



JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2023-2024

July 01, 2023

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 individuals who are indigent 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 individuals who are indigent in criminal and juvenile delinquency cases in which the Office of the State Public Defender (OSPD) has an ethical conflict of interest. OADC also provides legal representation in some municipalities and evaluates some municipal courts to ensure their court appointed lawyers are both independent and competent.

Statutory Mandate/Directive

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

Mission Statement

The mission of the Office of the Alternate Defense Counsel (OADC), through the practice of holistic public defense, is to help adults and children who the government has charged with criminal and delinquent offenses. The OADC's holistic practice model fosters ethical, informed, and standard-driven best practices in public defense. The OADC allocates resources in a manner intentionally designed to rebalance the disparate power wielded by the government in the criminal legal system. We advocate for every client's inherent worth and dignity by centering the client's experiences and voice to achieve the best legal outcome.

The OADC is dedicated to zealous, client-centered advocacy rooted in social justice, integrity, and humility. We recognize that we are working within a broken and racist criminal legal system. Public defense advocates play an essential role in challenging bias and disparity within the courtroom, within our offices, and within ourselves. There is a disparate presence of violent policing, over-charging, and harsher sentencing outcomes for Colorado's people of color and other vulnerable populations. The OADC is unwavering in its support of decarceration, the decriminalization of youth, and equity within the criminal legal system.

II. Major Functions of the Agency

Statewide Representation

The OADC contracts with over 900 private lawyers and other professionals across Colorado to represent adults and youth who are indigent where the OSPD has an ethical conflict of interest. The OADC contracts with investigators, paralegals, forensic social workers, forensic clinical advocates, legal researchers, case assistants and resource advocates to work alongside attorneys to form interdisciplinary defense teams. Experts and other ancillary services are also available to defense teams through the OADC. The Agency is committed to ensuring that contractors have the tools to practice holistic representation of the highest quality. Today, in every courtroom in Colorado, there are OADC contract lawyers available to be appointed and create interdisciplinary teams to represent clients in both delinquency and criminal cases.

Effective Court Appointed Counsel Teams

The OADC contracts with various defense team members to provide excellent and effective representation to clients. Our interdisciplinary defense team members include attorneys, investigators, forensic social workers, forensic clinical advocates, paralegals, legal researchers, case assistants, and resource advocates. Before granting a contract to a defense team member, the OADC reviews a thorough application package and conducts an interview with potential candidates. Once given a contract, the OADC has a variety of practices in place to ensure our contractors are fit to keep their contract and continue doing our work. Some contractors operate under a Memorandum of Agreement and the OADC confirms annually that they are actively engaged in our work. Other contractors (attorneys, investigators, forensic social workers, forensic clinical advocates, and resource advocates) are placed on a contract renewal cycle. During this renewal process, contractors are required to complete a detailed renewal application and an interview about their practice. In evaluating our contractors in this renewal process, OADC staff consider court observations of contractors, feedback from judicial officers and staff, compliance with continuing professional development requirements, written work product, client-centeredness, and overall level of practice.

The OADC also provides a variety of robust training for all interdisciplinary defense team members. In 2023, we have returned to some in-person training and continue to offer many trainings virtually. In-person training is almost always webcast to ensure accessibility to those who are outside the metro area or who cannot commute to in-person training. Additionally, the OADC has an online training portal that all contractors can access. Here, contractors can watch a plethora of “on-demand” trainings and receive home study continuing legal education credits.

All our contractors also have access to a multitude of legal and case-related resources including our Legal and Social Sciences eLibrary, our motions bank, legal research and writing assistance, brainstorming roundtables, weekly case law summaries (both written and podcast versions), an expert database, immigration specialists, and educational advocates. As an Agency, we have also developed comprehensive manuals on complex but common subject matter such as COCCA (Colorado Organized Crime Control Act), self-defense, character evidence, restitution claims, sexual offenses, habitual criminal sentencing, proportionality review, and ineffective assistance of

counsel claims. The OADC also co-sponsors the Colorado Juvenile Defense Manual which is updated biannually.

Pursuant to SB18-203, the OADC evaluates municipal courts and court-appointed counsel in certain municipalities through the Municipal Court Program and provides court-appointed counsel services in four municipalities.

The Municipal Court Program ensures that indigent defendants in municipal courts are represented free from any political considerations or private interest and that such representation is effective, high quality, ethical, conflict-free, and constitutionally sound. The evaluation process includes interviews with relevant municipal judicial officers, court staff, and court-appointed counsel, court observations of attorneys, and a review of relevant documents. When complete, the evaluation is provided to the municipality. Court-appointed counsel who are evaluated through the Municipal Court Program are also afforded the opportunity to attend trainings and have access to many of the same resources as OADC contract attorneys.

- Beginning January 1, 2021, the OADC initiated contracting directly with municipalities to provide court-appointed counsel services pursuant to C.R.S. 21-2-103(1)(c). In Aurora and Denver, OADC provides contract attorneys for the cases where the municipal public defender's office has a conflict. In Westminster and Northglenn, OADC provides contract attorneys to handle all the indigent criminal defense appointments.

Controlling Case Costs

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

- **Average cost per case: Historical** analysis, combined with current trends, allows the agency to monitor for isolated anomalies that affect costs and provide forecasts for the upcoming budget request cycle.
- **Cost effective research tools:** Another tool the OADC uses in controlling case costs is the eLibrary. This web-based repository streamlines case related research, thereby lowering case costs. In 2020, the OADC added enhanced Boolean search commands, culled outdated materials, and added updated and new materials.
- **Team Resources:** The Agency continues to explore innovative ways to improve representation and outcomes while controlling costs by using a variety of team members. Representation that incorporates expertise from several disciplines means that clients benefit from multiple areas of knowledge while making it unnecessary to pay attorney rates for all activities required to adequately represent someone. Examples of other team members' expertise and specialized training include, but are not limited to:
 - assisting with eDiscovery,
 - organizing cases,
 - researching, drafting, and filing motions in certain case types and jurisdictions, and

- incorporating several areas of expertise, such as its in-house appellate and post-conviction case management process.

Furthermore, the agency continues to grow its forensic social work program which expands the valuable use of social workers, clinical advocates, and resource advocates, each of whom bring their own expertise to support and improve client outcomes. Social workers and clinical advocates are essential to identifying mental health and substance use disorders that may be germane to the defense of the underlying charge and the client. They can also provide context and recommendations to the court to consider at sentencing. Resource advocates are specifically skilled in identifying, locating, and navigating the resources our clients need.

III. Performance Measures, Goals & Evaluation of Prior Year Performance

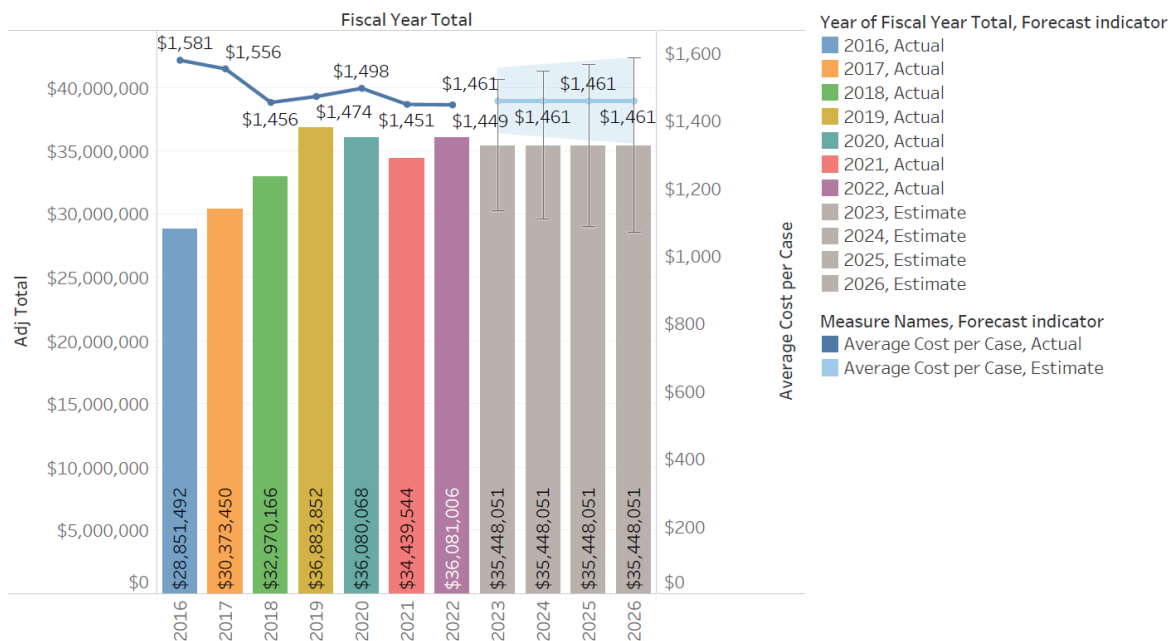
Performance Measure A: Contain Case Costs

The OADC analyzes its total annual expenditures and average cost per case monthly and strives to find innovative and effective strategies to contain those costs. The below chart shows those amounts from FY16 to FY23 (as of June 30th, 2023) and its estimated numbers for FY24-26. The OADC is dedicated to the practice of holistic defense, which is driven by multi-disciplinary legal teams, not just individual lawyers. The OADC works diligently to encourage contractors to build holistic and diverse legal teams that incorporate social workers, investigators, paralegals, case assistants, and more. This practice not only provides stronger legal advocacy for OADC clients, but also reduces costs, since lawyers receive the highest hourly rate.

Due to the many factors that can affect both the Average Case Cost and Total Year-end Expenditures, it remains a struggle for the OADC to estimate these numbers accurately and consistently for future fiscal years. Some of the factors that contribute to this struggle include Hourly Contractor Rate Adjustments (which occurred in FY19, FY23, and are occurring again in FY24), and year-end caseload and expenditure fluctuations. The Agency’s current estimate for future average cost per case ranges from \$1,300 to \$1,600. As fiscal year expenditures move further beyond the pandemic’s affected years of 2020-2021 the Agency anticipates its range of estimated average cost per case will narrow.

In evaluating the prior year’s performance, the FY23 Performance Plan estimated that an average cost per case for FY22 would be \$1,509. The actual average cost for FY22 was lower than estimated at \$1,461, a difference of approximately \$48 per case. The Agency continues to work towards containing its average cost per case and keeping ancillary costs per case to a minimum.

Expenditures and Average Case Costs - Forecast



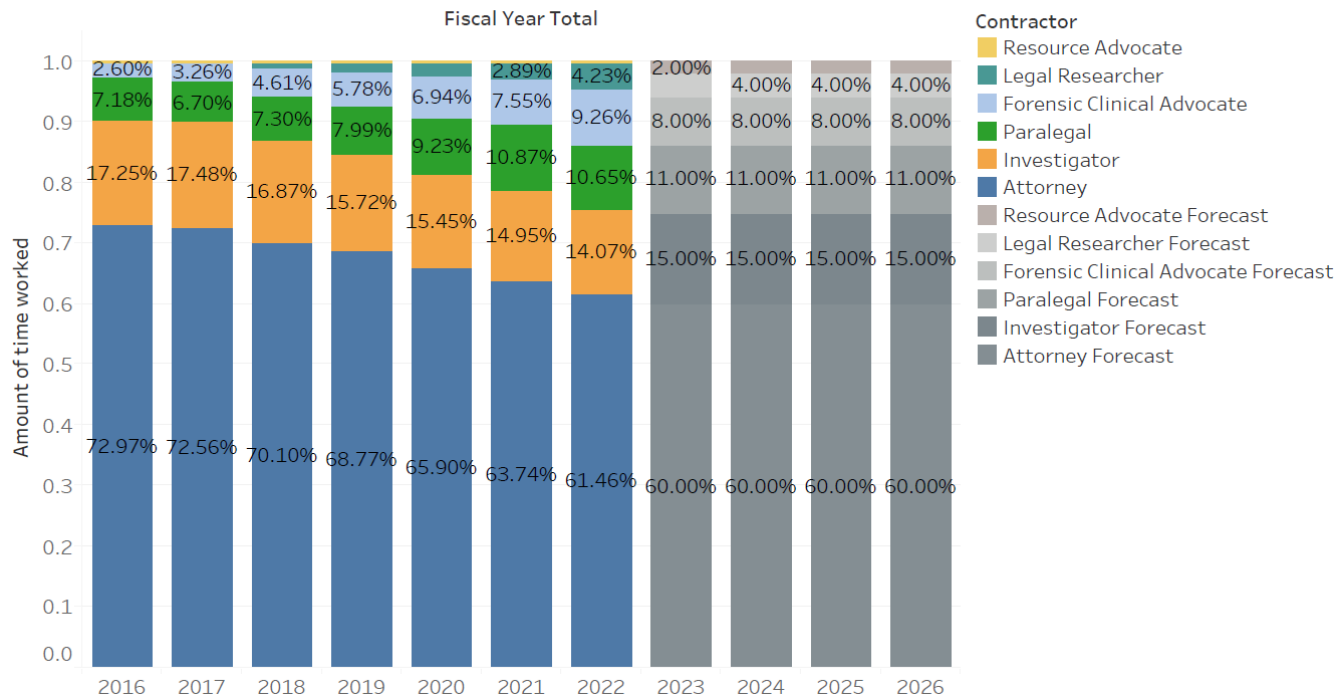
Performance Measure B: Providing Multidisciplinary Legal Teams for OADC clients

The OADC is dedicated to the practice of holistic defense, and empowering contractors to build and maintain strong and supportive teams to best serve their clients.

The chart below shows the overall percentage of hours spent on an average OADC case by varying team members. For example, the proportion of attorney time dropped 11.04% from 72.5% in FY16 to 61.46% in FY22 and a reciprocating percentage increase in other contractor time. The OADC hopes to see these holistic teams continue to grow in the upcoming years.

In evaluating the prior year’s performance, the Agency experienced adjustments across the board in its proportional percentages as estimated in the FY23 Performance Plan. The OADC estimated the FY22 proportion of Attorney time would drop to 63.3%, the actual percentage ended up being 61.46%. Another example was the FY22 proportion of Forensic Clinical Advocate time which was estimated to be 7.8% but ended up increasing to 9.26%. The Agency continues to succeed in providing multidisciplinary legal teams for OADC clients.

Contractor Hours Percent of Total



IV. Strategies

Continuing to grow and support Holistic Defense Representation for OADC Clients

Holistic defense requires defense teams to expand their focus beyond the discrete legal matter at hand, to address factors that impact recidivism and criminal system involvement, such as lack of housing, unemployment, and more. Access to stable housing or treatment opportunities can be the difference between a client remaining in jail or detention and pre-trial release or a potential community-based sentence instead of jail, prison, or commitment. To further advance the OADC's focus on holistic public defense and support the Agency's mission, the OADC is working to make multidisciplinary teams the norm to address "enmeshed" consequences to incarceration and conviction or adjudication, such as loss of housing, inability to find employment, and loss of benefits.

In moving towards a holistic defense team model of practice, the OADC requested and received 1.0 FTE (Full Time Employee) for a Holistic Defense Coordinator (HDC) to begin working on both inward and outward facing aspects of the agency's overall move to a more holistic approach to criminal defense. The HDC will begin the process of identifying ways in which the agency can engage communities across Colorado, from the network of state and local agencies that serve our clients, to distinct neighborhoods where our clients live. The HDC will broaden the range of training around interdisciplinary teamwork to incorporate considerations around collateral and enmeshed consequences of criminal legal system involvement. They will also look to bridge partnerships with non-profit and grant-funded entities that can support clients beyond the discreet legal matter in an effort to reduce recidivism.

The OADC also requested and received two Social Work Fellowship positions (Inclusivity and Greater Colorado Fellowships) as part of a pathway to practice for BIPOC (Black, Indigenous and People of Color) and rural professionals. These fellowships are designed to support social work professionals to grow and establish themselves in this work with the added stability and resources of a traditional employee model before moving on to become independent contractors. Investing in social workers through these fellowships will increase the likelihood of success and longevity of professionals in the communities where they practice when they become independent contractors.

The OADC continues to invest in the growth and training for the Forensic Social Work/Forensic Clinical Advocate and Resource Advocate program. The availability of Forensic Social Workers, Forensic Clinical Advocates, and Resource Advocates will increase the number of clients that are helped and continue to move teams towards a more holistic approach to defending clients. We believe this will allow the OADC to help even more clients in a more cost-effective way.

Improved and Cost-Effective Research Tools

The OADC continues to provide resources and technology to its contractors. A highly utilized resource developed by the Agency is a centralized, online legal research and information platform called the eLibrary that continues to expand and assists many of the Agency's contractors. This asset is imperative to the Agency because it reduces average case costs by streamlining research time for contractors while simultaneously improving the effectiveness of representation. This

eLibrary has expanded to include a separate youth justice and social sciences section. In 2020, the OADC added enhanced Boolean search commands, culled outdated materials, and added updated and new materials. The OADC also provides free Westlaw and EBSCO (legal and social science research databases) to its contractors.

Ancillary Services to Reduce Attorney Hours

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

1. Continuing the in-house appellate case management system that streamlines OADC appellate cases from inception through transmittal of the record on appeal.
2. Continuing the in-house post-conviction case management system that includes assembling the case file and preparing a triage memo prior to assigning the case to an attorney contractor.
3. Attorney access to electronic court records pursuant to HB 08-1264
4. Expanding and promoting the eLibrary
5. Providing interdisciplinary defense teams with Legal Researchers who can conduct legal research, draft, and file motions at lower than attorney rates, and save the attorney time.
6. The use of interdisciplinary team members with lower hourly rates to perform a variety of case related tasks based on their expertise and experience.

Case Assistants, Legal researchers and Paralegals are qualified and experienced to perform essential, but often time-consuming case related functions, including but not limited to:

- o organizing, reviewing, and summarizing voluminous media,
- o reviewing evidence with the client at the jail,
- o discovery management,
- o evidentiary preparation for trial,
- o or a variety of other cost saving tasks.

These skilled and experienced professionals have the necessary training to complete these tasks effectively and efficiently, and thus can support an interdisciplinary defense team and saves money, so the attorney does not need to practice outside their scope and role on the team.

7. Evaluating contractor efficiency and auditing billing.
8. Closely monitoring requests for expert assistance.
9. Identifying and promoting technologies that increase contractor efficiency.

Fraud, Waste, & Abuse Prevention

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

V. Performance Evaluation

Contractor Survey and Evaluations

This year the Agency conducted two contractor surveys about hourly rates earned when doing criminal defense work outside of OADC. The information and data from these surveys were instrumental in helping the Agency explain why a rate increase for our contractors was not only necessary, but critical from a pay parity perspective.

The OADC In-house Team Member Evaluations

The Agency conducted staff evaluations in June 2023. The Agency continued its evaluation approach by conducting self and supervisor/manager evaluations, in which 15 FTE team members rated job quality and performance questions. Each team member met with their supervisor to discuss the results, concerns, and overall performance of each employee.