisted with recruitment and retention of competent lawyers.

On January 1, 2010, the federal government raised its court-appointed attorney’s¹ hourly rate to \$125 per hour and for capital crime (death penalty) cases, the hourly rate was \$178 per hour. Per memo of the Administrative Office of the United States Court dated August 22, 2013, this rate has been reduced for work performed from September 1, 2013 through September 30, 2014 by \$15.00 per hour, to \$110 per hour and \$163 per hour respectively.

Key Indicators:

State of Colorado Felony Type	Hourly Rate Effective 1/1/1991	Hourly Rate Effective 7/1/1999 _a	Hourly Rate Effective 2/1/2003 _a	Hourly Rate Effective 7/1/2003 _a	Hourly Rate Effective 7/1/2006 _a	Hourly Rate Effective 7/1/2007 _a	Hourly Rate Effective 7/1/2008 _a
Death Penalty	\$40 out court \$50 in-court (\$41.66) _b	\$65	\$60	\$65	\$85	\$85	\$85
Felony A	\$40 out court \$50 in-court (\$41.66) _b	\$51	\$46	\$51	\$60	\$63	\$68
Felony B	\$40 out court \$50 in-court (\$41.66) _b	\$47	\$42	\$47	\$56	\$59	\$65
Juv, Misd, DUI, Traffic	\$40 out court \$50 in-court (\$41.66) _b	\$45	\$40	\$45	\$54	\$57	\$65

a. In court and out of court are paid at the same rate.

b. Based on the ABA standard (for every 6 hours worked 1 hour is in-court and 5 hours are out-of-court).

¹ Federal court-appointed attorneys are referred to as Criminal Justice Act (CJA) lawyers.

CJA Rates	Hourly Rate Effective 5/2002	Hourly Rate Effective 1/2006	Hourly Rate Effective 5/2007	Hourly Rate Effective 1/2008	Hourly Rate Effective 3/2009	Hourly Rate Effective 1/2010 - 8/2013	Hourly Rate Effective 9/2013 - 9/2014
Death Penalty	2/1/2005	\$163	\$166	\$170	\$175	\$178	\$163
	\$160						
Non-Capital	\$90	\$92	\$94	\$100	\$110	\$125	\$110

State of Colorado Attorney General rate-blended rate Attorney/Paralegal/Legal Asst.	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14
Legal Service Rate	\$64.45	\$67.77	\$72.03	\$75.10	\$75.38	\$73.37	\$75.71	\$77.25	\$91.08 *

* \$91.08 amount pulled from the Department of Law FY14 Long Bill (SB 13-230) page 134.

Performance Measure B.		FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Budget	FY15 Request
Contain the total number of Attorney hours per case. Includes all case type hours.	Target Attorney hours	19.64	19.64	19.64	19.64	19.64	19.64
	Actual	20.81	19.22	18.91	17.94		
Contain the total Attorney hours per case excluding Death Penalty cases.	Target Attorney hours	18.65	18.65	18.65	18.65	18.65	18.65
	Actual	18.93	16.96	16.78	15.85		
Contain the total Attorney hours per Death Penalty case.	Target Attorney hours	2,362.27	2,362.27	2,362.27	2,697.46	2,787.74	2,787.74
	Actual	1,843.97	1,936.80	2,697.46	2,787.74		
Contain the total Attorney hours per Type A Felony case.	Target Attorney hours	46.47	46.47	46.44	46.44	46.44	46.44
	Actual	49.74	44.46	44.76	43.00		
Contain the total Attorney hours per Type B Felony case.	Target Attorney hours	15.48	15.48	15.48	15.48	15.48	15.48
	Actual	16.45	14.73	14.81	13.83		
Contain the total Attorney hours per Adult Misdemeanor/Juvenile.	Target Attorney hours	7.81	7.81	7.24	7.24	7.24	7.24
	Actual	7.26	6.96	7.20	6.94		
Keep ancillary costs per case to a minimum.	Target Ancillary	\$119.73	\$119.73	\$124.07	\$120.38	\$132.78	\$132.78
	Actual	\$120.16	\$120.38	\$116.80	\$132.78		

Strategy:

The OADC reviews each individual contractor bill for reasonableness and accuracy. In an effort to increase the quality and efficiency of the OADC contract attorneys, the agency has implemented and will continue to seek out measures that will reduce billable contractor hours and associated ancillary costs. These measures include:

1. Continuing the in-house appellate case management system that streamlines the 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. Contracting with document management and paralegal professionals who specialize in organization and distribution of discovery in Colorado Organized Crime Control Act (COCCA) cases, death penalty cases, and other voluminous cases.
4. Attorney access to electronic court records pursuant to HB 08-1264.
5. Expanding and promoting the Brief and Motions Bank.
6. Providing expert legal research and legal motion drafting assistance.
7. Evaluating contractor efficiency and auditing contractor billing.
8. Closely monitoring expert requests.
9. Coordinating cost reduction methods for electronic and paper discovery charges from individual district attorney offices across the state. The OADC director is participating in the statutorily mandated Discovery Task Force in the hopes of containing or reducing discovery costs paid by the State of Colorado.
10. Identifying and promoting technologies that increase attorney efficiency.

Evaluation of Prior Year Performance:

As can be seen from the above table, the agency continues to contain the number of billable hours per case. The implementation of cost saving measures as listed in the following paragraphs has contained attorney billable hours.

Legal Resources and Technology: The OADC Brief and Motions Bank, coupled with the legal research assistance to OADC contractors, have created a centralized system of legal resources and technology available to all contractors to reduce duplication of efforts. This past year OADC has highlighted the creation of practitioner manuals in specific topic areas (character evidence, self-defense, sex offenders, juveniles, and conspiracy charges to name a few) as a priority. As one contractor commented,

I am reading your memo on self-defense now and I'll check out the materials in our motions and brief bank. This is just what I need. Thank you all very much!!!

Discovery: The OADC continues to provide electronic distribution of discovery in certain cases. Contracting with document management and paralegal professionals has allowed the OADC to take thousands of pages of paper discovery and reduce it to an electronic format, costing very little to reproduce. Although OADC's use of modern technology has reduced the distribution cost of

discovery in complex cases, the discovery costs paid to many district attorneys' offices statewide continues to increase.

Electronic Access to Court Records: OADC lawyers continue to benefit from access to electronic court records.

Appellate and Post-Conviction Cases: The agency has successfully reduced the number of attorney hours per case for appellate appointments. The agency's former appellate paralegal pilot program has transitioned to an appellate case management position, and now also includes case management for post-conviction cases. Each post-conviction case is triaged by a very experienced post-conviction lawyer who produces a memorandum suggesting a course of action for the assigned lawyer. Based on this memorandum a contract price is assigned to the case. This process has dramatically shortened the time that post-conviction cases are open by providing the attorneys with significant information regarding the case at the time of appointment. Feedback from OADC contractors, court clerks and judges has all been positive. As one OADC contractor stated:

As an ADC attorney whose caseload contains mostly of postconviction 35c cases, the process ADC has installed for obtaining and providing initial court documents to the attorney works effectively and efficiently. The process saves me time and saves ADC money.

OADC is also currently involved in an *ad hoc* brainstorming group with other stakeholders (Court of Appeals judges and staff, Department of Law Appellate Division, and the OSPD Appellate Division) to explore options to streamline post-conviction appeals.

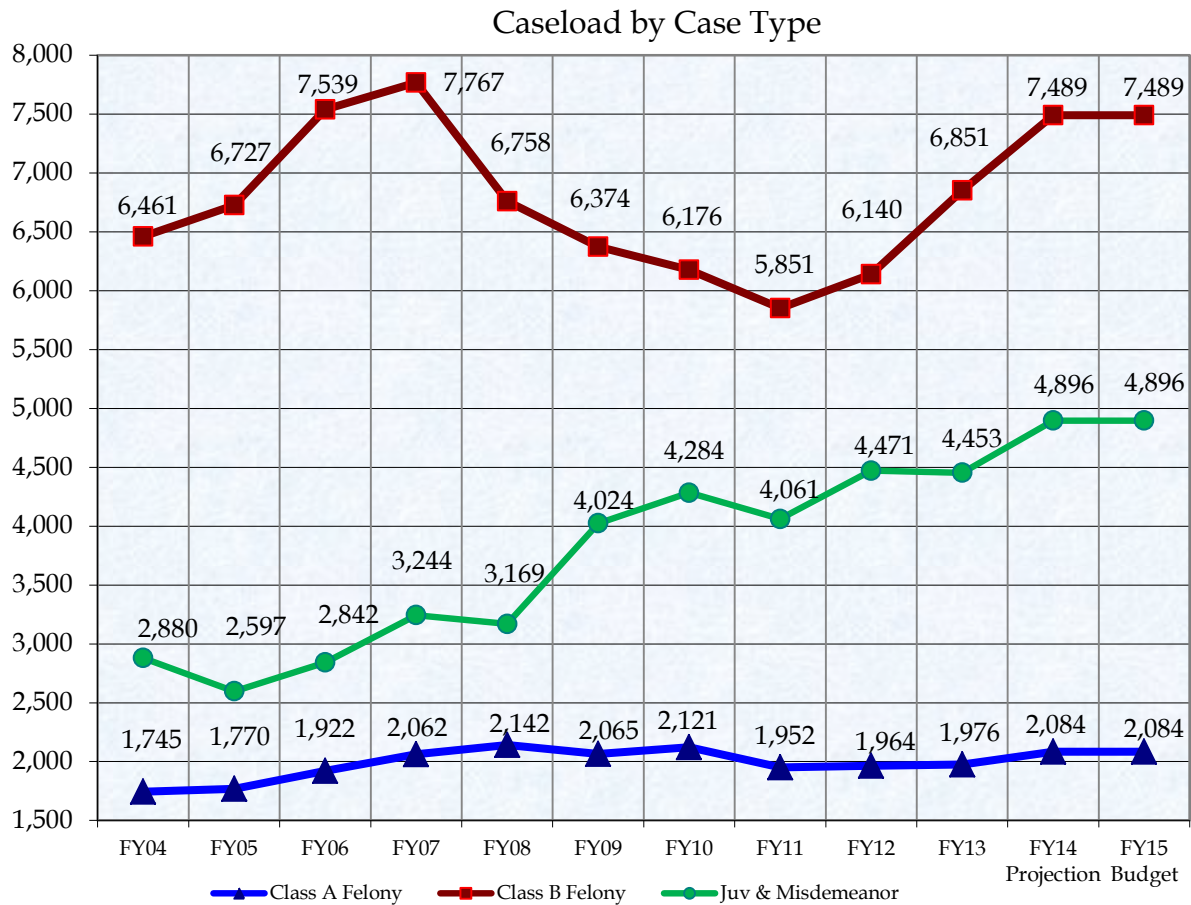
Evaluation and Auditing of Contractors: The OADC continues to audit individual contractors and analyze their billing procedures and patterns. The OADC has tailored trainings to address time management inefficiencies to reduce the number of hours per case.

Death Penalty: Capital cases are the most expensive case class. This includes attorney time, investigator time, paralegal time, and ancillary costs. As long as there is a death penalty in Colorado, and OADC has a case, it will be expensive. Currently OADC has one death penalty case pending on the trial court level. There are two death penalty cases proceeding under the Unitary Appeal Bill, and both defendants are represented by OADC contractors. All of these death penalty cases arise out of prosecutions from the 18th Judicial District.

Key Workload Indicators:

The following table includes trial, appellate, post-conviction and special proceedings grouped by felony class type.

	Actual FY08	Actual FY09	Actual FY10	Actual FY11	Actual FY12	Actual FY13	Budget FY14	Request FY15
Death Penalty								
Cases	13	11	13	14	10	10	10	10
Attorney Hours	12,922	19,731	23,290	26,266	26,047	26,567	28,007	28,007
Type A Felonies								
Cases	2,142	2,065	2,121	1,952	1,964	1,976	2,084	2,084
Attorney Hours	97,269	101,378	98,774	80,980	81,712	78,640	82,902	82,902
Type B Felonies								
Cases	6,758	6,374	6,176	5,851	6,140	6,851	7,489	7,489
Attorney Hours	93,907	87,124	91,916	77,339	81,257	84,891	89,493	89,493
Adult, Misd, Juv								
Cases	3,169	4,024	4,284	4,061	4,471	4,453	4,896	4,896
Attorney Hours	20,608	25,154	27,453	25,127	28,274	26,985	28,447	28,447
Total Cases	12,082	12,474	12,594	11,878	12,585	13,290	14,479	14,479



Performance Measure C.		FY11 Actual	FY12 Actual	FY13 Actual	FY14 Budget	FY15 Request
Sponsor X number of trainings annually for attorneys, investigators, paralegals, and court personnel.	Target	10	10	12	12	15
	Actual	12	12	12		

Strategy:

Based on the Performance audit of 2006 the agency recognized the need for additional evaluation, monitoring and training of contractors. Since then the agency has developed three basic components to its training program.

1. Assess and determine the types of training needed for OADC contractors and court personnel.
2. Organize and present continuing legal education training for OADC lawyers, investigators, and paralegals.
3. Facilitate access to trainings through in-person attendance, DVD reproduction, and webcasting.

Evaluation of Prior Year Performance:

The OADC met its training program target. The attendance at the trainings surpassed expectations and feedback was excellent. The agency was able to train on a variety of subjects that concern its contractors. For contractors who are unable to attend in-person, most trainings are webcast and accessible to anyone with a high speed internet connection and/or recorded and reproduced on DVD. As one contractor commented,

Webcasting CLE's is invaluable for me, a lawyer in Grand Junction. I have attended a half dozen CLE's via webcasts. It is likely I would have attended at best one or two of those CLE's if I had to travel to Denver, where CLE's typically are given.

During FY12, the OADC recognized a need to provide increased technology training for its contractors and provided hands-on training in technology tools such as Adobe Acrobat Professional for use with electronic discovery and transcript review. The demand and provision of this type of training continued in FY13.

Key Workload Indicators:

	Actual FY13	Budget FY14	Request FY15
Appellate Training	17 hours 102 Attendees		20 hours 120 Attendees
Research and Motions Practice			6 hours 40 Attendees
Ethics for Lawyers	7 hours 38 Attendees	5 hours 30 Attendees	7 hours 30 Attendees
Trial Practice Institute	35 hours 35 Attendees	35 hours 35 Attendees	35 hours 45 Attendees
Juvenile Training	8 hours 60 Attendees	15 hours 75 Attendees	7 hours 50 Attendees
Post-Conviction Training	5.5 hours 40 Attendees	7 hours 40 Attendees	
Social Work Training			12 hours 10 Attendees
Investigator Training	6.5 hours 56 Attendees	6 hours 45 Attendees	6 hours 35 Attendees
Sentencing	13 hours 59 Attendees	12 hours 50 Attendees	7 hours 50 Attendees
Adobe Prof. Training	24 hours 54 Attendees	12 hours 25 Attendees	8 hours 25 Attendees
Legal Technology			8 hours 30 Attendees
Paralegal Training		4 hours 25 Attendees	6 hours 25 Attendees
Communication for Trial Lawyers		6 hours 10 Attendees	
Criminal Law Update	15 hours 225 Attendees	15 hours 200 Attendees	15 hours 200 Attendees
Train the Trainers	15 hours 21 Attendees	15 hours 25 Attendees	
Organized Crime Act	5.5 hours 69 Attendees	5 hours 25 Attendees	
Evidence and Objections			6 35 Attendees
Plea Bargaining and Negotiation			6 hours 50 Attendees
Mental Health Pleas and Defenses			6 hours 40 Attendees

Performance Measure D.		FY11 Actual	FY12 Actual	FY13 Actual	FY14 Budget	FY15 Request
Provide Cost-Effective Research Tools and Resources to OADC Contractors	Target	Maintain and increase content in Brief and Motions Bank by 10%. Ongoing training on use of brief and motions bank.	Update and improve Brief and Motions Bank. 40% increase in monthly users.	Continue to populate and update Brief and Motions Bank, and populate 80% of the browse categories. Train contractors on use. 20% increase in monthly users.	Continue to populate and update Brief and Motions Bank and populate 100% of existing browse categories. Add categories as needed. Increase usage to 50% of OADC contractors.	Over 5,000 documents. Average users per month: 250
	Actual	Over 2,700 documents. Average users per month: 95	Over 3,000 documents. Average users per month: 161	Over 3,600 documents. Average users per month: 180		
Provide legal research assistance	Target	N/A	30 cases	60 cases	120 cases	200 cases
	Actual	N/A	47 cases	120 cases		
Provide summaries of new opinions.	Target	N/A	N/A	Quarterly summaries	12 monthly summaries	50 weekly summaries
	Actual	N/A	N/A	Monthly Summaries		

Strategy:

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 the Brief and Motions Bank;²
2. Providing legal research and motion drafting assistance to contractors;
3. Providing timely case law summaries of new criminal legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10th Circuit, and the United States Supreme Court;
4. Analyzing and introducing best practice applications to OADC contractors;
5. Creating comprehensive manuals on complex but frequently used subject matters such as character evidence, self-defense, sex offenders, juvenile, and conspiracy charges.

² The Brief and Motions Bank is an electronic data base containing high quality briefs and motions that have been indexed by topic. OADC contractors can use this resource as a starting point to efficiently address important legal issues in their cases.

Evaluation of Prior Year Performance:

In FY13, the Bank grew to over 3,500 documents, broken down into searchable categories. The agency has also recognized a need for legal research and drafting assistance. The agency receives numerous requests for this assistance every week. The following comment comes from a contractor who has over 20 years of criminal defense experience, “Thank you very much for your help, it saved me a day’s worth of research. Another contractor stated, “Thank you SO much! This information has been incredibly helpful.you are definitely earning your keep!”

Key Workload Indicators: As noted above.

Performance Measure E.		FY12 Actual	FY13 Approp	FY14 Budget	FY15 Request
Interview contract applicants; evaluate contractors prior to contract renewal date, and ongoing performance monitoring. Contract with investigators.	Target Attorney	100%	100%	100%	100%
	Actual	98%	99%		
	Target Investigator	100%	100%	100%	100%
	Actual	99%	99%		

Strategy:

Pursuant to the state performance audit of 2006, the OADC began a process to insure that all OADC lawyers and investigators are under a current contract. This process includes interviewing and evaluating all attorney contractors and contracting with investigators. To accomplish this, the agency has developed 7 basic components:

1. Maintain a tracking system for all attorney and investigator contractors that include contract renewal dates.
2. Contact and request renewal applications from attorney contractors, interview and evaluate contractors, and renew contracts if appropriate.
3. Receive feedback from judicial districts concerning OADC lawyers.
4. Verify attorney status with the Office of Attorney Regulation.
5. Monitor and evaluate lawyer court room practices.
6. Mandate training and testing for investigators prior to contract issuance.
7. Conduct audit and time-efficiency studies of select OADC contractors.
8. Require at least 5 hours of juvenile or defense specific CLE training per year.

Evaluation of Prior Year Performance:

As the numbers above indicate, the agency has essentially interviewed and approved or denied contracts with all contract attorneys and investigators. All attorneys and investigators are on a contract renewal cycle. The agency also has a procedure in place to process applications from new attorneys and investigators. In 2011, the Colorado legislature passed HB11-1195 (voluntary licensure of private investigators). In spite of this legislation there is no mandatory licensing for investigators, so OADC is continuing its training and screening/testing process prior to issuance of investigator contracts. Full implementation of the training and screening/testing process was initiated in FY12. OADC met its performance goal for investigator contracting in FY12-13.

Key Workload Indicators:

	Actual FY11	Actual FY12	Actual FY13	Budgeted FY14	Request FY15
Anticipated Attorney contracts (new/renewals)	174	121	130	157	99
Attorney Contracts Completed	160	90	135		
Attorney Contracts Incomplete	6	7	3		
Total Agency Attorney Contractors	417	383	397		
Anticipated Investigator contracts (new/renewals)	45	72	17	11	77
Investigator Contracts Completed	19	75	13		
Investigator Contracts Incomplete	16	1	1		
Total Agency Investigator Contractors	124	106	108		