



JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2020-2021

July 01, 2020

PERFORMANCE PLAN

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I. Agency Overview

Background

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

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

Statutory Mandate/Directive

The Office of the Alternate Defense Counsel is mandated by statute to “provide to indigent persons accused of crimes, *legal services that are commensurate with those available to non-indigents*, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association Standards relating to the administration of criminal justice, the defense function.” [C.R.S. § 21-2-101\(1\)](#) (emphasis added).

Mission

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 webcasted 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 Sciences and Juvenile eLibrary; legal research and motion drafting assistance; weekly case law summaries (both written and podcast versions) of new relevant legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10th Circuit of the United States Court of Appeals, and the United States Supreme Court. The OADC has created comprehensive manuals on complex but frequently used subject matter such COCCA (Colorado Organized Crime Control Act), self-defense, character evidence, restitution claims, CRE 404(b) evidence, researching legislative history, sex offenders, out-of-state subpoenas, habitual criminal sentencing, proportionality review materials and post-conviction and ineffective assistance of counsel claims. The OADC also co-authored the 4th edition of the Juvenile Defense Manual, which was released in April 2020.

Pursuant to SB 18-203, the OADC has begun evaluating municipal court-appointed counsel through the Municipal Court Program. In a similar approach to the process already in place by the OADC to contract with effective counsel, this program will ensure that indigent defendants in municipal courts are represented free from any political considerations or private interest and that such representation is effective, high quality, ethical, conflict-free and constitutionally sound. The evaluation process includes interviews with relevant municipal court staff and court-appointed counsel, court observations, and a review of relevant documents. When complete, the evaluation will be provided to the municipality. Court-appointed counsel in municipal courts will also be afforded the opportunity to attend trainings and have access to the same legal resources as OADC contract 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 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. In 2020, the OADC added enhanced Boolean search commands, culled outdated materials, and added updated and new materials.
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 continually expanding its social worker program.

III. Performance Measures & Goals

Performance Measure A: Ensure Adequate Contractor Rates

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

		FY09-14 Actual	FY15-18 Actual	FY19 Actual	FY20 Actual	FY21 Request	FY22 Anticipated	FY23 Anticipated
OADC average hourly Attorney Rates	Target	\$75	\$75	\$80	\$80	\$85	undetermined	undetermined
	Actual	\$65	\$75	\$80	\$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.

		FY17 Actual	FY18 Actual	FY19 Actual	FY20 Budget	FY21 Request	FY22 Anticipated	FY23 Anticipated
Average Cost per Case	Target	\$1,581	\$1,523	\$1,523	\$1,456	\$1,456	\$1,474	\$1,474
	Actual	\$1,523	\$1,456	\$1,474				
Keep ancillary costs per case to a minimum.	Target	\$120	\$107	\$107	\$91	\$91	\$67	\$67
	Actual	\$107	\$91	\$67				

Performance Measure C: Provide High-Quality Annual Trainings

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

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

	FY18 Actual	FY19 Actual	FY20 Actual	FY21 Request	FY22 Anticipated	FY23 Anticipated
Total Trainings	16	31	51	31	51	51
Total Hours	332	244	267	244	267	267
Total Attendees	1,384	1,351	2,650	1,351	2,650	2,650

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

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

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

		FY18 Actual	FY19 Actual	FY20 Actual	FY21 Anticipated	FY22 Anticipated	FY23 Anticipated
On-Line Research Tools and Resources to the OADC Contractors*	Target docs	6,000	7,000	7,500	7,541	7,854	7,854
	Actual docs	7,297	7,541	7,854			
	Target hits	1,200	1,700	2,000	4,952	5,928	5,928
	Actual hits	3,108	4,952	5,928			

* Including Juvenile, and Mental Health specific materials

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

		FY18 Actual	FY19 Actual	FY20 Actual	FY21 Request	FY22 Anticipated	FY23 Anticipated
Evaluate Potential and Renewing Attorney Applicants	Target	100%	100%	100%	100%	100%	100%
	Actual	100%	100%	100%			
Evaluate Potential and Renewing Investigator Applicants	Target	100%	100%	100%	100%	100%	100%
	Actual	100%	100%	100%			
Court Room Observations	Target	75	75	75	75	75	75
	Actual	77	96	39*			
Mock Oral Arguments	Target	12	12	12	12	12	12
	Actual	5	9	6			
Oral Arguments	Target	16	16	16	16	16	16
	Actual	11	10	6			
Review Pleadings	Target	100	150	150	150	150	150
	Actual	150	180	158			

* The OADC usually does a significant number of observations between March 1st and-June 30th, but due to COVID-19, these hearings and observations did not occur this year.

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. Access to EBSCO Research Database
3. Social Worker related trainings.
4. Incorporate Social Work into OADC’s main website.

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

		FY18 Actual	FY19 Actual	FY20 Actual	FY21 Request	FY22 Anticipated	FY23 Anticipated
Number of Cases with Social Workers	Target	200 cases	300 cases	350 cases	496 cases	624 cases	624 cases
	Actual	320 cases	496 cases	624* cases			
Number of Social Worker Contractors	Target	15 contractors	21 contractors	24 contractors	32 contractors	44 contractors	44 contractors
	Actual	22 contractors	32 contractors	44 contractors			
Number of Social Worker Interns	Target	3 interns	4 interns	5 interns	5 interns	6 interns	6 interns
	Actual	3 interns	3 interns	5 interns			

*Cases paid on as of June 30, 2020

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 continues to apply lessons learned through this process to improve the quality and efficiency of OADC juvenile defense. The OADC provides juvenile specific training, both on its own and through collaboration with other agencies and organizations. The agency’s annual spring conference was held this year, despite COVID-related challenges, using a remote platform. The OADC also assists 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-attorney professionals such as social workers, forensic clinical advocates, mitigation specialists, investigators, paralegals, and legal researchers. The Juvenile Defense Coordinator regularly observes Juvenile Division contractors and conducts initial contract interviews as well as contract renewal interviews. In addition, the Coordinator represents the interests of OADC juvenile defense teams and clients by participating in various policy initiatives and stakeholder meetings.

		FY18 Actual	FY19 Actual	FY20 Actual	FY21 Request	FY22 Anticipated	FY23 Anticipated
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	Target	25	25	25	26	100%	100%
	Actual	7*	26	18			
Incorporate a social worker into juvenile defense teams where appropriate.	Target	50 cases	50 cases	60 cases	112 cases	114 cases	114 cases
	Actual	61 cases	112 cases	114 cases			
Provide specialized education law assistance to juvenile defense teams where appropriate.	Target	20	20	25	40	42	42
	Actual	31	40	42			

*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. Now that the Juvenile Division has gone through its first three-year renewal cycle the goal moving forward is to evaluate 100% of the attorney contractors up for renewal each year.

Performance Measure H: Implement and Manage the Municipal Court Program

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

1. Evaluate the 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 standards.

		FY18 Actual	FY19 Actual	FY20 Actual	FY21 Request	FY22 Anticipated	FY23 Anticipated
Municipalities Requesting OADC Attorney Evaluations	Target	na	50	50	50	56	56
	Actual	na	37	56			
Evaluation of Municipalities requesting services	Target	na	na	100	16***	21	26
	Actual	na	na	56			
Evaluation of Court- Appointed Attorneys	Target	na	na	112	75	75	75
	Actual	na	na	81*			
Municipalities visited that requested OADC services	Target	na	100%	100%	100%	100%	100%
	Actual	na	97%	13% **			

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

***This number is low due to COVID-19 closures of municipal courts.*

****The number of municipalities requesting services decreased from 56 to 53. The 3 courts not renewing their participation have not used court-appointed counsel in several years*

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 5% for the FY20-21 budget request. The Joint Budget Committee originally approved the request but later withdrew their decision due to statewide budgetary cuts due to the COVID-19 pandemic. The OADC will continue to measure and compare statewide and national legal fees with its contractor rates and request additional funding when possible.

Provide Ongoing Trainings

The Performance Measures and Goals section provides a list of the OADC's commitment to trainings in the upcoming 3 fiscal years. The types of trainings provided are based on an assessment of the needs of the OADC contractors. Despite COVID-19, the OADC successfully exceeded its training goals by moving to an on-line platform for its trainings since mid-March.

Conducting Periodic Evaluations

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

Improved and Cost-Effective Research Tools

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

Paperless and Administrative Efficiencies

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

Ancillary Services to Reduce Attorney Hours

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

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

Fraud, Waste, & Abuse Prevention

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

V. Performance Evaluation

Contractor Survey and Evaluations

This year the Agency conducted surveys regarding the Municipal Court Program Counsel List, Trial Advocacy Trainings, and FSW/FCA impact on cases.

The OADC Staff Evaluations

The Agency conducted its employee self-evaluations in April 2020. 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.

Evaluation of Prior Year Performance

Performance Measure A: Ensure Adequate Contractor Rates:

In FY20 the OADC did not request a rate increase for its contractors.

Performance Measure B: Contain Case Costs:

The Agency continues to contain its average cost per case and keep ancillary costs per case to a minimum. (See chart on page 5 of 15)

Performance Measure C: Provide High-Quality Annual Trainings:

As can be seen by the chart below, the agency provided 51 trainings, consisting of 267 hours, and reaching 2,650 attendees, an increase from the projected 903.

	FY20 Projected	FY20 Actual
Total Trainings	16	51
Total Hours	158	267
Total Attendees	903	2,650

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.

	FY20 Projected	FY20 Actual
Total Number of Documents	7,500	7,854
Users per month	2,000	5,928

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 pleadings reviewed by 8 as seen below.

	FY20 Projected	FY20 Actual
Evaluate Renewing Attorney Applicants	100%	100%
Evaluate Renewing Investigator Applicants	100%	100%
Courtroom Observations	75	39*
Mock Oral Arguments	12	6
Oral Arguments	16	6
Review Pleadings	150	158

*The OADC usually does a significant number of observations between March 1st and June 30th, but due to COVID-19, these hearings and observations did not occur this year..

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 for FY19-20, and that position was filled on July 1, 2019. This program continues to expand as seen in the chart below.

	FY20 Projected	FY20 Actual
Number of Cases with Social Workers	350	624
Number of Social Worker Contractors	24	44
Number of Social Worker Interns	5	5

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

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

	FY20 Projected	FY20 Actual
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	25	18
Incorporate a social worker into juvenile defense teams where appropriate.	60	115
Provide specialized education law assistance to juvenile defense teams where appropriate.	25	42

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 evaluates the independence and competence of court-appointed counsel in municipal courts across the state. In FY19, the Coordinator connected with the 56 municipalities that requested OADC services and observed court proceedings in over 30 of those municipalities. Over the course of 2020, the Coordinator has been conducting evaluations these municipal courts and will provide reports to each of them by the end of 2020. COVID-19 has impacted the ability to conduct court observations, however, with the implementation of virtual court hearings and municipal courts starting to open back up over the summer, the Coordinator is slowly resuming these observations. 53 Municipal Courts have requested services for 2021. Requests for 2022 evaluation services are due September 1, 2020.

	FY20 Projected	FY20 Actual
Municipalities Requesting OADC Attorney Evaluations	50	56
Municipalities visited that requested OADC services	100%	13%*

*The number of municipalities requesting services decreased from 56 to 53. The 3 courts not renewing their participation have not used court-appointed counsel in several years