



Office of the
**Alternate
Defense
Counsel**

JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2019-2020

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PERFORMANCE PLAN

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Table of Contents

I.	Agency Overview	
	Background	2
	Statutory Mandate/Directive	2
	Mission	2
	Vision	2
II.	Major Functions of the Department	
	Statewide Representation	3
	Effective Court Appointed Counsel	3
	Controlling Case Costs	3
III.	Performance Measures & Goals	
	Ensure Adequate Contractor Rates	4
	Contain Case Costs	4
	Provide High-Quality Annual Trainings	5
	Provide 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 Training	10
	Conducting Periodic Evaluations	10
	Improved and Cost-Effective Research Tools	10
	Institute Paperless and Administrative Efficiency	10
	Ancillary Services to reduce Attorney Hours	10
	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

The mission of the Office of the Alternate Defense Counsel is to provide indigent 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 ensuring 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, evaluation, and the effective use of modern technology and evidence-based best practices.

II. Major Functions of the Agency

Statewide Representation

The OADC contracts with approximately 460 private lawyers across Colorado to represent indigent defendants and juveniles where the OSPD has an ethical conflict of interest. Each of these lawyers is an independent contractor. Investigators, paralegals, social workers, experts, and other ancillary services are available to these lawyers through the OADC. The Agency is committed to ensuring that the representation is of the highest quality possible. Today, in every courtroom in Colorado, there are OADC contract lawyers available to accept court appointments in both juvenile delinquency and adult criminal cases.

Effective Court Appointed Counsel

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 webcast to allow contractors all over the state to attend. All contractors have access to a number of legal and technical resources including the Legal, Social Science 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 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, and ineffective assistance of counsel claims. The OADC also co-authored the 3rd edition of the Juvenile Defense Manual, which was released in April 2018.

Pursuant to SB 18-203, the OADC is beginning the process of coordinating the evaluation of 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 will be accomplished through interviews with relevant municipal court staff and court-appointed counsel, court observations, and a review of appropriate documents. When complete, the evaluation will be provided to the municipality. Further, court-appointed counsel in municipal courts will be afforded the opportunity to attend trainings and have access to legal resources like OADC attorneys.

Controlling Case Costs

The OADC has several key functions in controlling case costs including average hour 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.

1. **Average hours per case:** Historical analysis, combined with current trends, allow the agency to monitor for isolated anomalies that affect costs and provide appropriate forecasts for the upcoming budget request cycle.
2. **Cost effective research tools:** Another tool the OADC uses in controlling case costs is the Legal, Social Sciences and Juvenile eLibrary. This Web-based repository streamlines case related research, thereby lowering case costs.
3. **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 expanding its social worker program.

III. Performance Measures & Goals

Performance Measure A: Ensure Adequate Contractor Rates

For the FY18–19 Budget Request the OADC submitted a Decision Item requesting an increase to contractor hourly rates by 6.7%. The Joint Budget Committee approved that Decision Item and the OADC was appropriated an additional \$2,306,291 to accommodate the rate increase.

		FY09-14 Actual	FY15-18 Actual	FY19 Actual	FY20 Request	FY21 Anticipated	FY22 Anticipated
OADC average hourly Attorney Rates	Target	\$75	\$75	\$80	\$80	undetermined	undetermined
	Actual	\$65	\$75	\$80			

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.

		FY16 Actual	FY17 Actual	FY18 Actual	FY19 Budget	FY20 Request	FY21 Anticipated	FY22 Anticipated
Average Cost per Case	Target	n/a	\$1,581	\$1,523	\$1,523	\$1,456	\$1,456	\$1,456
	Actual	\$1,581	\$1,523	\$1,456				
Keep ancillary costs per case to a minimum	Target	\$135	\$120	\$107	\$107	\$91	\$91	\$91
	Actual	\$120	\$107	\$91				

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. Organize and present trainings for the OADC lawyers, investigators, paralegals, and social workers.
3. Facilitate access to trainings through in-person attendance, Home Study, and webcasting.

	FY18 Actual	FY19 Actual	FY20 Request	FY21 Anticipated	FY22 Anticipated
Total Number of Trainings	16	31	16	31	31
Total Number of Hours	332	244	158	244	244
Total Number of Attendees	1,384	1,351	903	1,351	1,351

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 timely case law summaries (both written and podcast) 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. Analyzing and introducing best practice applications to OADC contractors.
5. 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, and ineffective assistance of counsel claims. Co-authoring the 3rd edition of the Juvenile Defense Manual, which was released in April 2018.

		FY18 Actual	FY19 Actual	FY20 Request	FY21 Anticipated	FY22 Anticipated
On-Line Research Tools and Resources to the OADC Contractors (including Juvenile, Social Sciences and Mental Health specific materials)	Target documents	6,000	7,000	7,500	7,541	7,541
	Actual documents	7,297	7,541			
	Target users/month	1,200	1,700	2,000	4,952	4,952
	Actual users/month	3,108	4,952			

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.
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.
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).

Requires at least 5 hours of juvenile or defense specific CLE training per year.

		FY18 Actual	FY19 Actual	FY20 Request	FY21 Anticipated	FY22 Anticipated
Evaluate Renewing Attorney Applicants	Target	100%	100%	100%	100%	100%
	Actual	100%	100%			
Evaluate Renewing Investigator Applicants	Target	100%	100%	100%	100%	100%
	Actual	100%	100%			
Courtroom Observations	Target	75	75	75	75	75
	Actual	77	100			
Mock Oral Arguments	Target	12	12	12	9	9
	Actual	5	9			
Oral Arguments	Target	16	16	16	10	10
	Actual	11	10			
Review Pleadings	Target	100	150	150	180	180
	Actual	150	180			

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.
2. A separate social science component to the Agency's eLibrary.
3. Social Worker related trainings.

		FY18 Actual	FY19 Actual	FY20 Request	FY21 Anticipated	FY22 Anticipated
Number of Cases with Social Workers	Target	200 cases	300 cases	350 cases	496 cases	550 cases
	Actual	320 cases	496* cases			
Number of Social Worker Contractors	Target	15 contractors	21 contractors	24 contractors	32 contractors	35 contractors
	Actual	22 contractors	32 contractors			
Number of Social Worker Interns	Target	3 interns	4 interns	5 interns	5 interns	5 interns
	Actual	3 interns	3 interns			

*Cases paid on as of June 30, 2019

Performance Measure G: Strengthen the OADC’s Juvenile Division

In FY17, the OADC created a specialized Juvenile Division of attorneys with the skills, knowledge and experience necessary to competently represent juvenile clients in delinquency and adult court. The OADC is applying lessons learned through this process to improve the quality and efficiency of OADC juvenile defense. The OADC is bringing juvenile specific training to areas outside of the Denver Metropolitan area, where there are fewer available and qualified juvenile attorneys. It is difficult for attorneys in these areas to travel to the metro area for training, and while some seminars can be viewed on DVD or through webinars, it is important to conduct some training in-person. Further, the OADC is assisting contract attorneys in incorporating other professionals into their defense teams. This includes specialists in education advocacy, appeals, mental health and competency, and the defense of sex offense cases, as well as non-legal professionals such as social workers, mitigation specialists, investigators, paralegals and researchers. In addition, the Juvenile Coordinator regularly observes Juvenile Division contractors and conducts contract renewal interviews to ensure continued high-quality juvenile defense.

		FY18 Actual	FY19 Actual	FY20 Request	FY21 Anticipated	FY22 Anticipated
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	Target	25	25	25	26	26
	Actual	7*	26			
Incorporate a social worker into juvenile defense teams where appropriate.	Target	50 cases	50 cases	60 cases	112 cases	112 cases
	Actual	61 cases	112** cases			
Provide specialized education law assistance to juvenile defense teams where appropriate.	Target	20	20	25	40	40
	Actual	31	40**			

*The OADC conducts contract renewal screenings at the end of each calendar year. In 2016, the OADC created a Juvenile Division, and screened all attorneys who applied to represent juveniles in the summer of that year. Therefore, no juvenile attorneys were screened at the end of that calendar year. In addition, because most contractors were given two or three year contracts beginning on January 1, 2017, there were fewer renewal screenings at the end of 2017 than 2018.

**Cases paid on as of June 30, 2019

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 will evaluate the selection process of court-appointed counsel in municipalities and the independence and competence of those attorneys. Evaluations will begin January 1, 2020. Evaluation reports will be provided to each municipality via their governing board/council and Municipal Court. To accomplish this, the Agency will:

1. Evaluate the general selection of court-appointed counsel by a municipality.
2. Evaluate municipal court-appointed counsel to determine whether services are being provided free from political and judicial influence and meet minimum constitutional obligations.

		FY18 Actual	FY19 Actual	FY20 Anticipated	FY21 Anticipated	FY22 Anticipated
Municipalities Requesting OADC Evaluate the Provision of Defense Counsel to Indigent Defendants	Target	na	50	50	50	50
	Actual	na	37			
Municipalities visited that requested OADC services	Target	na	100%	100%	100%	100%
	Actual	na	97%			

IV. Strategies

Increase Compensation Rates

As mentioned in the Performance Measures and Goals section of this plan, the OADC submitted a Decision Item regarding an increase to its contractor hourly rates by 6.7% for the FY18-19 budget request. The Joint Budget Committee approved that Decision Item and the OADC was appropriated an additional \$2,306,291 to accommodate the rate increase.

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.

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 library has expanded to include a separate juvenile and social sciences section and will eventually include a separate mental health section.

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.

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 contractor 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 interest and willingness to pay for an application that would allow greater functionality of contractor billing while using mobile devices.

The OADC Staff Evaluations

The Agency has continued its employee self-evaluations. This annual evaluation includes such topics as; Job Knowledge, Work Quality, Attendance/Punctuality, Initiative, Communication/Listening Skills, and Dependability. Each staff member completed a self-evaluation, and met with their supervisor to discuss the results, concerns, and overall performance of each employee. The Agency also underwent a StrengthsFinder staff evaluation process to improve team dynamics and performance.

Evaluation of Prior Year Performance

Performance Measure A: Ensure Adequate Contractor Rates:

In its FY19 budget request, the Agency requested and received a 6.7% rate increase for its contractors. However, this still falls significantly below the federal government's court-appointed attorney¹ hourly rate of \$148/hour for non-capital cases, and for capital crime (death penalty) cases, an hourly rate of \$190/ hour.

Performance Measure B: Contain Case Costs:

The Agency continues to contain (and reduce) its attorney hours per case and keep ancillary costs per case to a minimum. (See chart on page 4 of 12)

Performance Measure C: Provide High-Quality Annual Trainings:

As can be seen by the chart below, the agency provided 31 trainings, consisting of 244 hours, and reaching 1,351 attendees, an increase from the projected 956.

	FY19 Projected	FY19 Actual
Total Number of Trainings	15	31
Total Number of Hours	192	244
Total Number of Attendees	956	1,351

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.

	FY19 Projected	FY19 Actual
Total Number of Documents	7,000	7,541
Users per month	1,700	4,952

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 court room observations by 25 as seen below.

	FY19 Projected	FY19 Actual
Evaluate Renewing Attorney Applicants	100%	100%
Evaluate Renewing Investigator Applicants	100%	100%
Courtroom Observations	75	100
Mock Oral Arguments	12	9
Oral Arguments	16	10
Review Pleadings	150	180

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

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

The Agency’s Social Worker program has continued to expand. 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 FTE, which is slated to start July 1, 2019. As the chart below indicates, it is anticipated that this program will continue to expand.

	FY19 Projected	FY19 Actual
Number of Cases with Social Workers	300	496*
Number of Social Worker Contractors	21	32
Number of Social Worker Interns	4	3

*Cases paid on as of June 30, 2019

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

The OADC successfully implemented its new Juvenile Division and anticipates that the efficacy of this program will increase as it moves forward.

	FY19 Projected	FY19 Actual
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	25	26
Incorporate a social worker into juvenile defense teams where appropriate.	50	112*
Provide specialized education law assistance to juvenile defense teams where appropriate.	20	40*

*Cases paid on as of June 30, 2019

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

Pursuant to SB 18-203, enacted in FY18, the OADC hired a Municipal Court Coordinator to run the Municipal Court Program, a program that will evaluate the independence and competence of court-appointed counsel in municipal court. In FY19, the Coordinator connected with all 37 municipalities that requested OADC services, as well as observed court proceedings in all but 1 jurisdiction. The first draft of the Municipal Court Program was created and distributed to 36 municipalities (one municipality rescinded its request for OADC services).

	FY19 Projected	FY19 Actual
Municipalities Requesting OADC Evaluate the Provision of Defense Counsel to Indigent Defendants	50	37
Municipalities visited that requested OADC services	100%	97%