

**ANNUAL HEARING**

Before  
The Joint Judiciary Committee  
Of The Colorado General Assembly



**APPEARING ON BEHALF OF THE AGENCY:**

**MEGAN A. RING**  
**COLORADO STATE PUBLIC DEFENDER**

**KAREN TAYLOR**  
***First Assistant Public Defender***

**MAUREEN CAIN**  
***Director of Legislative Policy and Organizational Communication***

**KAREN PORTER**  
***Chief Financial Officer***

**Thursday, November 29, 2018**

# Hearing Agenda

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**1:00 PM – 1:30 PM Office of the State Public Defender**

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## **Introductions**

### **Opening Comments**

- Introductory remarks
- Our role under the United States and Colorado Constitutions

### **Mission**

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

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

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

### **Vision**

The Office of the State Public Defender's vision is to develop, maintain and support our passionate and dedicated team so that they can provide the best possible quality of effective and efficient criminal defense representation for each and every one of our clients.

- Current fiscal year appropriation

To support the OSPD in the representation of their FY 2018-19 projected caseload, the OSPD was appropriated \$ 97,453,793 and 872 FTE. The FTEs consist of 526 attorneys, 174 investigators/paralegals (including 14 social workers), 131 administrative assistants and 41 centralized management and support positions.

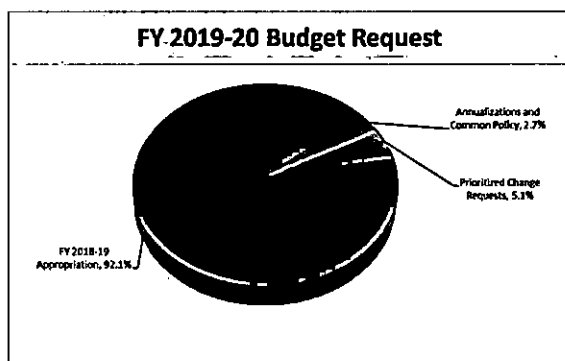
## **FY 2019-20 Budget Request**

The total FY 2019-20 budget request for the OSPD is \$ 105,770,201 and 875.6 FTE. This represents an increase of 8.5% when compared to the FY 2018-19 appropriation of \$ 97,453,793.

Our organization is a service-heavy organization, with 85% of our expenses going directly to personal services. Consistent with our service focus, each one of our SMART Act goals ties to providing quality

representation for our indigent clients. We are asking for four prioritized Change Requests totaling \$ 5,423,649 in our FY 2019-20 Budget Request. Our main requests are for attorney salary survey, courtroom staffing and IT security.

- **FY 2018-19 Appropriation of \$ 97,453,793**  
MINUS Annualizations of \$ 4,254  
PLUS Common Policy of \$ 2,897,013
- **FY 2019-20 Base Request of \$ 100,346,552**
- **FY 2019-20 Budget Request of \$ 105,770,201**



## **Budget Priorities**

The OSPD continually reviews, analyzes and prioritizes needs to efficiently use its limited resources in a manner that still accomplishes our mission. With this in mind, we are making four prioritized budget requests for FY 2019-20.

Our number one priority for our FY 2019-20 budget is to partially fund the most recent Compensation Study in order to provide more competitive attorney salaries for our attorneys. This request directly ties to our number one SMART Act goal of hiring and retaining a sufficient number of high quality staff. As an indication of our reduced competitive position over the past few years, we have experienced a dramatic increase to our attorney attrition. Our attrition rates had been closer to 11%, but during FY 2017-18, we experienced an attrition rate of 18%. During the first few months of this year, we have continued to see yet another increase to this trend. If this trend continues, we will lose more than one hundred attorneys this year, which equates to a 20 percent attrition rate. This attrition rate is contrary to the efficiency and effectiveness of our agency, as we will be required to expend more resources in the search for new attorneys and the training of those new attorneys.

Last year our number one prioritized request was for additional attorney FTE which would increase our staffing level back up to 85%. Although this request was approved, the continuing increase in felony filings has caused our projection to fall below the staffing level goal. Over the past five years, our office has experienced over a 40% increase in felony cases, similar to that being reported by the Judicial Department. We recognize the need for additional attorney FTE, especially if this trend continues and to provide coverage if the Judicial Department is funded for additional judges. The most critical need to our agency at this time, however, is our ability to retain our attorneys and increasing pay is essential to help stabilize our staffing.

The findings of the 2018 salary study of public attorneys, conducted in coordination with the Department of Law, demonstrated that, overall, the Public Defender's average salaries have not kept up with the market and place the OSPD in a non-competitive position. The survey revealed, for example:

- that public defenders are paid on average 13.1 % below what the market currently pays public attorneys in corresponding positions;
- when compared to the 2015, this is 10% lower than the 3.2% below market amount reported at that time;
- ~~present Public Defender salaries align with the 2015 market average, meaning we are 3 years behind the market; salary range minimums overall are 11.1 % below market; and~~
- a critical deficit exists in the entry level Public Defender classification, with both the average salary and range minimum well below the market, at 20.9% and 16.7% respectively.

Our second and third budget priorities for FY 2019-20 both relate to courtroom staffing needs. In January 2018, the City and County of Denver added an additional courtroom to handle criminal cases in an effort to decrease a backlog of cases and address a 41% increase in felony filings. Denver agreed to provide the necessary funding for the OSPD to staff this new courtroom. The funding will end June 30, 2019, however, so we are requesting the resources to continue staffing the new courtroom.

House Bill 14-1050 was enacted in FY 2014-15 in response to the Judicial Department's request for two new Arapahoe district court judges along with the associated staff. At that time, the Judicial Department indicated that one of these new judges was to be assigned a docket of half civil and half criminal cases. Our fiscal note was calculated and funded based on this docket assignment.

We have recently received notification from the Chief Judge of the 18th Judicial District that, effective January 7, 2019, this division will preside over a dedicated criminal docket. They have reported that based on their most recent weighted case load study, they are staffed at only 58% in their criminal divisions based on case filings. Consequently, we now need the additional FTE and funding in order for our regional trial office to fully staff this courtroom.

Our fourth budget priority ties directly to our second SMART Act goal and addresses funding requirements to improve the information technology (IT) security posture for the OSPD. Over the past few years, IT security has become a major challenge for all agencies and must be continually evaluated and adjusted to protect against the ever-changing landscape of increasing threats. The OSPD has an ethical obligation, which has been emphasized by recent formal opinions from the ABA, to protect the confidentiality of personal and case specific information for our clients. In order to meet this obligation, we take a multilayered approach to ensure we have the necessary staffing and solutions to execute our security strategy. The requested funding will allow the OSPD to add another crucial layer of prevention and detection to the critical security function that protects our systems and information and ensure that we are able to monitor the systems we have in place and respond to any potential threats in a timely and effective manner.

## Legislation

- Competency

We continue to litigate issues relating to competency, including competency determinations, clients waiting in jail for competency-related services, as well as findings of permanent incompetency. These pieces of recent legislation were intended to provide services but services remain limited, delivery is sporadic and this remains a major constitutional issue.

✓ HB 18-1050; Competency to proceed for juveniles involved in the juvenile justice system. *Established a juvenile-specific definition of 'competent to proceed' and 'incompetent to proceed' for juveniles involved in the juvenile justice system, as well as specific definitions for 'developmental disability', 'mental capacity', and 'mental disability' when used in this context. The bill clarified the procedures for establishing incompetency, as well as for establishing the restoration of competency.*

- ✓ SB 18-249; Redirection Criminal Justice Behavioral Health. *The bill created up to 4 pilot programs in judicial districts in the state that divert individuals with low-level criminal behavior and a mental health condition to community resources and treatment rather than continued criminal justice involvement (program).*
- ✓ SB 18-250; Jail-based Behavioral Health Services. *The bill continued to allow the correctional treatment cash fund to be used to provide treatment for persons with mental and behavioral health disorders who are being served through the jail-based behavioral health services program (program). The purpose of the program is to provide adequate staff to complete competency and behavioral health screenings, prescribe psychiatric medications as necessary, and provide mental health counseling, substance use disorder treatment, and transitional care coordination; train jail staff on behavioral health disorders and best practices in working with individuals with mental health, substance use, and co-occurring disorders; and fund administrative costs to jails participating in the program. Jails with minimal behavioral health services, including rural and frontier jails, were to be prioritized.*
- ✓ SB 18-251; Statewide Behavioral Health Court Liaison Program. *The bill established in the office of the state court administrator (office) a statewide behavioral health court liaison program (program) to identify and dedicate local behavioral health professionals as court liaisons (court liaisons) in each state judicial district to facilitate communication and collaboration among judicial, health care, and behavioral health systems.*
- ✓ SB 17-12; Competency Restoration Services and Education, Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. *The bill addressed various issues relating to the restoration of competency for juveniles and adults in the juvenile and criminal justice systems.*

- Bail

On May 11, 2013, Governor Hickenlooper signed into law H.B. 13-1236, a bipartisan bill that altered the way judges are to administer bail in Colorado. It was the first major overhaul of the pretrial bail statute since 1972. Despite the legislative changes, research conducted by the Department of Public Safety in 2017 and 2018 indicates that little has changed and there continues to be an over-reliance on money bail in many jurisdictions in Colorado. This issue continues to be examined by the Pretrial Release Task Force of the Colorado Commission on Criminal and Juvenile Justice and the Colorado Supreme Court's Bail Blue Ribbon Commission. The OSPD continues to litigate issues related to pretrial release of indigent clients.

- New judges

As noted previously, the Judicial Department's FY 2019-20 budget request seeks funding for fifteen new judges. If funded, the creation of these additional courtrooms will directly impact the courtroom staffing needs we have already identified.

## **SMART ACT - Goals, Strategies and Performance Measures**

In order to achieve our mission of providing high-quality, effective criminal defense representation for each of our clients, the OSPD ensured that our goals, strategies and measures addressed our people, our process and our product. To this end, we have developed three overarching goals, five strategies and nineteen measures, all focused on improving service to our clients.

Although we have multiple connections among our goals, strategies and measures, they all tie directly to

our vision and our mission. Furthermore, as part of our organizational infrastructure planning, these components are continually reviewed and further refined.

**Goals:**

1. Hire and retain a sufficient number of high quality staff to effectively manage the assigned caseload.
2. Provide both a high quality and quantity of staff development, training, new technology and other resources to adapt our response to the ever-changing criminal justice system so that our legal services are commensurate with those available for non-indigent clients.
3. Provide effective legal representation in both the trial court and appellate courts.

**Strategies:**

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

**Measures:**

*Input*

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

*Output*

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

**Performance Measures**

		FY 16-17	FY 17-18	FY 18-19	FY 19-20	FY 20-21
		(actual)	(actual)	(projected)	(projected)	(projected)
<b>MEASURE 1:</b>	<b>Target</b>	<b>137,652</b>	<b>141,907</b>	<b>148,664</b>	<b>153,994</b>	<b>159,552</b>
Number of new trial court cases.	Actual	137,777	143,552			
<b>MEASURE 2:</b>	<b>Target</b>	<b>173,612</b>	<b>181,112</b>	<b>189,075</b>	<b>195,295</b>	<b>202,978</b>
Number of active trial court cases.	Actual	175,873	183,078			
<b>MEASURE 3:</b>	<b>Target</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Percent of trial court attorney staff allocated vs. total required for closed trial court cases.	Actual	83%	80%			
<b>MEASURE 4:</b>	<b>Target</b>	<b>500</b>	<b>475</b>	<b>485</b>	<b>485</b>	<b>485</b>
Number of attorney applications received.	Actual	483	521			
<b>MEASURE 5:</b>	<b>Target</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Percent of total attorney staff allocated vs. total required for closed trial court cases and appellate cases.	Actual	83%	81%			
<b>MEASURE 6:</b>	<b>Target</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>
Annual rates of attrition:						
Attorneys	Actual	14%	18%			
Investigators	Actual	12%	8%			
Administrative Assistants	Actual	17%	24%			
Total All Employees	Actual	13%	16%			
<b>MEASURE 7:</b>	<b>Target</b>	<b>70%</b>	<b>70%</b>	<b>70%</b>	<b>70%</b>	<b>70%</b>
Percent of experienced, fully capable staff (journey level or higher):						
Attorneys	Actual	46%	43%			
Investigators	Actual	55%	49%			
Administrative Assistants	Actual	48%	43%			
Total All Employees	Actual	49%	46%			
<b>MEASURE 8:</b>	<b>Target</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Percent compliance with minimum standards for total staffing requirements.	Actual	82%	81%			
<b>MEASURE 9:</b>	<b>Target</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>	<b>12%</b>
Maintain established standard percentages for reasonable staff supervision, management and development.	Actual	8%	11%			

		FY 16-17 (actual)	FY 17-18 (actual)	FY 18-19 (projected)	FY 19-20 (projected)	FY 20-21 (projected)
<b>MEASURE 10:</b>	<b>Target</b>	558	535	528	534	539
Number of new appellate cases.	<b>Actual</b>	525	523			
<b>MEASURE 11:</b>	<b>Target</b>	2,229	2,001	1,887	1,870	1,827
Number of active appellate cases.	<b>Actual</b>	2,196	1,989			
<b>MEASURE 12:</b>	<b>Target</b>	100%	100%	100%	100%	100%
Percent of appellate attorney staff allocated vs. total required for appellate cases awaiting filing of initial brief.	<b>Actual</b>	83%	85%			
<b>MEASURE 13:</b>	<b>Target</b>	134,266	140,395	145,909	150,461	155,183
Number of trial court cases closed.	<b>Actual</b>	136,321	141,511			
<b>MEASURE 14:</b>	<b>Target</b>	130	130	133	133	133
Days of training provided.	<b>Actual</b>	179	135			
<b>MEASURE 15:</b>	<b>Target</b>	15	15	15	15	15
Number of CLE credits provided to all attorneys.	<b>Actual</b>	15	15			
<b>MEASURE 16:</b>	<b>Target</b>	3	3	3	3	3
Hours of ethics training provided, focusing on Colorado criminal law.	<b>Actual</b>	3	4			
<b>MEASURE 17:</b>	<b>Target</b>	15	15	15	15	15
Number of administrative processes and organizational infrastructure evaluations performed.	<b>Actual</b>	14	15			
<b>MEASURE 18:</b>	<b>Target</b>	486	468	451	451	451
Number of appellate cases for which an Opening Brief has been filed.	<b>Actual</b>	459	421			
<b>MEASURE 19:</b>	<b>Target</b>	563	531	486	438	393
Number of backlogged appellate cases.	<b>Actual</b>	587	539			