

ANNUAL HEARING  
Before  
The Joint Judiciary Committee  
Of The Colorado General Assembly



APPEARING ON BEHALF OF THE AGENCY:

**DOUGLAS K. WILSON**  
*COLORADO STATE PUBLIC DEFENDER*

**DOUGLAS D. TRACEY**  
*Chief Administrative & Operations Officer*

**Friday, January 18, 2013**

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# HEARING AGENDA

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## **INTRODUCTIONS AND OPENING COMMENTS**

*Introductory remarks about the creation of the Office of the State Public Defender in 1970; our role under the United States and Colorado Constitutions; and our overall mission and goals, including a summary of our programmatic and budget goals for the current Fiscal Year and Fiscal Year 2013-14.*

- **Discussion of the most significant programmatic and budget priorities for the upcoming year, including:**
  - **Attorney Pay**
  
- **Discussion of other long-term programmatic and budget issues of The OSPD, including:**
  - **Appellate Caseload Issues**
  - **Operating Expense Deficits**
  
- **Discussion of proposals for legislation that may affect The OSPD's program operations and resource requirements, including the following:**
  - **Judicial Department Request for District Judges**
  - **Rothgery-related Reform**
  - **Discovery Reform**
  - **Juvenile Life Without Parole**
  - **Bail Bond Reform**
  - **Other significant criminal statute reforms, if any**

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**PRIORITIES  
FOR THE CURRENT AND NEXT  
FISCAL YEARS**

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## **The OSPD's Number One Priority:**

### **ATTORNEY PAY PARITY**

#### ***REQUEST SUMMARY***

The OSPD has requested \$5,777,183 in addition to the government-wide Common Policy Total Compensation Request of the Executive Branch in order to fully fund attorney salaries at the FY 2011-12 market rate for PUBLIC attorney pay in Colorado.

In its FY 2012-13 budget request, The OSPD requested \$907,715 annually for three years to fill the gap in FY 2009-10 base attorney pay. This request was not approved, and as a result, the gap in OSPD attorney pay has grown from a budding 3.2 percent in FY 2004-05 to a daunting 17.9 percent in FY 2011-12 — the base attorney pay gap has increased by 14.7 percent of market pay over 7 years.

In its FY 2013-14 budget submission, The OSPD has requested full funding in one year to completely achieve attorney pay parity competitive with pay practices of Colorado's public sector attorney employment market. The continual growth in The OSPD base attorney pay gap and the significant level that it has now reached both support the need for such immediate resolution. An incremental approach to solving this problem over a number of years will only further increase the existing base pay gap as the economy continues to improve and as the market continues to make increasing levels of annual pay adjustments above The OSPD's requested levels. A history of OSPD pay increases received and the growing deficit in attorney pay is included at the end of this section.

The OSPD attorney wage gap as it exists through FY 2011-12 will be eliminated should the full amount requested be funded in FY 2013-14. Additionally, the Governor's FY 2013-14 common policy COLA increase will partially offset any further movement in market pay practices that will occur during FY 2012-13 and FY 2013-14. It is likely that additional pay adjustment in the public attorney employment market will occur this year (FY 2012-13) and in FY 2013-14, which is not included in the FLA study data. Such additional pay movement for the two years will likely exceed the Governor's 1.5 percent common policy request for a FY 2013-14 cost of living adjustment for all state employees. Since the FLA study of public attorney compensation provides data as of FY 2011-12 pay, this budget request will not fully cover the total additional movement that will occur during the current and next fiscal years. However, projections by FLA of market adjustments expected this year are competitively aligned with the Governor's request level for next year. Therefore, at most, it is expected that OSPD attorney pay will lag behind the market by one year as a result of funding this request.

## **PUBLIC ATTORNEY COMPENSATION STUDY**

In coordination with the Department of Law (The DOL), the OSPD contracted with an independent compensation research and consulting firm, Fox Lawson & Associates (FLA), to conduct a FY 2011-12 public attorney salary study. The study surveyed attorney salary ranges and actual salaries paid at 23 Colorado public sector attorney organizations at the state, city and county, and federal government levels.

The OSPD and The DOL cooperated on the same study in 2010 with the same consultant. At that time, the FLA survey results concluded that The OSPD's overall attorney salaries were 9.5 percent below the average salaries of the Colorado public attorney employment market. In 2012, the FLA survey results concluded that The OSPD's attorney compensation gap with the overall market has expanded to 17.9 percent below average market paid salaries as of FY 2011-12.

The summarized results of the study, including The OSPD's overall average actual base salaries and salary range minimums, midpoints and maximums in relation to the overall public attorney employment market in Colorado are shown in **Table 1** below. The percentage differences represent all attorney benchmarks combined, in terms of The OSPD. A positive figure means that The OSPD is above the market by that amount; and a negative figure means that The OSPD is below the market by that amount.

**Table 1 - The Office's Attorney Salary Variances from the FLA's Market Analysis**

<b>Salary Comparison</b>	<b>Overall Market Average</b>
<b>Actual Salaries</b>	-17.9%*
<b>Salary Range Minimums</b>	-19.0%
<b>Salary Range Midpoints</b>	-22.5%
<b>Salary Range Maximums</b>	-25.2%

On the following page, **Table 2** shows a comparison of The Office's actual salaries for each benchmark attorney position as compared to the same positions in the overall Colorado public attorney employment market. The pay disparity by benchmark varies from 7.8 percent below market for public defender staff attorneys at the non-supervisory, intermediate-level to as much as 30.7 percent for Managing Attorneys, the equivalent position of elected district attorneys.

**Table 2 - Attorney Salary Variances by Career Level**

<b>Bench No.</b>	<b>Benchmark Title</b>	<b>Public Defender Avg. Actual</b>	<b>Overall Market Avg. Actual</b>	<b>% Diff.</b>
1	Deputy PD Managing Attorney/Office Head	\$108,561	\$141,911	-30.7%
2	Deputy PD Supervising Attorney	\$97,266	\$120,413	-23.8%
3	Deputy PD Senior Attorney	\$92,265	\$100,974	-9.4%
4	Deputy PD Intermediate Staff Attorney	\$69,082	\$74,476	-7.8%
5	Deputy PD Entry-level Staff Attorney	\$54,442	\$59,473	-9.2%
	<b>Average</b>			<b>-17.9%</b>

**IMPACT OF PAY DISPARITY**

The outcome of this salary gap is showing itself already in several ways, but generally speaking, it is reflected in challenging retention and expertise trends occurring among The Office’s attorneys. Continued attrition of experienced, fully qualified and independently capable attorneys is having a detrimental impact on the overall level of skill and experience maintained by The Office’s attorneys. This diminishes the overall competence of the agency to deliver its mission and has a direct impact on The Office’s ability to effectively represent Colorado’s poor in a court of law.

**A Critical Minority of Experienced Attorneys.** The Office has lost a significant level of experienced and fully capable attorneys who are crucial in efforts to carry the most severe cases, to mentor and train beginning attorneys, and to take on additional workload as new attorneys continue to develop to an independent level of expertise. The proportion of beginning-level attorneys (Entry-Level Position Class) has increased from 38 percent of all attorneys in FY 2004-05 to 56 percent in FY 2011-12, and the proportion of journey-level and career-level attorneys (Intermediate, Senior, Supervisory and Managing Position Classes combined) has declined from 62 percent to 44 percent during that same time period. The Office’s standards are approximately 30 percent for beginning level to 70 percent for experienced level attorneys. This loss of capable staff and dominance of a growing majority class of inexperienced staff directly diminishes the competence of The Office to effectively serve its clients.

On the following page, **Table 3** provides the percent of staff for each occupational group that has reached the journey level or higher, and therefore, are considered to be fully capable, independent experts. It is this group of staff that is tasked with handling the most difficult cases, as well as with mentoring, developing and supervising younger, inexperienced staff until they are fully capable. Since 2005, the percent of fully capable attorneys dropped from 62 percent to 44 percent, a reduction

in relative expertise of 28 percent of the experienced attorney population. This is a reflection of the increasing inability to maintain experienced staff and to assert that the adequate representation of our clients is being provided.

**Table 3 - Ratio of Entry Level, Journey Level and Career Staff 2005 to 2012**

<b>Employees by Occupation &amp; Experience Level by Fiscal Year</b>											
Occupation	Experience Level	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	Cum. %	
										Change	CRG
Legal Secretaries	BEG	58%	59%	40%	51%	57%	58%	71%	76%	31%	4%
	JRNY+CAREER	42%	41%	60%	49%	43%	42%	29%	24%	-43%	-8%
Inv/Para/SW	BEG	36%	34%	29%	44%	47%	52%	62%	67%	85%	9%
	JRNY+CAREER	64%	66%	71%	56%	53%	48%	38%	33%	-48%	-9%
Attorneys	BEG	38%	38%	46%	53%	55%	58%	56%	56%	46%	6%
	JRNY+CAREER	62%	62%	54%	47%	45%	42%	44%	44%	-28%	-5%
Professional Services	BEG	0%	0%	0%	4%	4%	3%	10%	10%	968%	40%
	JRNY+CAREER	100%	100%	100%	96%	96%	97%	90%	90%	-10%	-1%
<b>% of all staff at Beg.</b>		<b>37.7%</b>	<b>37.9%</b>	<b>40.0%</b>	<b>48.1%</b>	<b>50.9%</b>	<b>54.1%</b>	<b>56.3%</b>	<b>57.6%</b>	<b>53%</b>	<b>6%</b>
<b>% of all staff at Jrny &amp; Above</b>		<b>62.3%</b>	<b>62.1%</b>	<b>60.0%</b>	<b>51.9%</b>	<b>49.1%</b>	<b>45.9%</b>	<b>43.7%</b>	<b>42.4%</b>	<b>-32%</b>	<b>-5%</b>

In total, The Office has lost about 20 percent of its experienced, capable staff in all job functions since 2005.

**Increasing Loss of Years of Experience Invested By the State.** Additionally, an increasing number of attorneys are leaving The OSPD each year with an increasing number of average years of experience (“AYOS”). With this trend comes a diminished capacity of The Office to serve its clients effectively AND a loss of a great resource investment made by the State to develop these experienced and capable attorneys.

**Table 4** below provides the number of attorneys leaving The OSPD each year; their combined total years of experience lost; and the increasing average years of experienced lost per attorney.

**Table 4 – Historical Attorney Departures with Total and Average Years of Attained Experience**

Fiscal Year	Number of Attorneys Departing	Total Years of Experience	AYOS
FY08-09	27	129	4.8
FY09-10	30	173	5.8
FY10-11	44	250	5.7
FY11-12	37	237	6.4
FY12-13*	26	172	6.6

\*Indicates the loss the Office has experienced in just the first four months of Fiscal Year 2012-2013

It is clear that this trend is increasing as employees seek other means to earn a living after an extended period of both career stagnation and pay freezes. This loss of experience is detrimental to the ability of The Office to effectively serve its clients. Furthermore, this represents the loss of an incredible investment of resources made by The State. This lost investment will need to be reinvested in again and again at great cost until that lost level of experience can be regained.

The cost to regain the several lost years of experience and expertise for the many employees departing in just one year is equivalent to the investment in salaries and other costs that will need to be reinvested in inexperienced replacements to develop them to the experience and expertise level of their predecessors over a number of years. It is estimated that it will cost near 21 million dollars to develop 37 inexperienced attorney replacements over an equal period of about 6+/- years through the investment of salaries, benefits, management, supervision, administration, training and mentoring. This cost is near four times higher than the current OSPD request for salary dollars (5.8 million dollars), just to replace ONE year's worth of experience lost during 2012.

Additionally:

- it will take an investment of 22.2 million dollars to regain the cumulative expertise lost with 44 attorneys that departed in 2011; plus
- 15.4 million dollars for the experience lost with the 30 attorneys that departed in 2010; plus
- 11.5 million to regain the experience lost with the 27 attorneys that departed in 2009; plus
- 15.2 million dollars to regain the experience lost to the 26 attorneys that have left the OSPD so far this Fiscal Year, since July 1.

In total, over the last 4.5 years, the State has lost a resource of 961 cumulative years of experience and expertise held by 164 attorneys who were developed by the State over a period of near 6 years each. The State had invested approximately 85.3 million dollars to develop the expertise held by those attorneys. That investment has been lost as a result of inadequate pay practices. That investment must now be reinvested over the next 6 years before its returns can be regained in the form of fully competent staff. The request by the OSPD is merely 5.8 million dollars, which is critical to the Office's ability to maintain its drastically diminished level of experience and expertise. These resources will also provide incentive for developing staff to remain with The OSPD to reach full competence level.

**HISTORY OF OSPD'S PRIOR PAY PARITY REQUESTS, SALARY INCREASES RECEIVED & ATTORNEY COMPENSATION STUDIES**

Due to state-wide pay freezes, OSPD staff has not received pay increases during the last four years. **Table 5** below shows the last three salary increases for all OSPD employees that were approved by the General Assembly:

**Table 5 – History of OSPD's General Assembly Funded Salary Increases**

<b>Fiscal Year</b>	<b>Anniversary</b>	<b>Salary Survey</b>
FY 2006-07	None	\$ 843,028
FY 2007-08	\$ 403,490	\$ 934,562
FY 2008-09	\$ 477,544	\$ 1,342,685

The above common policy increases did not include funds needed to address salary parity for attorney pay classifications.

Salary increases funded by the General Assembly for The OSPD have been limited to statewide increases that were based upon common policy levels for non-attorney classifications. These increases were derived from annual compensation studies performed by the Department of Personnel and Administration (DPA), which specifically excluded attorneys as a classification. As a result, attorney pay has not been adequately addressed to ensure that pay is aligned with the market, as has been achieved for all other specific professional and technical classes of state employees.

Since attorneys are not included as a classification in the State's annual compensation studies, The OSPD has periodically contracted with Fox Lawson & Associates (FLA), a nationally recognized, independent compensation research and consulting firm, to specifically study attorney pay practices in PUBLIC entities throughout Colorado.

The findings of the studies performed by FLA have demonstrated that the common policy increases provided to other classifications of state employees have not been adequate to ensure that attorney pay is aligned with that of other public attorneys in Colorado. Even as common policy increases have been provided to The OSPD for all staff, each study has shown that attorney pay has increasingly fallen behind the pay practices of other PUBLIC attorney entities throughout Colorado, including district attorney offices (DAs), the Office of the Attorney General (The AG), and city and county attorney offices.

In 2005, FLA study results indicated that OSPD attorney salaries were 3.2 percent below Colorado's public attorney employment market for FY 2004-05, including any common policy increases received through FY 2004-05.

In 2006, FLA performed a new study of Colorado public entity attorney pay, which indicated that OSPD attorney wages had further declined to 5 to 6 percent below that

of other public sector attorneys in Colorado for FY 2005-06, including any common policy salary increases received through FY 2005-06.

In November 2006, The OSPD requested \$761,242 within its FY 2006-07 budget submission to address the 2005-06 base pay-level gap. The Office received additional salary resources as part of statewide common policy to address 2006-07 planned market pay adjustments for all staff. However, the request to fill the existing, additional 2005-06 base attorney pay gap was not approved. As a result, attorney salaries maintained the same 5 to 6 percent base pay deficit in FY 2006-07, including the common policy increases received through FY 2006-07. Additionally, since the FY 2006-07 common policy increases were based upon specific increases planned for all other professional classifications, excluding attorney classifications, any gap between other professional class pay adjustment rates in the market and that of the specific attorney class pay adjustment rates in the market during FY 2006-07 was not met; and that gap in pay adjustments further compounded the previously existing 5 to 6 percent 2005-06 base attorney pay gap.

In 2010, FLA performed another study of public attorney pay practices in Colorado, which indicated that the deficit in OSPD attorney wages had grown to 9.5 percent below public attorney market pay for FY 2009-10, including all common policy salary increases through FY 2009-10.

In 2012, FLA performed its most recent study of public sector attorney salaries in Colorado, which indicated that the consistent underfunding of OSPD attorney pay has resulted in OSPD attorneys earning 17.9 percent less than that of other public attorneys in the state during FY 2011-12, including all common policy salary increases through FY 2011-12.

Both the 2010 and the 2012 FLA studies were done in conjunction with the Department of Law, using similar benchmarks, and surveying pay practices for Colorado's DAs, The AG, and city and county attorney offices throughout the state. Private sector attorney pay is NOT used in these pay analyses, their recommendations, or The OSPD resource requests. Recommendations of these studies also included adjustments to The OSPD's pay structure to account for economic differences and pay disparities across all 22 judicial districts, from the most urban to the most rural. Both the FY 2012-13 and the FY 2013-14 OSPD budget requests for attorney pay parity incorporated these economic adjustments.

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# **BUDGET REQUEST SUMMARY**

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## FY 2013-14 BUDGET REQUEST

The FY 2013-14 Budget Request for the Office of the State Public Defender is \$71,802,170 and 658.6 FTE. This represents a 13.4 percent reduction from the full budget requirement needed to meet MINIMUM staffing standards at pay practices that are comparable to that provided to government attorneys and support staff across the state. The components of the Budget Request are as follows as well as depicted in **Table 41** below:

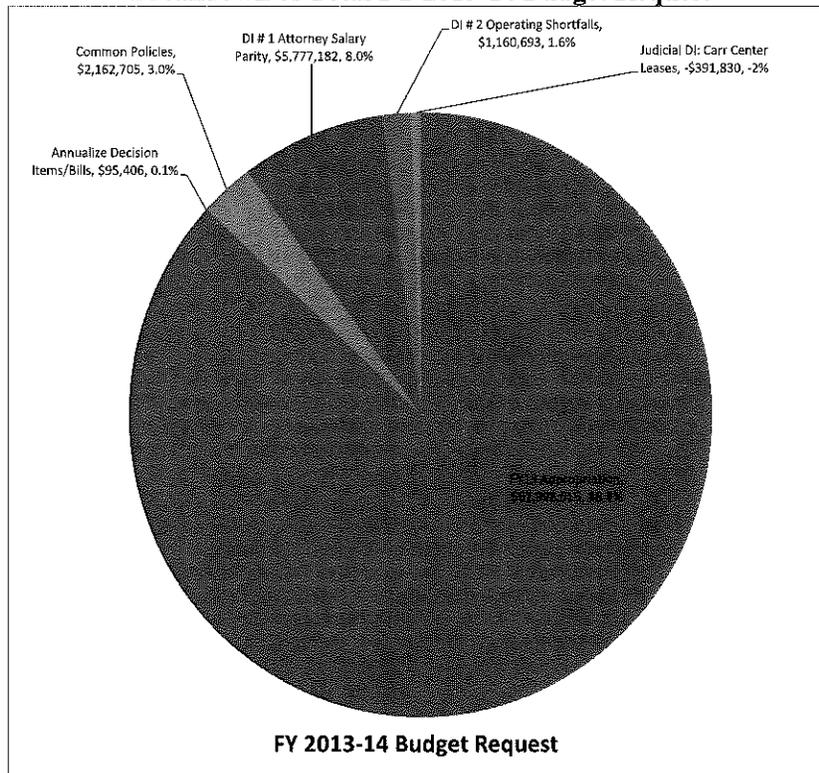
### Base Budget Requirements

- FY 2012-13 Appropriation of \$62,998,015 and 656.4 FTE
- \$95,406 (net) to annualized FY 2012-13 Decision Items
- \$2,162,705 in Executive Branch common policy adjustments, including short-term disability rate change; health, life & dental rates; AED & SAED rate changes; leased vehicle costs; and, 1.5% across-the-board salary survey increase & 1.6% across-the-board merit pay increase

### 2013-14 Change Requirements

- \$5,777,182 for Decision Item # 1: Attorney Pay Parity
- \$1,160,693 for Decision Item # 2: Operating Shortfalls
- A reduction of \$391,830 for the Judicial Branch's consolidation of leased space costs for the Carr Judicial Center

**Breakdown of Total FY 2013-14 Budget Request**



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