



Review of the Aurora, Colorado Municipal Public Defense System

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The Aurora Public Defender's Office

Prepared by

The National Legal Aid & Defender Association

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AURORA
PUBLIC
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Justice Fairness &
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Table of Contents

Executive Summary.....	5
Findings	6
Recommendations	8
Chapter 1: Background and Methodology.....	11
Background on the Project	11
Methodology.....	11
Report Roadmap.....	12
Chapter 2: Aurora’s Municipal Court Structure and Operation.....	13
Municipal Courts in Colorado	13
Aurora Municipal Court	13
Aurora Public Defender’s Office	14
Indigency Determination	14
Chapter 3: Aurora’s Indigent Defense System: Structure, Operation, and Compensation	16
National Public Defense System Delivery Models	16
Structure of Aurora’s Indigent Defense System	17
Aurora Public Defender’s Office	17
Aurora Public Defender Commission.....	18
Conflict of Interest Cases	21
Operation of the Aurora Public Defender’s Office	22
Training	22
Standard Operating Procedures	25
Case Management System.....	26
Budget, Staffing, and Caseload	27
Budget and Staffing.....	27
Caseload.....	27
Aurora Criminal Case Workload and Resource Information.....	31
Supporting Clients and the Community.....	40
Holistic Defense and Client-Centered Representation	40
Client Engagement	42
Community Support.....	43
Chapter 4: System-Wide Challenges.....	45
Restructuring the “Big Four”	45

Public Defender Independence	46
Paper-Only Filing: Issues with Workflow and Discovery.....	47
Diversity, Equity, and Inclusion.....	48
Late Case Dismissals.....	49
Alternative Sentencing.....	49
Enhanced Community Responsiveness Through Public Defender Collaboration	50
Interviewee Suggestions for Improvement	51
Chapter 5: Applying National Public Defense System Standards and Best Practices to Aurora.....	53
Adherence to ABA Ten Principles	53
Principle 1: Defender Independence	54
Principle 2: Mixed Practitioner Delivery System.....	55
Principle 3: Eligibility and Early Appointment of Counsel.....	55
Principle 4: Time and Space to Meet with Clients	55
Principle 5: Workloads	56
Principle 6: Ability and Training	57
Principle 7: Vertical Representation	58
Principle 8: Resource Parity and Equal Partnership.....	58
Principle 9: Continuing Legal Education.....	60
Principle 10: Supervision and Review of Defense Counsel	60
Looking Ahead to the Revised Ten Principles	60
Holistic Defense and Client-Centered Representation	60
Race Equity.....	61
Use of Data.....	62
Chapter 6: Findings and Recommendations	63
Findings	63
Recommendations	67
Appendix A: Spotlight on Aurora’s Municipal Wellness Court and Holistic Public Defense Services.....	72
Criteria for Eligibility	72
Program Mechanics	73
Public Defender’s Role and Program-Specific Operations.....	74
Public Defense Procedure at Wellness Court	74
APDO Staffing of Wellness Court	75
Data and Case Management System Limitations	75

Training	76
Appendix B: Aurora Public Defender’s Office Staff Organizational Chart	77
Appendix C: Aurora Chief Public Defender’s Accomplishments and Ongoing Projects (January 2020- August 2021)	78
Appendix D: Aurora Municipal Court Criminal Summons Form	80

Executive Summary

The City of Aurora, Colorado is home to one of the nation's few municipal court systems that ensures the right to counsel for low-income people through a municipal public defender agency. Established in 1989, the Aurora Public Defender's Office (APDO) provides counsel to people facing charges in the Aurora Municipal Court. The U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) funded the undertaking of an evaluation of the APDO through its Sixth Amendment Initiative. That initiative seeks to help jurisdictions uphold their obligations under the Sixth Amendment to the U.S. Constitution. The National Legal Aid & Defender Association (NLADA), a training and technical assistance (TTA) provider for BJA, conducted this evaluation in the first half of 2021. The report that follows details the assessment process, provides information gathered from various data sources and agencies, and issues findings and recommendations for strengthening municipal public defense and criminal justice in Aurora.

The City of Aurora has established a municipal public defender office that is structured to promote independence from interference by government oversight, which is essential for ensuring the effective assistance of counsel. A Public Defender Commission oversees the Office and is statutorily empowered to appoint and discharge the Chief Public Defender and ensure that clients are represented independently of any political interests. National standards and best practices identify independence as the core structural foundation needed for effective public defense systems. However, defense function independence can only be operational if other government entities embrace its importance. The City of Aurora is to be commended for recognizing this.

NLADA's review of the APDO was undertaken to evaluate its compliance with national indigent

defense standards (chiefly the American Bar Association's (ABA) Ten Principles of a Public Defense Delivery System) and to identify areas for strengthening the quality of representation for people experiencing poverty in Aurora. Overall, the evaluation finds the Office in compliance with some critically important national standards and making significant progress toward others.

This report measures compliance with the ABA Ten Principles, identifying strengths in the structure, operations, and leadership of the APDO. It also identifies areas needing improvement. Personnel needs, resources, technology, data, training, and stakeholder partnerships are addressed. Additionally, in alignment with national efforts to confront racial, ethnic, and gender disparities in the criminal legal system, the report identifies opportunities to enhance focus on ensuring fair and equitable treatment of all people experiencing criminal charges as well as all people working throughout the court system. Finally, certain recommendations address public defense issues that have far-reaching impacts across the Municipal Court system.

For example, the conditions that affect public defender clients – poverty and challenges that stem from mental illness, substance abuse, and housing instability – are factors that draw on the limited resources of public safety, healthcare, social services, and court agencies in Aurora. Holistic interventions embraced by the Municipal Court require stakeholders from various agencies to collaborate in order to deploy resources in ways that will best support success of individuals in need of services. The APDO is uniquely positioned to expand the Municipal Court's capacity for providing holistic services and thereby make better use of City agencies' limited resources.

NLADA's findings and recommendations for the APDO and for the broader court system in Aurora are set out briefly within this executive summary. The report's final chapter presents the findings and recommendations in fuller detail. It has been a privilege for NLADA to assess public defense in a municipal court jurisdiction. By embracing assessment and evaluation, the City of Aurora and the Aurora Public Defender's Office have taken effective steps toward strengthening public defense in Aurora that also offer invaluable insights for municipalities across the nation seeking to do the same.

Findings

1. Aurora, Colorado has a strong and effective municipal public defense delivery system and a municipal court that promotes the rule of law and protects individual due process rights.
2. The Aurora City Council's action in May 2021 to approve supplementary budget funds to bring APDO attorneys toward pay parity with city attorneys was a substantial, positive step toward improving Aurora's municipal public defense system and the City's criminal legal system more broadly.
3. Aurora's structuring of the municipal public defense function under the non-partisan and independent Public Defender Commission is an excellent method of promoting defender independence, in alignment with national standards and best practices. Some stakeholders in the Aurora municipal criminal legal system seem to misunderstand defender independence, its role, its operationalization, and its centrality to constitutional rights. Stakeholders across the system would benefit from education about the core role of defender independence in the functioning of the

criminal legal system and in fostering cross-sector collaboration.

4. Staffing for the Aurora Public Defender's Office assumes that attorneys will carry an open caseload of 125 active cases. This figure does not appear to be grounded in any empirical basis.
5. A sizable portion of cases that the Public Defender's Office works up for trial are dismissed on the day of trial (at the jury call), or the Wednesday of the week before trial (the jury status date), by the City Attorney's Office.
6. The Aurora Municipal Court operates with an antiquated, all-paper filing system that leads to inefficiencies for the Court, the City Attorney's Office, and the Public Defender's Office.
7. Case tracking data maintained by the Court Administrator's office, the City Attorney, and the Public Defender's Office lack uniformity, which complicates analysis of overall system workload and resource needs.
8. The APDO can expect that its recent implementation of the LegalServer case management system will allow it to leverage data to better assess quality of services and improve representation of its clients. It will also produce added certainty that APDO resource assessments are based in accurate workload assessments.
9. The APDO does not track several characteristics of the clients they serve, including clients' race, ethnicity, and immigration status, that are essential to understanding quantifiably how the Office's services advance racial and ethnic equity.
10. The City Attorney does not make mandatory discovery information available

to the Public Defender's Office in an electronic format, which contributes to significant administrative inefficiencies within the APDO.

11. The APDO's current staff capacity and practice model are not suitable for widespread or consistent provision of holistic defense services, a nationally recognized best practice in indigent defense.
12. The Aurora Wellness Court and the newly established Aurora Armed Forces Treatment Court are well-intentioned initiatives intended to address underlying needs that bring individuals into frequent entanglement in Aurora's criminal legal system. The Wellness Court is under-utilized, considering its longevity.
13. The Aurora Public Defender's Office lacks a formal training program for new attorneys and formal ongoing training for experienced attorneys.
14. The APDO does not have written standard operating procedures to guide attorneys and staff in various administrative office- and court-wide tasks and practices.
15. Aurora's informal, cross-stakeholder cohort known as the "Big Four" is not an effective mechanism for addressing wide-reaching municipal criminal legal system issues, problems, and opportunities. The Big Four's membership – the Presiding Judge, the Court Administrator, the Chief Public Defender, and the Deputy City Attorney for the Criminal Division – excludes some key stakeholders in the municipal criminal legal system, does not meet regularly, and has no dedicated staffing.
16. The country's renewed attention toward racial equity in criminal legal systems nationwide has revealed continuing, significant racial disparities in these systems. Particularly in light of Aurora's recent history and its diverse population, diversity, equity, and inclusion are necessary areas of focus for all professionals working in Aurora's municipal criminal legal system. This focus should apply to internal office operations, cross-sector interactions, and the pursuit of equitable treatment of people subject to criminal proceedings.
17. Clients whom the APDO cannot represent due to a conflict of interest are not served by a system that conforms to best practices to the same extent as are clients represented by APDO staff. The system of overseeing and paying private attorneys who take appointments to conflict of interest cases lacks independence and sufficient administrative controls.
18. The enthusiasm, expertise, and active involvement of the Aurora Public Defender Commission is a significant strength in ensuring that the citizens of Aurora have access to effective representation in the Municipal Court.
19. The Aurora Public Defender Commission faces two notable potential threats to its long-term effectiveness in overseeing the APDO and promoting the independence of the municipal indigent defense function: difficulty of recruiting new members; and the lack of a mechanism to support the Commission's institutional memory and sustain the levels of engagement and enthusiasm embodied by current Commissioners.
20. At present, the APDO does not routinely or substantially elicit feedback from current or former clients regarding the quality of the Office's representation and services.

21. The APDO currently does not engage in coordinated outreach to the general population of Aurora.
22. A City of Aurora committee that examined office space needs of City agencies recommended that the Public Defender receive additional office space as soon as possible.
23. The COVID-19 pandemic substantially disrupted the functioning of the Aurora Municipal Court, the work of municipal criminal legal system professionals (including APDO attorneys and staff), and communications between public defenders and their clients.

Recommendations

1. The Aurora City Council should allocate funding in its annual budgeting processes to ensure that municipal public defenders continue to receive pay parity with Aurora city attorneys, and with municipal public defenders in Denver. Similarly, City Council should take action to bring the APDO's administrative and other non-attorney staff to pay parity with their counterparts in the City Attorney's Office as well as their counterparts in the Denver Municipal Public Defender's Office.
2. In addition to ensuring pay parity, the APDO should work with the City's Human Resources department, the City Manager, and City Council to ensure adequate resources to provide holistic representation to all clients across all courtrooms in the Aurora Municipal Court. A multidisciplinary team with core skillsets to address both the allegations and the underlying drivers that foster repeated contacts with the health, public safety, and court systems is critical to achieving the goals and objectives of each agency in Aurora that intersects with people in need of supportive interventions.

At minimum, a social worker position is needed not just to sustain the APDO's ability to provide effective representation in the Wellness Court and Armed Forces Treatment Court, but also to expand the capacity for the Office to seek out interventions for clients appearing in every courtroom.

3. The Aurora Public Defender should undertake a case-weighting study to establish workload standards appropriate to the varying types of cases it handles and their individual complexities.
4. The Public Defender Commission and the APDO should develop a communications plan for providing city stakeholders with information about why independence is critical to the mission of the Office, and what steps are necessary to operationalize and protect independence.
5. The Public Defender Commission and the APDO's communications plan about independence should be accompanied by a communications plan for city stakeholders about the advantages of APDO collaboration with other City agencies.
6. To optimize collaborative decision-making about issues facing Aurora's criminal legal system, Aurora should officially create a criminal justice coordinating committee (CJCC).
7. The Aurora Municipal Court system should adopt an electronic filing system for all case filings, motions, and discovery, and be equipped with the necessary staff capacity to maintain such a system.
8. Whether instigated by the existing Big Four group or a newly created criminal justice coordinating committee, Aurora's core criminal legal stakeholders need to commit

to producing and sharing data that utilizes common case definitions and counts.

9. Whether it is undertaken by the existing Big Four group or a new criminal justice coordinating committee, analysis should be undertaken of the high rate of case dismissals by the City Attorney on the Wednesday of the week before trial (the jury status date) or on the day of trial (at the jury call).
10. As the APDO management becomes more adept with its new case management system, it should rely on the CMS to produce data reports that substantiate practice goals and document practice issues.
11. The Chief Public Defender and Aurora Public Defender Commission should work to ensure that Aurora is served by a coordinated, independent system for providing counsel to clients for whom representation by the Public Defender's Office would present a conflict of interest. The system should comport with the same standards and best practices to which the APDO is held.
12. The APDO should partner with the Public Defender Commission to develop a client engagement strategy plan.
13. The Aurora Public Defender Commission should leverage the expertise of its Aurora-based members to partner with the APDO and develop a community engagement plan.
14. To assist in on-boarding new Commission members, the Aurora Public Defender Commission should develop a resource for Commissioners that sets out authority for the body, provides key information about APDO and Municipal Court operations, and

contains guidance about Commission roles and responsibilities.

15. The APDO should enlist volunteers from the current attorney Commissioners to develop an initial staff training curriculum that APDO staff can update as needed. That curriculum should cover traditional defender trial advocacy skills as well as other skills and principles considered important to providing the most effective representation to a client base that has limited economic means and routinely experiences effects of systemic discrimination and disadvantage.
16. To supplement ongoing training delivered in-house, the APDO budget should continue to include adequate funds for all attorneys to attend external training that supports their representation of clients in the Aurora Municipal Court.
17. All staff at the Public Defender's Office should receive basic mental health and addiction training, and staff assigned to the Wellness Court and the Armed Forces Treatment Court programs should receive additional comprehensive training in understanding mental illness, addiction, and trauma.
18. The APDO should enlist volunteers from the Commission to guide development of an employee procedures handbook.
19. All stakeholders in the Aurora municipal criminal legal system should reassert their commitment to diversity, equity, and inclusion, not only in the system's interactions with people who are accused of crimes and communities of color, but also in their staffing and internal office operations.
20. The APDO, the Aurora City Attorney's Office, the Aurora Municipal Court Administrator, and the Presiding Judge

should collaboratively investigate and consider opportunities to expand the reach of Aurora's treatment courts.

21. The APDO should be moved to an expanded office space that will accommodate usage

needs and is located off-site, but near to, the Aurora Municipal Court building.

22. Aurora should plan for continued disruption of court practice through pendency of the COVID-19 pandemic, and possible similar disruptions in the future.

Chapter 1: Background and Methodology

Background on the Project

The Aurora, Colorado Public Defender's Office (APDO) is a recipient of training and technical assistance (TTA) from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance's (BJA) Sixth Amendment Initiative. The initiative seeks to help jurisdictions uphold their obligations under the Sixth Amendment to the U.S. Constitution. Aurora Chief Public Defender Doug Wilson applied to BJA requesting subject matter expertise to examine the program's adherence to national standards and best practices for public defense, including the American Bar Association (ABA) Ten Principles of a Public Defense Delivery System. Chief Defender Wilson entered his current role in January 2020. Under his leadership and that of the Aurora Public Defender Commission, the Office grew interested in an objective assessment of efforts underway to improve the program and suggestions for additional improvement measures.

As Aurora has one of the country's very few municipal public defender offices that is governed by an independent commission, NLADA and BJA agreed that it would be valuable to undertake the assessment, both to help Aurora directly and to serve as a model for other jurisdictions in the country.

Located in Washington, DC, the National Legal Aid & Defender Association (NLADA) is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. NLADA is one of several providers of technical assistance and subject matter expertise for BJA's Sixth Amendment Initiative, and was asked to undertake the review in Aurora.

Methodology

NLADA's assessment of Aurora's indigent defense system is guided by consideration of relevant national, state, and local standards and guidelines, and relevant national, state, and local statutory and case law.¹

A core component of NLADA's review of Aurora's indigent defense system was a series of interviews conducted by three members of NLADA's Defender Legal Services Division, occurring between February 8 and April 26, 2021. Another component was court observation. Typically, both interviews and court observation are conducted on-site and in-person, but due to travel restrictions stemming from the COVID-19 pandemic, both activities were undertaken over online videoconferencing. The full methodology for NLADA's work incorporated:

- Review of APDO budget and caseload data;
- Review of APDO authorizing and governance materials;
- Semi-structured interviews (via Microsoft Teams);
- Remote court observation (via WebEx); and
- Synthesis and analysis of observations in a written report.

¹ Examples of relevant national standards include the ABA Ten Principles of a Public Defense System and NLADA's Performance Guidelines for Criminal Defense Representation. Examples of relevant U.S. Supreme Court case law include *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and *Alabama v. Shelton*, 535 U.S. 654 (2002).

NLADA greatly appreciates the willingness of all interview stakeholders to make time to meet with the evaluation team and to speak candidly. NLADA also wants to recognize the assistance provided by the APDO's AmeriCorps VISTA member in coordinating the interview schedule. In total, NLADA interviewed 39 individuals about their perceptions of the current indigent defense system and to learn any suggestions for improvement. By professional category, interviewees included:

- Judges (2);
- Court Staff (3);
- Public Defender Attorneys and Staff (16);
- Public Defender Commissioners (7);
- City Attorneys (2);
- City Police (2);
- City Human Resources (2);
- Other City Staff (1); and
- Experts Outside of City Government (4).

Court observations were conducted of:

- Arraignments (Division 8);
- Bond Returns (Division 6);
- Trial Status Checks;
- Trials; and
- Wellness Court.

[Report Roadmap](#)

The balance of this report is divided into chapters as follows. Chapter 2 discusses the Aurora Municipal Court's structure and operation. Chapter 3 focuses on the structure and operation of Aurora's indigent defense system. Chapter 4 discusses a number of challenges that span across the Aurora municipal criminal legal system. Chapter 5 outlines relevant national standards and best practices for indigent defense systems and uses those as a lens for analyzing the current system in Aurora. Finally, Chapter 6 presents findings and recommendations.

Chapter 2: Aurora's Municipal Court Structure and Operation

This chapter begins with an overview of municipal courts generally and Aurora's municipal court specifically. The chapter closes with general information about the structure of the Aurora Public Defender's Office.

Municipal Courts in Colorado

Municipal courts in Colorado are authorized pursuant to the State Constitution.² The Colorado General Assembly has also codified statutes that govern municipal courts in Title 13, Article 10 of the Colorado Revised Statutes.³ There are more than 215 municipal courts throughout the state,⁴ all of which are charged by state statute with hearing violations of city ordinances promulgated by the respective municipalities.⁵

Aurora Municipal Court

There are three main divisions of government in the City of Aurora, including the Mayor and City Manager, City Council, and the Municipal Court. The jurisdiction of the court includes the administration of justice for city ordinance violations, including youth who are at least ten years of age or under the age of eighteen; traffic charges; and civil matters, including zoning, animal control, and fire.⁶ Other violations that are governed by the municipality include offenses against people and property, and an array of activities determined to be public peace and safety concerns for citizens of Aurora.⁷

There are seven full-time and seven part-time judges on the Court who manage seven courtrooms and eight court divisions in total. The Court is open Monday through Friday, from 7:30am until 5:00pm, or beyond 5:00pm for courtrooms that are still in session.⁸ All courtrooms are in session Monday through Friday, with various events docketed in each court, including first appearance/arraignment, case status, motions hearings, probation, bonds, entry of pleas, and jury trials.

In addition to designated courts for traffic and youth offenses, the Municipal Court also has two specialty courts that provide services to people who are in need. The Wellness Court supports individuals experiencing mental health and substance use disorders. The Aurora Armed Forces Treatment Court targets the unique needs of veterans who have served in the military. Both courts also address housing needs as part of the case management plan for each individual program participant.

Part of the impetus for creating Aurora's municipal court was reportedly a concern about escalating numbers of domestic violence cases, and a belief that they could be adjudicated more swiftly in

² COLO. CONST. art. IV.

³ See *generally* COLO. REV. STAT. tit. 13, art. 10 (§§ 13-10-101 et seq.) (2018).

⁴ See *Colorado Municipal Courts*, COLO. MUN. JUDGES ASS'N, <https://www.coloradomunicipalcourts.org/courtsincolorado>.

⁵ See COLO. REV. STAT. § 13-10-104 (2018).

⁶ See AURORA, COLO., CHARTER art. X, § 10-4; AURORA, COLO., CODE OF ORDINANCES § 50-26 (2019 & Supp. 2020).

⁷ See *generally id.* ch. 94 (listing all ordinance violations).

⁸ The Aurora Municipal Court's website provides information to the public about the Court, including procedures for people appearing pro se, pandemic-related emergency court guidelines, and contact information for additional assistance. See *Courts & Detention*, CITY OF AURORA, COLO., https://www.auroragov.org/residents/public_safety/courts___detention.

municipal court and with better chances of influencing underlying drivers of domestic violence than in the state court system. Over time, domestic violence cases have declined as an overall portion of Aurora workload, but they remain an area that is monitored closely. Creation of the Wellness and Armed Forces Treatment Courts in Aurora echoes this intention to serve needs of the community.

The structure of the various court dockets within Aurora is typical of how many municipal courts are structured across Colorado and across the country: traditional court processing and outcome options that are supplemented by smaller and more fully resourced specialty court dockets. With sufficient personnel and resources, a public defender's office, unlike most court-appointed or contract systems, can provide clients with access to treatment and alternatives to sentencing that can improve individual, family, and community public safety and health in ways that incarceration, fines, and probation alone do not address. As outlined in Chapter 3, the APDO does not currently follow a holistic defense practice model, but it is a goal for the APDO to consider. And a cross-sector stakeholder partnership initiative with Aurora public safety agencies could expand strategies for pre-arrest diversion options that relieve capacity strains on the jail and court system. A spotlight on the structure of Aurora's treatment courts and opportunities to increase their impact are provided in Appendix A. Additional focus on how intervention goals align with the role of the Public Defender's Office is included in Chapter 3.

Aurora Public Defender's Office

The City of Aurora has a structured public defender office delivery system to provide indigent defense legal services to indigent individuals facing Municipal Court criminal charges that carry penalties including incarceration. Further details regarding the structure of the APDO, its workload, and internal growth needs discovered through this evaluation are included in Chapter 3.

Indigency Determination

Before proceeding to an in-depth discussion of the Aurora Public Defender's Office, a brief examination of the Municipal Court's procedure for determining whether an accused person is indigent, and therefore whether they are eligible for APDO representation, follows.

Per city ordinance, the APDO is designated as the initial arbiter of whether an applicant qualifies for public defense services, subject to a final determination by a judge.⁹

In 2020, Chief Public Defender Doug Wilson worked with the Court and Court Administrator to implement changes that streamlined the process for applying for a public defender and making indigency determinations. From their initial appearance at court, it was taking two or three trips to the court for a client to get counsel appointed, which delayed processing of their cases. Guidelines now in place include the following:

- **First, the APDO is automatically appointed at arraignment for people who are in custody and request a public defender.** Such individuals are assumed to presumptively qualify and therefore can be assisted by the public defender at their initial appearance, the arraignment. They can be subject to further screening after the initial appearance. This includes all individuals facing allegations of domestic violence, the largest category of cases in the APDO's workload. No individuals facing a domestic violence charge appear initially via a summons; all are arrested and held at the court detention facility prior to arraignment.

⁹ AURORA, COLO., CODE OF ORDINANCES § 50-170(b) (2019 & Supp. 2020).

- Second, **if someone is on a federal assistance program** (such as the Supplemental Nutrition Assistance Program (SNAP; a/k/a food stamps), Medicaid, or Temporary Assistance for Needy Families (TANF)), they can just show their program card and the APDO will be appointed.
- Third, someone whose income is found to be **at or below 150% of the federal poverty guidelines**, qualifies for APDO appointment. Previously the court applied the eligibility threshold of at or below 125% of federal poverty guidelines.

The APDO does not staff the arraignment docket scheduled for people who were issued a summons and complaint but were never taken into custody, or who were arrested but posted bond and were released prior to the daily arraignment docket held just for detained individuals. (It does staff the arraignment held for individuals who are detained following arrest, which includes anyone facing a domestic violence charge.) Under the new screening process, in the arraignments occurring without a public defender present, the judge asks individuals if they are on federal assistance; if the answer is yes, the APDO is appointed on the spot. If not, the judge conducts additional questioning. If still more verification is needed to make a determination, the judge is supposed to contact the Public Defender's Office, which is located in the Municipal Court building, to request that an attorney come conduct a more thorough eligibility screening. The goal is for a decision to be made as to whether to appoint the APDO at that court appearance. Previously, such an individual would be instructed to contact the APDO for eligibility screening and given their next court date. The case would be continued over one time to accommodate the screening. The new approach eliminates the need for the individual to make two initial appearances to receive appointment of a public defender.

During COVID-19 courthouse restrictions, individuals who were cited-and-released by police were given a summons containing the date of when to initially appear at court. They could choose to appear on a remote, WebEx video docket rather than in-person. At the video appearance, they were asked if they wanted a public defender appointed. If yes, and they could show the judge a federal public assistance program membership card over WebEx, the APDO was directly appointed. Where eligibility was less clear cut, an individual was instructed to contact the APDO to complete an application. The APDO could accept applications electronically, over the phone, or in-person, although in-person was rare during the height of the pandemic. If eligibility was established, the APDO would assign an attorney to make contact with that new client prior to the next court date.

Chapter 3: Aurora’s Indigent Defense System: Structure, Operation, and Compensation

With the background of the Aurora Municipal Court and local justice system laid out, this chapter continues with an in-depth look at the City’s indigent defense system. The chapter begins by describing the broader context, with a general overview of public defense delivery models used in the U.S. The remainder of the chapter focuses on Aurora’s system, in four main areas: first, the structure of the City’s indigent defense system, including the APDO, the Aurora Public Defender Commission, and the handling of conflict cases; second, the operation of the APDO, including training, standard operating procedures, and the Office’s case management system; third, an examination of budget, staffing, and caseload; and fourth and finally, support for clients and the Aurora community, including holistic defense, client-centered representation, client engagement, and community support.

National Public Defense System Delivery Models

Broadly speaking, the U.S. relies on three primary delivery systems to provide constitutionally required legal services to individuals who cannot afford defense counsel at the state and local levels: a public defender office, private attorneys who undertake appointments on a case-by- case basis, and the contract model. Variations of these models exist but general characteristics are described in Table 1.

Table 1:
Public Defense Delivery Models

Public Defender:	All attorneys work in one office under the direction of a chief public defender.
Court-Appointed:	Individual attorneys are appointed by the court and compensated on a per-case basis.
Contract System:	Attorneys, law firms, or non-profit organizations enter into contracts with the governing body to provide defense services to people who cannot afford counsel.

Many jurisdictions use two or even all three of these models. For instance, they might use a public defender office to handle the majority of cases and assign overflow and conflict of interest cases to assigned or contract counsel.

National information on public defense systems used across the country is available from the Bureau of Justice Statistics.¹⁰ However, this information in large part overlooks misdemeanor case delivery systems in general, and municipal court operations in particular, focusing instead on systems that handle felony and juvenile delinquency cases. Reliable information about public defense systems operating at the municipal level is scant. What is known from review of available information is that about 43 states currently operate some form of a municipal court that processes city ordinance violations and, in some

¹⁰ For relevant past studies, see *Indigent Defense Systems*, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, <https://www.bjs.gov/index.cfm?ty=tp&tid=28>.

jurisdictions, misdemeanors as well. Not all of these entities are called “municipal courts,” but where there is a local court structure, municipalities provide defense representation for indigent people primarily through individual case court appointments, contract systems, or a combination of both. Municipal court public defender offices are rare. And unfortunately, some municipal court systems do not provide counsel as required at all.

Structure of Aurora’s Indigent Defense System

The Sixth Amendment to the U.S. Constitution guarantees the right to counsel for any person accused of a jailable criminal offense, where there is a potential for the loss of liberty.¹¹ As such, anyone facing charges for a jailable offense in the Aurora Municipal Court who cannot afford to hire his or her own attorney is entitled under federal and state law to have counsel provided at public expense.

The City of Aurora provides public defense services through its municipal public defender office. The Aurora Public Defender’s Office, in turn, is overseen by an independent, nonpartisan commission, the Aurora Public Defender Commission. This section will provide an overview of the APDO, followed by discussion of the appointed counsel system for cases where the APDO has a conflict of interest, concluding with a look at the Public Defender Commission.

Aurora Public Defender’s Office

The Aurora Public Defender’s Office was established in 1989, and officially began working with clients in January 1990, when the newly built Municipal Court building opened to the public. The APDO is one of only two dedicated municipal defender offices in the State of Colorado, the other being the Denver Office of the Municipal Public Defender. Other municipalities in Colorado ensure the right to counsel through contract, court-appointed attorney, or managed assigned counsel systems.¹²

The APDO represents individuals who are determined to be indigent and are a) under arrest or charged with committing a violation of the City Charter or a municipal ordinance if jail is a potential penalty, and b) the Office of the City Attorney has not informed the Court that it will not seek a punishment of jail as a possible penalty.¹³ The APDO provides representation to clients across all courtrooms in the municipal court, including the Wellness Court and the Armed Forces Treatment Court.

Current staffing levels at the APDO include one director (Chief Public Defender); two supervising attorneys (Chief Deputy Public Defenders); seven non-supervising attorneys (Deputy Public Defenders); one investigator; and four support staff, including one administrative supervisor/office manager (Executive Public Defender Assistant), one Paralegal, and two Administrative Assistants (one part-time and the other full-time).¹⁴ The APDO maintains partnerships with two law school clinical programs—the

¹¹ U.S. CONST. amend. VI. The right applies to state and local courts through the Due Process and Equal Protection Clauses of the Fourteenth Amendment and for purposes of misdemeanors is clarified in *Argersinger v. Hamlin*, 407 U.S. 25 (1972) and *Alabama v. Shelton*, 505 U.S. 654 (2002). At the state level, see COLO. CONST. art. II, sec. 16.

¹² See S.B. 18-203, 71st Gen. Assemb., 2d Reg. Sess. (Colo. 2018), https://leg.colorado.gov/sites/default/files/2018a_203_signed.pdf. Under S.B. 18-203, which went into effect in July 2018, all municipal courts in Colorado that impose jail sentences are required to provide defense counsel to indigent people who are accused of crimes. *Id.*

¹³ See AURORA, COLO., CODE OF ORDINANCES § 50-170 (2019 & Supp. 2020).

¹⁴ An organizational chart listing the office staff and showing the hierarchy of supervision is available in Appendix B. That chart includes one attorney position and one support staff position that were open as of the time of writing this report.

University of Denver, Sturm College of Law's Criminal Defense Clinic and the University of Colorado (CU) Law School's Criminal Defense Clinic—allowing law students to provide representation in some Municipal Court cases (for example, CU's program provides representation for some Division 8 in-custody arraignments).

The APDO is located in the same building as the Municipal Court. When Chief Defender Wilson joined the Office, space limitations required attorneys to share offices, an arrangement that is not conducive to meeting privately with clients, or fostering concentrated case preparation focus. The APDO expanded its office into an unused jury deliberation space in 2020, which eased the immediate problem of attorneys sharing offices. However, the arrangement positioned some staff in a physical location apart from the rest of staff, and did not meet the APDO's full needs for adequate physical space. A City of Aurora committee that examined office space needs of City agencies recommended that the Public Defender receive additional office space as soon as possible.

Aurora Public Defender Commission

The Aurora Public Defender Commission is a nonpartisan board whose members are appointed by the City Council and charged with selecting the Chief Public Defender and all attorneys for the APDO. The city ordinance that created the Commission reads as follows:

The municipal public defender commission is created and established. The commission, through its ability to appoint and discharge the public defender and his or her assistants, shall ensure that indigent clients are represented independently of any political consideration or private interests, provide legal services to indigent persons accused of violation of municipal ordinances that are commensurate with those available to nonindigents, and conduct the office in accordance with the Colorado Code of Professional Standards relating to the administration of criminal justice, the defense function.¹⁵

This simple declaration sets the Aurora indigent defense system in contrast with most other municipal indigent defense systems around the country. The Commission's structure comports with national standards that call for the indigent defense function to be independent from judicial and political pressures to the same extent as that of private retained defense attorneys.¹⁶ Aurora deserves recognition as one of the first, and possibly the only, municipal indigent defense system in the country to be structured in this recommended model.¹⁷ In addition to hiring the Public Defender and assistant attorneys, the Commission, not the City, sets their pay, subject to approval through the City Council's budget process. Unlike attorney staff, all clerical staff at the Public Defender's Office are classified as career service employees,¹⁸ thus they work under the authority of municipal Human Resources policies. There are only four positions in Aurora government that are directly appointed by the City Council: the City Attorney, the Presiding Judge, the City Manager, and the Court Administrator. The four positions

¹⁵ AURORA, COLO., CODE OF ORDINANCES § 50-166 (2019 & Supp. 2020).

¹⁶ See AM. BAR ASS'N, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM 2 (2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ten_principlesbooklet.pdf [hereinafter ABA TEN PRINCIPLES] (Principle 1).

¹⁷ The ordinance creating the public defender commission and office was enacted in 1989. See AURORA, COLO., CODE OF ORDINANCES § 50-166 (2019 & Supp. 2020).

¹⁸ *Id.* § 50-169.

report directly to the City Council. The Chief Public Defender is the only position in Aurora appointed by, and therefore directly answerable to, an independent commission.

The Commission has three citizen members and four attorney members. The citizen members must be Aurora residents who are not licensed to practice law in Colorado, whereas the attorneys must be licensed to practice law in Colorado but need not be Aurora residents.¹⁹ Attorneys serving may not currently work as a judge, prosecutor, public defender, or law enforcement agency employee. Commissioners are appointed to three-year terms that are renewable up to three times.

The existence of a model structure does not guarantee delivery of a high functioning system. All institutions depend on the performance of individuals leading and working in them. Between 2016 and 2019, the Public Defender's Office and the Public Defender Commission experienced turnover in leadership and internal disarray. Oversight was lacking by the Commission and during this period, the Commission was targeted for elimination by the City Council and Mayor. A proposal was made to make the Public Defender an appointee of the City Council, just like the Presiding Judge, the City Attorney, and the Court Administrator. That push was scuttled when state legislation was enacted in 2018 in response to sharp criticism led by the ACLU of Colorado that municipal court indigent defense in Colorado was abusive and unconstitutional.²⁰ The law called for each municipality to either create an independent commission or form a regional one with other municipalities in order to provide independent, constitutionally compliant indigent defense for each indigent person charged with a municipal code violation that carried a possible sentence of incarceration. Aurora's existing commission structure complied with the new statute²¹ and the period of tumult shifted to one of repairing the APDO's performance and bringing on a more involved Commission.

Doug Wilson first became involved with the Aurora system in 2019 when he applied to be a Commission member. Wilson had recently retired as the chief of the Office of the Colorado State Public Defender, where he had served for twelve years. He was encouraged by other Commission members to instead consider taking on the Chief Public Defender position in Aurora, to help put the Office back on track following a period of dysfunction. Wilson agreed to apply as Chief, and also helped recruit attorney members to fill vacant Commission positions.

¹⁹ *Id.* § 50-167.

²⁰ See generally ACLU OF COLO., JUSTICE DERAILED: A CASE STUDY OF ABUSIVE AND UNCONSTITUTIONAL PRACTICES IN COLORADO CITY COURTS (2017), <https://aclu-co.org/wp-content/uploads/2017/10/JUSTICE-DERAILED-web.pdf>.

²¹ COLO. REV. STAT. § 13-10-114.5(3)(a), (d)(I) (2018). The relevant portions of the statute state:

(3) (a) On and after January 1, 2020, each municipality shall provide independent indigent defense for each indigent defendant charged with a municipal code violation for which there is a possible sentence of incarceration. **Independent indigent defense requires, at minimum, that a nonpartisan entity independent of the municipal court and municipal officials oversee or evaluate indigent defense counsel.**

...

(d) (I) To satisfy the requirement described in subsection (3)(a) of this section, a municipality may establish a local independent indigent defense commission or coordinate with one or more other municipalities to establish a regional independent indigent defense commission. **Any local or regional independent indigent defense commission in existence as of January 1, 2018, is deemed to be in compliance with this subsection (3)(d) and may continue as established.**

Id. (emphasis added).

The current Commission is described by one of its attorney members as being very engaged:

We have hiring and firing power, we review budget, we review requests Doug has like expanding [the] office and spending money on equipment, City Council initiatives, [and the] push for pay parity. Those are all-in-the-weeds policy and operational decisions that all come through the board. In my experience, [the Commission] has a surprisingly hands-on operation.

Interviews with other Commission members confirm that the Commission has not always played an active role. Part of this could be due to lack of specificity in the authorizing ordinance over the Commission's responsibilities. Part, also, was apparently due to the fact that the Public Defender's Office operated for many years without any notable challenges.²² In the past, Commission members would meet once a month at the Public Defender's Office and be presented with binders containing the budget for the Office. One Commissioner said, "There were never any issues. We just went in there once a month and looked at the budget and were done in twenty minutes." Commission members were never given materials to take with them; the binders apparently stayed in the office. But the Office experienced internal staff conflict, which triggered a period of scrutiny by the City's Human Resources department, leadership turnover, and interest by the City to restructure the public defender appointment process and eliminate the Commission.

The TTA team interviewed all seven current Commission members individually. The team was impressed by how dedicated they are to the success of the Office and fulfillment of its mission. Confidence in the Chief Public Defender appears to be an integral part of this commitment. Members unanimously expressed favorable views of Doug Wilson's performance. Exemplifying the sentiments are views of one member:

[Wilson] was the head of the state PDO for thirteen years with 900 employees and a \$100 million-plus budget, and he's now head of an office with twelve employees and a \$1 million budget, and he's running it no differently, which is incredible. It's hard to think of things for him to do. What he's accomplished in a little over a year is nothing short of remarkable.

Underscoring Wilson's productivity and initiative in a remarkably short time, the Public Defender Commission asked him to prepare a list of accomplishments made during his tenure as Chief Public Defender. The list contains 32 entries, ranging from instigating an investigation undertaken by the City HR Department into the need for pay parity between city attorney and defender attorneys, to developing and implementing a streamlined process for indigency determination, to securing two grant-funded staff positions during the fiscally uncertain period of the pandemic.²³

Commission members also acknowledged the strength of the body's current composition. All of the attorney members are experienced criminal defense lawyers, including three veterans of the nationally recognized Colorado State Public Defender system, and all became involved after encouragement by Wilson. None of the attorney members are Aurora residents, but all are well-positioned to offer advice

²² A timeline of the Public Defender's Office is available on their website. See *Public Defender*, CITY OF AURORA, COLO., https://www.auroragov.org/city_hall/departments/public_defender.

²³ The full list of accomplishments, updated to reflect activities through August 2021, appears in Appendix C.

on defender operations due to their past experiences. The attorney members all underscored the importance of the citizen members, who have deep roots with and perspective into the Aurora political system. NLADA interviews with citizen Commission members revealed deep dedication to protecting and improving the APDO. The balance of experience and perspectives of the current members optimizes the Commission's effectiveness in its role.

One Commission member noted an inherent vulnerability in the all-volunteer municipal commission model: it can be difficult to find good commissioners. Effective candidates need to understand and care about what the Commission does, have insight into city politics, and have time to devote to the role. Currently there is no guide to help onboard new Commissioners about the mission and goals of the Commission, or the objectives that underlie roles and procedures. The development of such a guide would support effective participation by members as they cycle on and off the Commission.

With the structure of municipal indigent defense in Aurora set forth, the focus of this chapter now turns to the internal workings of the APDO.

Conflict of Interest Cases

Cases of individuals who are eligible for public defender representation but present a conflict of interest for the APDO are handled by private attorneys who are appointed by the Court. Per City ordinance, such attorneys are to be paid reasonable compensation and reimbursement for expenses determined by the Commission and paid from the budget of the APDO.²⁴ Beyond that, there is no official identification of a process or entity responsible for identifying participating attorneys, specifying minimum levels of experience and training, or overseeing their performance. These responsibilities are undertaken in a de facto fashion, and with some discomfort, by the Chief Public Defender.²⁵

Without an independent entity to manage the process, the Public Defender's Office maintains a list of attorneys who are willing to take conflict-of-interest cases. If the APDO notifies the court that it has a conflict with a particular case, the court will appoint a lawyer from that list. When Chief Defender Wilson joined the Office, conflict attorneys were paid a flat fee of \$250 per case. Wilson sought and secured immediate approval from the Commission to change the rate of pay to be the same amount used by the state Office of Alternate Defense Counsel, which is currently \$75 per hour with a \$1,500-per-case cap. Wilson reached out to those on the conflict list to see if they wanted to continue or not. Some declined. He also reached out to some lawyers who he knew from his time with the Office of the Colorado State Public Defender who agreed to join the panel. There are currently twelve attorneys on the list, and there is reportedly some difficulty attracting attorneys who are willing to take appointed cases in Aurora.

There is no formalized application process or minimum level of experience required to join the list. Nor is there a formal oversight or supervision process for panel attorneys. Payment is administered by the Public Defender's Office. In 2020, it paid out \$27,130 for 66 conflict cases, for an average cost-per-case

²⁴ AURORA, COLO., CODE OF ORDINANCES § 50-171 (2019 & Supp. 2020).

²⁵ The Office of the Colorado State Public Defender, in contrast, has no involvement with conflict case administration. Looking at defender programs nationally, however, it is not unheard of for a state public defender office to oversee local conflict counsel. For instance, the state public defender programs in Kentucky, Massachusetts, and Wisconsin administer conflict of interest case systems, using varying structures to monitor performance and yet maintain independence for practitioners.

of \$411, and an average time of 5.4 hours per case at the \$75-per-hour rate.²⁶ In 2019, when the \$250 flat fee per case was still in effect, the APDO paid out \$42,896 for 191 conflict cases, which averages out to \$225 per case. Attorneys were not required to report time, so it is not known how much time, on average, attorneys devoted to each case under the flat fee payment system, but applying the \$75-per-hour rate, the \$225-per-case average above would compensate an average of just 3.0 hours per case. Attorneys may have put in more time per case but would have been unable to receive additional compensation for those extra hours.

There is no single recommended, best practice structure for managing public defender program conflict of interest cases. However, standards for administration of assigned counsel programs – both those that serve as the primary provider of indigent defense representation and those that serve as conflict case provers – offer valuable guidance.²⁷ Colorado’s Office of Alternate Defense Counsel is the most sensible candidate to assume responsibilities for administering Aurora’s conflict of interest cases, and the Chief Public Defender has approached the Office about doing so. However, original cost estimates from the OADC far exceeded the APDO’s annual expenditures on conflict counsel.

Operation of the Aurora Public Defender’s Office

The TTA team interviewed every member of the APDO staff, and those conversations shed considerable light on the functioning of the Office. This section will focus on a few key areas that were highlighted in the TTA team’s fact-finding: training, standard operating procedures, and the Office’s newly-adopted LegalServer case management system.

Training

Proper training for attorneys, support staff, and other non-attorney staff alike is essential to ensuring that any public defender’s office is providing its clients with the highest quality of representation possible. The following analysis of the APDO’s training will focus on initial and ongoing training for staff, followed by outside training.

Staff Training: Initial and Ongoing

Unlike larger defender offices, the APDO does not have a staff member or unit dedicated to developing and delivering staff training. Interviews with staff inquired about training they received, both initial and ongoing. During interviews, multiple mentions were made that all staff in the Office are supportive of one another and eager to answer any questions. But it was clear there is no formal initial training for the attorneys, investigator, paralegal, or administrative staff, nor is there a formal approach to providing ongoing training.

Attorneys

Each new attorney to the Office works with one of two chief deputy public defender supervisors and is assigned another attorney as a mentor. Perspectives of the initial training experience reported ranged

²⁶ Conflict case appointments declined in 2020 from 2019, as did public defender appointments, during the height of the pandemic.

²⁷ See, e.g., N.Y. STATE OFF. OF INDIGENT LEGAL SERVS., ILS STANDARDS FOR ESTABLISHING AND ADMINISTERING ASSIGNED COUNSEL PROGRAMS (2019), <https://www.ils.ny.gov/files/ACP%20Standards%20with%20Commentary%20070119.pdf>. These standards reference and expand on earlier New York state standards and national standards, including NLADA’s *Standards for the Administration of Assigned Counsel*.

from one attorney who closely shadowed a very hands-on mentor for a few weeks, to another who occasionally sat in with other attorneys but, otherwise, jumped straight into the job. Attorneys who came to Aurora with former experience at the Colorado State Public Defender noted the contrast in training supports offered by the two offices.

Every three years, practicing attorneys in Colorado are required to complete forty-five continuing legal education (CLE) hours, seven of which must be devoted to professional responsibility, including at least two credit hours in the area of equity, diversity, and inclusivity, and at least five credit hours in the areas of legal ethics or legal professionalism. But there is no state bar requirement that one attend CLE training relating to the primary area(s) in which they practice. Training in one's particular practice area is essential, as the law is an ever-evolving discipline. If a public defender office is not able to deliver ongoing training in-house, it should send staff to attend external programs.

In February 2021, the APDO paid for all attorneys to attend the annual, week-long trial advocacy training put on by the Colorado, Office of the Alternate Defense Counsel (OADC), which was delivered remotely due to pandemic-related travel restrictions. The training was open to all criminal defense attorneys, not just indigent defense practitioners, and not just municipal court practitioners, although public defenders and contract attorneys received a discount. The training was well received by APDO attorneys. One attorney who was new to the Office said it was very intense. Another said they lucked out in having access to the training. In 2020, Aurora public defenders were able to attend the in-person training provided by the Office of the State Public Defender.

Comprehensive public defender training is not just about acquiring legal skills. Training in legal professionalism and temperament, as well as principles in trauma and client-centered practice are also important. Public defenders are often the only voice for clients who may have mental health or substance use struggles that cloud judgment, or who have experienced lifelong marginalization due to racism or poverty that make it difficult for them to trust their lawyers.

Another core purpose of public defender training is to set out performance expectations. All attorneys, but particularly new attorneys, need to know what is expected of them in order for their performance to be fairly evaluated. Training puts attorneys on notice of what is expected in case handling duties. The APDO conducts performance evaluations of attorneys using evaluation protocols that were updated when Chief Defender Wilson joined the office, and are based on review protocols used by the State Public Defender. A number of public defense systems look to performance standards developed for use in their states as a basis for their initial and ongoing attorney training. Colorado, unlike some other states, does not have its own performance standards. Other states' standards, though, offer excellent

models to adapt,²⁸ and themselves are typically adapted from national standards, such as those of the National Legal Aid & Defender Association.²⁹

Administrative, Paralegal, and Investigator Staff

The Administrative Assistant and Legal Secretary report to the Executive Public Defender Assistant: these are the three positions the APDO's organizational chart categorizes as part of the Office's administrative team. The Paralegal reports to one of the two Chief Deputy Public Defenders, and the investigator reports to the other one. As with attorneys, initial and ongoing training for these staff positions is informal and limited. One team member said learning was done primarily by observing and asking questions. The Office's investigator came on board with a substantial amount of past experience but not specifically working in a public defender's office. The Office has no job protocol for the position and no initial training. In addition to a lack of direct training on their individual roles, there was a sense from non-legal staff that attorneys did not know how to make best use of the legal secretary, paralegal and investigator.

Under-utilization of legal secretary, paralegal, and investigator assistance can result in attorneys spending time on activities that others could do more effectively, or worse, not undertaking key work activities that would support their effectiveness. An investigator, for instance, can locate and interview witnesses, photograph and document crime scenes, help obtain evidence, such as medical records, cell phone records, camera footage, and business records, and serve subpoenas on witnesses for trial. Reportedly, few deputy public defenders in Aurora regularly engage investigative help. Nor do public defenders engage assistance of experts for their cases. No attorneys recalled the use of an expert in past cases, flagging the area as a possible training category to cover.

Increasingly, public defender offices are following the model of client-centered, holistic practice, pioneered by the Bronx Defenders.³⁰ Best practices in client-centered, holistic defender offices call for staff to work in teams. On a client's defense team, for instance, the attorney and investigator would work closely to strategize the best approach to getting valuable information in victim and witness interviews. Even if a public defender office is not following a formal team practice model, all staff should be cross-trained. Aurora attorneys should learn how to work with the legal secretary, paralegal, investigator, and any other positions that are on-boarded in the future, such as a social worker, to best serve clients. And just like attorneys, non-legal staff should receive guidance in working with clients who face mental health or substance use struggles, or who have skepticism due to lifelong racism or other types of societal marginalization that can affect their ability to trust working with public defender staff.

A possible avenue for developing an initial training curriculum that supports all positions and includes cross-training, is to seek assistance from Aurora Public Defender Commission members. The

²⁸ See, e.g., MASS. COMM. FOR PUB. COUNSEL SERVS., ASSIGNED COUNSEL MANUAL ch. 4 (2019), <https://www.publiccounsel.net/wp-content/uploads/Assigned-Counsel-Manual.pdf>; IND. PUB. DEF. COUNCIL, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION (2014); STATE BAR OF TEX., STANDING COMM. ON LEGAL SERVS. TO THE POOR IN CRIM. MATTERS, PERFORMANCE GUIDELINES FOR NON-CAPITAL CRIMINAL DEFENSE REPRESENTATION (2011), reprinted in 74 TEX. BAR J. 616 (2011), https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703.

²⁹ See NLADA, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION (2006), <https://www.nlada.org/defender-standards/performance-guidelines>.

³⁰ See *Holistic Defense, Defined*, BRONX DEFENDERS, <https://www.bronxdefenders.org/holistic-defense>.

Commission's current lawyer members have extensive public defender office staff training experience. Development of a core training curriculum would require time but would standardize learning and be easy to update in future years as learning needs evolve. NLADA offers another road map for defender training programs in its Defender Training and Development Standards.³¹ First developed in 1997, the Standards have been thoroughly updated and will be released in a forthcoming edition.

Outside Training

As noted, ongoing training and professional development needs can be supplied in part through participation in external trainings. Attorney training options include those of state organizations, such as the Colorado Defense Lawyers Association, and national organizations, such as NLADA and the National Association for Public Defense. The budget for the APDO should provide for annual staff training and ongoing training should not be limited to attorneys. The investigator has paid to attend external trainings needed to keep his professional certification current. Ongoing training for administrative staff can be more difficult to find. The morale and professionalism of all employees benefit from training, so efforts should be made to secure appropriate options.

Standard Operating Procedures

Multiple APDO attorneys and staff expressed frustration with the Office's lack of standard operating procedures (SOPs) for various aspects of working in the Office, including general guidelines, the use of the LegalServer case management system, use of support staff, and the indigency determination process.

Staff expressed interest in the Office "having things more in writing, or a more permanent procedure," to help people learn and reinforce their roles. During the tenure of Jose Martinez as chief (2016-19), the APDO created an internal policy and procedure manual describing various aspects of work at the APDO, including how to maintain files, how to work in different court divisions, and how sick leave hours are accrued and used. That manual has since become outdated. Staff noted that there has been an ongoing effort within the APDO to update the manual, but "it hasn't been a huge priority" and progress has been hampered by the Office's inability to maintain a full staff. The staffing problem, in turn, is partly due to the APDO's high turnover rate, as the Office is only able to offer salaries that attract younger attorneys, and without a defined career progression path within the Office, attorneys tend to move onto other opportunities. Pay for administrative staff, who can be instrumental in creating and updating the user guides, is perhaps even less competitive than that for attorneys.

Just as it has no in-house staff dedicated to staff training, the APDO has no in-house staff dedicated to Human Resources (HR) work. For most personnel concerns, reliance on City HR guidance is sufficient. But APDO personnel need to be involved in development of SOPs for core functions of the Office. As with training, a possible avenue for developing an APDO procedures handbook is to seek assistance from Commission members. The Commission's current lawyer members have extensive public defender office management experience. Development of an up-to-date employee procedures handbook would require time but would serve the Office for years to come.

Another area where SOPs are needed is in working with the recently implemented LegalServer case management system. There is to be an expected transition and learning time when moving an

³¹ NLADA, DEFENDER TRAINING AND DEVELOPMENT STANDARDS (1997), <https://www.nlada.org/defender-standards/training>.

organization from use of an all-paper case tracking system to a full-featured electronic case management system. Inevitably, staff will take to it at varying degrees of ease. SOPs can be a helpful and possibly a necessary way to move the Office out of these “growing pains” and into smooth functioning of the system. The TTA team’s interviews found that several attorneys were having difficulty properly accessing and entering data in LegalServer in spring 2021, shortly after the system first went live. A standardized set of instructions and guidelines on use of the system, combined with attorneys’ increased familiarity through practice, will be instrumental in bringing everyone in the Office up to a common level of fluency in using LegalServer. And of course, written instructions will assist new hires to gain familiarity with the system.

APDO attorneys would also benefit from SOPs providing guidance on how to make the best use of the Office’s support staff. Interviews with APDO staff revealed that support staff are often under-utilized as attorneys often undertake tasks themselves that would otherwise be performed by support staff.

Finally, the updated indigency determination guidelines and process described in Chapter 2 are another area in need of formal write-up; not just for the benefit of APDO staff, but also for prospective clients. The policy should be available on the APDO’s website.

Case Management System

The Aurora Public Defender’s Office has historically operated with only paper case files and no electronic case management system. When Doug Wilson joined the Office as Chief Public Defender, one of his goals was to implement an electronic case management system to simplify tracking cases and extracting statistics, which would in turn help design processes to improve workflow. The Office selected the LegalServer case management system. Onboarding a new case management system is an intensive process. The Office has no dedicated in-house information technology (I.T.) staff member, so Wilson secured an AmeriCorps VISTA member³² to shoulder much of the work, in close collaboration with the Office’s investigator, who has some I.T. background, and the Executive Public Defender Assistant. The work involved determining what criteria to input and track, determining what information to extract in reports, and programming the case management system with the desired features. The VISTA member also developed training materials for administrative staff, lawyers and managerial staff and, as the system went live in 2021, instituted a system to solicit input from users on needed modifications.

One Commissioner underscored the importance of getting the new CMS. Having accurate data and reports, it was noted, is very important, and the data provided by the courts were not fully verifiable.

Implementation of the LegalServer system will serve the APDO well for years to come, allowing it to accurately track cases assigned and activity performed on cases, and giving it much-needed capacity to assess trends and performance. The Office should be recognized for its initiative in securing a VISTA

³² Since 2017, NLADA has administered Defending Communities in Service, an AmeriCorps VISTA (Volunteers in Service to America) project that offers public defense offices and opportunity to serve as a host site for volunteers to undertake projects that leverage data and/or community partnerships to better serve defender clients. Over the course of their 12-month term of service, AmeriCorps VISTA members perform activities such as building community partnerships within their host communities and developing data systems and analysis methods to drive evidence-based practices by their host organizations. See *AmeriCorps VISTA in Public Defense*, NLADA, <https://www.nlada.org/AmeriCorps-VISTA>.

member, and for efforts undertaken by the investigator and the Executive Public Defender Assistant to help implement the system.

Having reviewed some of the internal mechanics of the APDO, the next area of focus for this chapter is how APDO staff are utilized and funded.

Budget, Staffing, and Caseload

Personnel costs are the largest single category for any public defender program budget. Personnel costs are driven by workload demands and their translation into the number of staff, both attorneys and non-legal staff, needed to adequately handle projected cases. The interconnected areas of budget, staffing, and caseload are addressed below.

Budget and Staffing

The City of Aurora's 2021 projected budget for the APDO is \$1,671,474, which provides for 15.5 full-time equivalent (FTE) positions covered by the City's General Fund. These includes the Chief Public Defender, 9 attorneys, an Executive Public Defender Assistant, 2.5 administrative positions, a paralegal, and an investigator. The current authorized General Fund staffing level of 15.5 FTEs was set in 2019; in 2018 the Office had 11.5 authorized FTEs. In 2020, the Chief Public Defender secured federal grant money³³ to add an attorney specifically to offset workload demands stemming from the pandemic-related court closure and resulting case backlogs. Funding for that position expires at the end of 2021. Furthermore, in 2021, the state Department of Local Affairs appropriated funds that allowed the APDO to create a part-time attorney position to handle bail hearings every morning in Division 8. In 2020, the Office also brought on an AmeriCorps VISTA member to serve one year helping implement the LegalServer system. Secured through NLADA's Defending Communities in Service program, the VISTA member cost the Office \$3,000.

Caseload

As mentioned, the Aurora Public Defender's Office has not in the past tracked its own case data with a case management system; court administration and court I.T. staff produced statistics on public defender case appointments and closings. Court staff produce monthly reports on the number of all charges in the municipal court system, including traffic and juvenile cases – which public defenders very rarely handle, as most charges do not carry a possible sentence of jail. Extrapolations must be made from these reports to arrive at the number of cases, as opposed to the number of charges, handled specifically by public defenders (cases often carry multiple charges). Additional extrapolations must be performed by court I.T. staff to produce data that places APDO workload in context of the overall criminal case workload; for instance, to determine what percent of total cases filed is handled by the APDO. Court staff accommodate requests for additional data runs on public defender workload as best as they can, but the requests stretch staff capacity and the APDO hasn't had the ability to verify the data.

The APDO's General Fund-supported staffing level is built on the assumption that public defender attorneys carry over 125 active cases apiece at any given time, year-round. However, understanding actual caseload numbers for the APDO is complicated by its historic lack of relevant and accurate caseload information.

³³ Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, Pub. L. No. 116-136.

Data from the Court Administrator's office show that the Public Defender's Office handled 2,313 new appointments in 2019 and 1,721 new appointments in 2020. These numbers, however, are expressed in counts of charges, not cases, thus are of limited use when applying the 125-active-cases-per-attorney workload expectation.

Even if the APDO had access to annual caseload data expressed as number of cases rather than number of charges, one could not simply divide 125 into the annual total to arrive at the number of attorneys needed, because handling 125 active cases at once, all year long, is far different from handling 125 cases total for the year. The APDO also needs to know for how long, on average, cases remain pending, or active, in a public defender's workload.

With its new CMS, the APDO should be able to calculate case aging and thus attain this crucial missing information. Also, for the first time, it is able to track time spent on each case, and therefore make distinctions on the level of effort required to effectively handle various types of cases. For instance, it will be able to determine whether an assault A case requires a different amount of time to handle, on average, than a shoplifting case. That matters because the best way to determine resource needs for a public defender program is to understand the number of cases assigned as well as the differing amounts of time it takes to effectively handle the various case types it is assigned. Right now, as mentioned, staffing is based on an expectation that attorneys handle 125 active cases apiece, with no differentiation according to case type. Further, there is no evidence-based workload standard used by the Office.³⁴

The field of public defense lacks credible, up-to-date national caseload standards. The only national standards ever produced date to 1973,³⁵ although numerous states have undertaken efforts since then to develop empirically based defender caseload standards. Case-weighting studies are an accepted method of developing workload standards for a public defender program.³⁶ The Colorado State Public Defender has undertaken several such studies since the mid-1990s. Policy and practice norms change over time, so to be meaningful, workload standards should be revisited periodically.³⁷ For example, the

³⁴ Workload differs from caseload in that it accounts for the entirety of an attorney's professional responsibilities, both those that are case-related and those that are non-case related activities. See the Workload discussion under "Parity: Resources, Workload, and Pay" later in this chapter.

³⁵ The National Advisory Commission on Criminal Justice Standards and Goals (NAC), established by the federal government, recommended maximum annual caseload standards for public defense organizations in 1973 that have been widely influential, largely because there have been no other attempts to develop national defender caseload standards. In his 2011 book, *Securing Reasonable Caseloads: Ethics and Law in Public Defense*, Norman Lefstein set out in detail the history and limitations of the standards, most notably that they were not based on an empirical study. The NAC-recommended annual maximum caseloads of a public defender office are: not more than 150 felonies per attorney per year; not more than 400 misdemeanors per attorney per year (excluding traffic); not more than 200 juvenile court cases per attorney per year; not more than 200 Mental Health Act cases per attorney per year; and not more than 25 appeals per attorney per year.

³⁶ See, e.g., STEPHEN F. HANLON, MALIA N. BRINK & NORMAN LEFSTEIN, *USE OF DELPHI METHOD IN ABA SCLAIID PUBLIC DEFENSE WORKLOAD STUDIES: A REPORT ON LESSONS LEARNED* (2021), https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf.

³⁷ The most recent of these studies for the state public defender was produced in 2017. See RUBINBROWN & AM. BAR ASS'N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *THE COLORADO PROJECT: A STUDY OF THE COLORADO PUBLIC DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS* (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf.

relatively recent introduction of body-worn cameras, and the need to watch and analyze that footage, markedly increases the amount of defender time required for case investigation in all cases involving body-worn camera evidence. On the other hand, the national trend toward integration of social workers into public defender practice can lessen the time required of attorneys on cases that are also served by a social worker.

The State Public Defender's workload studies³⁸ examined public defense practice in state court, which differs markedly from municipal public defense practice in a number of ways, perhaps most significantly in the presence of more time-intensive felony cases at the state level. In the Colorado state criminal legal system, there are multiple classifications for misdemeanor offenses, and the classifications carry differing maximum penalties, in accordance with the Colorado Revised Statutes. The most serious type, a Class 1 misdemeanor, is punishable by six to 18 months in jail, a fine of \$500 to \$5,000, or both. A Class 3 misdemeanor, in contrast, is punishable by up to six months in jail, a fine of \$50 to \$750, or both. In contrast, in Aurora, all jailable ordinance violations have the same maximum punishment: up to 364 days in jail and/or a fine of up to \$2,650.³⁹ A domestic violence assault is, therefore, weighted the same as a trespassing case. The Aurora Public Defender's Office is in need of a case weighting study to develop workload standards that reflect its municipal court practice, which differs from that handled by the State Public Defender.

Jury Trials

Another workload variable to consider is trial load. The APDO sets a considerable percentage of cases for jury trial. While many of these resolve in guilty pleas or dismissals, each must be prepared with the full rigor of any case going before a jury. One attorney estimated that "seventeen out of eighteen clients want to go to trial." Reasons cited were that often this is an individual's first encounter with the police and they want to keep their records clean. And, reportedly, domestic violence cases often get set for trial because pleading guilty to a domestic violence charge results in a mandatory year-long sentence to probation and to attend weekly domestic violence classes, which carry significant costs. A flat fee of \$325 is assessed for probation, whether it is supervised or unsupervised, and the domestic violence classes cost an additional \$30 per week. Coming out of the pandemic-related court closure and the suspension of jury trials during part of 2020, attorneys in early 2021 were feeling the pressure of preparing multiple backlogged cases for trial. One attorney said that through April 2021, they had seven or eight cases set for trial each week, and after that, numbers tapered a bit.

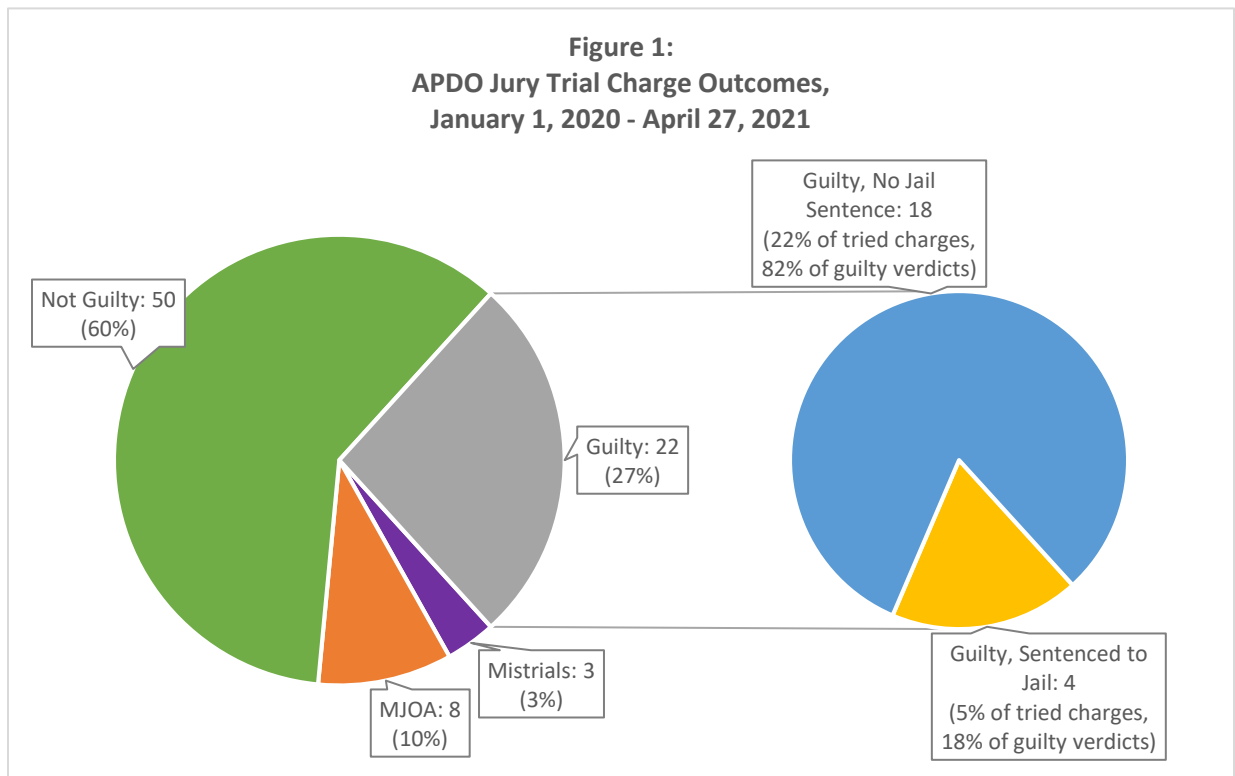
In spring 2021, the APDO conducted a review of jury trials handled by the Office since January 2020, when Doug Wilson became Chief Defender. The analysis shows that public defenders handled 41 jury trials in cases encompassing 83 charges. During that time, the courthouse was closed to the public due to the COVID-19 pandemic from March 17 to June 1, 2020, with jury trials suspended until August 3. So more accurately, there were 41 jury trials handled over 11.5 months. Of those, not guilty findings were returned in an astonishing 60% of charges (50 of 83). All outcomes are summarized below in Table 2 and Figure 1.

³⁸ A workload study is also known as a weighted caseload study.

³⁹ See AURORA, COLO., CODE OF ORDINANCES § 1-13(a) (2019 & Supp. 2020).

Table 2:
APDO Jury Trials Analysis, January 1, 2020 - April 27, 2021
 APDO Data

Total Jury Trials: 41
Total Charges: 83
<ul style="list-style-type: none"> • Mistrials: 2 mistrials for 3 total charges • Motion for Judgment of Acquittal (MJOA)⁴⁰: 8 • Not Guilty: 50 • Guilty: 22 <ul style="list-style-type: none"> ○ Guilty, Sentenced to Jail: 4 ○ Guilty, No Jail Sentence: 18



⁴⁰ A motion for judgment of acquittal is the procedure formerly known as a motion for directed verdict. Under current Colorado Rules of Criminal Procedure,

Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment or information, or complaint, or summons and complaint after the evidence on either side is closed, if the evidence is insufficient to sustain a conviction of such offense or offenses.

COLO. R. CRIM. P. 29(a) (2021).

Late Case Dismissals

Preparing a case for trial is perhaps the most resource-intensive work that a public defender performs. The APDO's trial performance, as reflected in these case statistics, is notably strong, and reflects the investment of time and effort that Aurora defenders put into trial case preparation. However, having multiple cases set for trial on a weekly basis adds significantly to public defender workload demands. Whether cases are set for trial or are heading toward dismissal or plea does not affect overall caseload expectations. Aurora public defenders are expected to carry 125 active cases at once; case assignments do not appear to be reduced on the basis of workload demand, but rather are assigned equally across attorneys. City attorneys dismissed a sizable 47% of charges for APDO-represented clients in 2019, rising to 59% in 2020.⁴¹ A high proportion of dismissals reportedly occur on the day of trial (the jury call), or the Wednesday of the week before trial (the jury status date, when cases are continued, disposed of, dismissed, or declared ready for trial), often due to inability to get witnesses to appear at trial.⁴² If city attorneys know that cases are unlikely to proceed at trial, it raises worrisome questions about their pursuit of such cases until the day of trial, rather than dismissing them earlier. It is concerning that city attorneys put public defenders and their clients through the stress of preparing for a trial if they know they have little chance of being able to proceed at trial.

APDO attorneys identified the City Attorney's Office's horizontal practice model as a contributing factor to late case dismissals. In a continuous, or vertical, practice model, one attorney is responsible for a case, conducting all of the necessary activities from its initiation through adjudication. In a horizontal model, cases are the responsibility of a particular law office, and multiple attorneys in that office can be involved in different aspects of the case, such as arraignment, investigation, motions arguments, and trial. APDO lawyers follow a vertical practice model. Defenders expressed skepticism whether some city attorneys, when appearing for trial, had thoroughly reviewed body-worn camera footage, spoken with witnesses, and undertaken other preparation essential for trial-readiness. Close contact with witnesses is particularly important in domestic violence cases, many of which have witnesses who are reluctant to go to trial or can become reluctant to testify. The City Attorney's Office reportedly prosecutes 1,600 domestic violence cases per year, which includes a substantial portion of cases that go to trial with the APDO providing representation. A sizeable portion of domestic violence cases set for trial are dismissed by the City Attorney.

The trial figures in Table 2 were tabulated manually. The APDO's new CMS will allow it to more easily produce reports that better communicate level of effort, such as number of cases set for trial, number of cases that are dismissed on the day of trial, and number of jury and bench trials, all by case type. It will also be able to report on system issues, including occurrence of case continuances and the reasons for the continuances, and case outcomes, including case dismissals and the reasons for dismissal.

Aurora Criminal Case Workload and Resource Information

For a defender program manager, access to accurate data on one's own program and on the overall system in which that program operates is indispensable for effective management. The APDO has been hindered by a lack of reliable workload data from which it can determine resource needs and justify resource requests. Until 2021, it did not have its own case management system. And in the past, it has

⁴¹ Data provided by Aurora Municipal Court administration. See *infra* Table 5 and Figure 2.

⁴² Bench trials (trials without a jury) have been rare in the Aurora Municipal Court since the Court, in agreement with Chief Defender Doug Wilson, agreed to waive the \$25 jury fee for all individuals facing criminal trials.

been further affected in resource allocation considerations by overly broad comparisons of its work to that of the entire functioning of the City Attorney's Office. The following section probes these areas, with an emphasis on resource sufficiency through a resource parity lens.

Parity: Resources, Workload, and Pay

Principle 8 of the ABA Ten Principles of a Public Defense Delivery System calls for parity in resources, workload, and pay between a jurisdiction's prosecuting office and its indigent defense providers.⁴³ In addition, it calls for both functions to have a comparable voice in the functioning of the overall criminal legal system.⁴⁴ When assessing parity between the PDO and City Attorney's Office in Aurora, it is important to restrict the analysis to the work performed on comparable cases: jailable offenses.

The 2020 authorized staff for the City Attorney's Office was 62 FTEs. The Office has two divisions: the Civil Division and the Criminal Justice Division. The Civil Division represents the City in litigation and provides legal counsel to City offices and to the City Council. It also works with the City Council on drafting legislation. The City Attorney's Criminal Justice Division prosecutes violations of Aurora municipal ordinances and regulations, including traffic offenses.

There is no analog in the Public Defender's function to the work performed by the City Attorney's Civil Division. The comparable City Attorney division for the APDO is the Criminal Justice Division. Even there, parity analysis needs to be restricted to the City Attorney's resources devoted to prosecuting criminal ordinance violations that carry the possibility of a jail sentence. The resources that support the bulk of business handled by the City Attorney – processing non-jailable traffic citations and violations – should be separated out when comparing City Attorney and APDO resource parity.

Resource Adequacy

Directly related to parity in resources is the need for adequacy of resources for both the defense and prosecution functions. Adequacy is determined by applying accepted standards of how much and what sort of personnel is needed to effectively handle the workload. Because the workloads of the two offices differ due to their distinct responsibilities, resource allocations should be determined for them individually and from accurate caseload data that are shared among the APDO, the City Attorney's Criminal Justice Division, the City, and Court Administration. Further, the staffing needs of the City Attorney and Public Defender differ somewhat due to their differing functions. To effectively represent clients, public defender offices require access to certain types of professionals, such as social workers and immigration experts, that prosecutors do not need.

The 2020 budget for the Criminal Justice Division of the City Attorney's Office was \$3,322,233 with an authorized staff of 33, of whom 20 were lawyers.⁴⁵ The actual 2020 budget for the Public Defender's Office, with a staff of 15.5 positions, including 9 attorneys, was \$1,743,580.⁴⁶ The resourcing for the APDO has notably been missing any in-house resources for social worker capacity, which is necessary for

⁴³ ABA TEN PRINCIPLES, *supra* note 16, at 3.

⁴⁴ **"There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense." *Id.*

⁴⁵ The other staff included 2 victim witness liaisons and 11 to 12 support staff.

⁴⁶ The APDO's 2020 actual budget (\$1,743,580) is higher than the 2021 projected budget (\$1,671,474) due to certain one-time expenditures made in 2020, such as LegalServer setup costs and some salary changes.

addressing the full, complex range of client needs and providing representation in line with the nationally recognized best practice of holistic defense. That gap in staff capacity is expected to change in 2021, as a grant from the state's competency Consent Decree Fines Committee will provide funding to support a social worker staff position.

Workload

There is no centralized source of agreed upon data used by the City Attorney Criminal Division and the APDO to perform workload analysis. Data from 2019 and 2020 appearing in the accompanying tables were provided by the Court Administration and Court I.T. staff, who generously took time away from their primary duties to produce caseload statistics for NLADA.⁴⁷ Analysis of that shared data follows.

Cases are initiated by Aurora police on a “J” Summons and Complaint. A summons can allege multiple charges—for instance, reckless endangerment and carrying a concealed weapon—arising from one incident.⁴⁸ Court Administration tracks court filings using counts of charges.

According to the Aurora Court Administrator’s office, there were 27,021 total charges filed in 2020. Of these, 6,042, or 22 percent, carried a possible jail sentence. That subcategory of cases carrying a possible sentence of incarceration is characterized in the monthly reports prepared by court administration as “general filings.” The APDO was reported as “involved” in 1,721, or 28 percent, of the general filings offenses. In 2019, there were 37,162 total charges filed, of which 8,206, or 22 percent, were general filings. The APDO was reported as “involved” in 2,313, or again 28 percent, of the general filings.⁴⁹ See Table 3 and Figure 2.

It is thought that filings in 2020 dipped due to COVID-19 stay-at-home requirements and other disruptions of daily life related to the pandemic. At the same time, with the March 17 to June 1, 2020 courthouse closure, and even longer suspension of jury trials, a backlog of open cases mounted and carried into 2021.

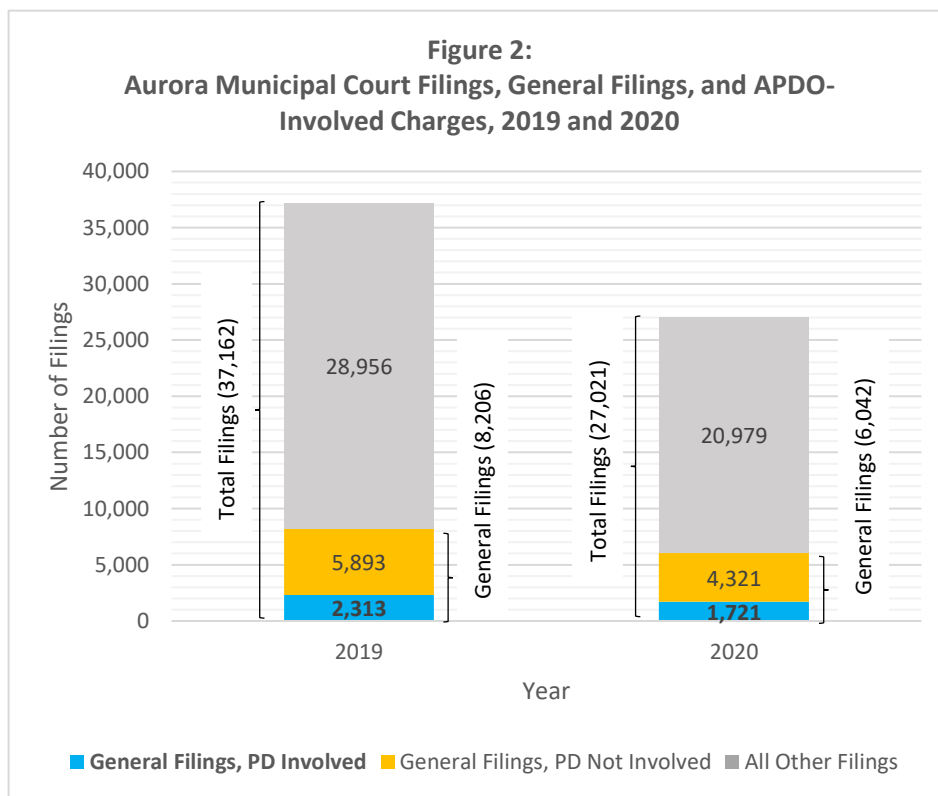
⁴⁷ NLADA was provided with three sources of information on Aurora’s municipal court filings for 2019 and 2020: 1) a City of Aurora Municipal Court 2020 Report for Month of December; 2) a PowerPoint circulated for the May 20, 2021 Public Safety, Courts & Civil Service Committee Meeting about Aurora Municipal Court; and 3) emails from Aurora Court Administration following the TTA Team’s interviews. All three sources list somewhat different figures. The source of numbers used in this report are the emails to NLADA from Aurora Court Administration.

⁴⁸ A blank J Summons is included in Appendix D.

⁴⁹ There are notable discrepancies between the total annual charges provided by Court Administration, which is reproduced in Table 3, and caseload figures reported to the TTA team by the City Attorney’s Office, which estimated that city attorneys handle 45,000 to 50,000 cases per year.

Table 3:
Aurora Municipal Court Charges Filed and APDO Involvement, 2019 and 2020
 Court Administration Data⁵⁰

Type of Charge	Charges Opened in 2019	Charges Opened in 2020	% Change, 2019-20
General Filings ⁵¹	8,206	6,042	-26%
PD Involved (within General Filings)	2,313 (28% of General Filings)	1,721 (28% of General Filings)	-26%
Impound Hearings	32	14	-56%
Traffic/Moving Violations	28,868	20,863	-28%
Photo Red Light ⁵² Dispute Cases	1	1	0%
Zoning Cases	0	1	N/A
Total	37,162	27,021	-27%



⁵⁰ Court Administration provided higher figures as counts of “cases created” for the APDO: 2,414 for 2019 and 2,358 for 2020.

⁵¹ Refers to charges carrying a possible sentence of incarceration.

⁵² The Photo Red Light Enforcement program is the City of Aurora’s automated system of traffic law enforcement through the use of cameras at red light intersections. See CONDUENT, <https://www.cite-web.com/PublicINQ/default.asp>. The filings listed here are disputes of tickets issued through this program.

With the implementation of the APDO's new LegalServer case management system in January 2021, the Office has been able to accurately track case and charge counts and other case-related data in a coordinated, centralized manner for the first time.⁵³ The capacity equips it to compare its own case data with that produced by Court Administration, offering a basis from which it can validate the data or raise questions if discrepancies exist. Early use of the LegalServer system suggests that the APDO's and Court's case tracking systems are producing comparable counts. That is a healthy development for overall system certainty. The APDO's system has the added benefit of easily being able to produce case counts by individual and by charge, and by opening, pending, and closed status.

For the period of just over six months from January 11 to July 19, 2021, APDO data shows that the Office represented clients for 2,234 charges in a total of 1,223 cases (an average of 1.83 charges per case); this includes 1,297 charges in 767 cases opened during that period (averaging 1.69 charges per case), and 937 charges in 456 cases closed in that time (averaging 2.05 charges per case). Extrapolating these data to an annualized projection, one can expect the APDO to handle about 2,343 cases carrying 4,280 charges in the entirety of 2021, including projected totals of 1,470 cases opened carrying 2,485 charges filed, and 874 cases closed carrying 1,795 charges.

Overall, these figures track closely with the 2019 data reported by the Court Administrator's Office (counts for 2020 are considered atypical, due to pandemic-related disruptions in arrests). See Table 4, which includes the APDO's partial year counts and projected year-end totals for 2021, plus Court Administration's actual counts of charges assigned for 2019 and 2020. Because the APDO only began using the LegalServer system in January 2021 and did not enter cases into the system that were initiated prior to the new CMS going live, APDO data to compare to Court Administration data for 2019 and 2020 are not available.

In interviews, APDO staff and Commissioners noted that they could not be sure whether the data provided by the Court Administrator's office was accurate. Firm figures from LegalServer replace that speculation with informed comparisons, which stands to strengthen the working relationship between the Court and APDO.

Table 4:
Client Charges Assigned to the Aurora Public Defender's Office, 2019-2021
Court Administration Data (2019, 2020) and APDO Data (2021)

	2019	2020	Jan. 11-July 19, 2021	2021 Annualized Projection ⁵⁴
Total Charges Opened	2,313	1,721	1,297	2,485
Average Charges Opened Per Month	193	143	207	207
Total Charges Closed	2,522	776	937	1,795
Averages Charges Closed Per Month	210	65	150	150

⁵³ For more on the APDO's use of LegalServer, see the Case Management System section earlier in this chapter.

⁵⁴ Extrapolated from the APDO's data for January 11 to July 19, 2021.

It is important to stress that the number of charges is different from the number of cases. As alluded to above, individual cases often involve multiple charges. Public defenders in Aurora think of their workload in terms of representing individual clients, some of whom happen to face multiple charges and some who do not. The staffing assumption that public defenders will carry 125 active cases refers to 125 individuals, not charges. It is not possible to produce accurate public defender staffing projections from the charges data appearing in Tables 3-6. The APDO needs to work from the number of cases – or individuals – assigned to be represented by the Office, and, beyond that, data on average case aging.

Table 5 displays numbers of charges (again, charge data rather than case data is what was provided by Court Administration) closed for both public defenders and private attorneys who represent people who are not indigent. The comparison is shared for general context. Unfortunately, there is no way to tell what percentage of the cases handled by retained attorneys actually faced a jailable sentence, whereas all APDO clients faced a possible sentence of jail.

Table 5:
Aurora Municipal Court Charges Closed, by Legal Services Provider, 2019 and 2020
Court Administration Data

Provider	Charges Closed in 2019	Charges Closed in 2020	% Change, 2019-20
Public Defender	2,522	776	-31%
Private Attorneys	1,422	799	-56%

Table 6 shares outcomes of the charges closed by the APDO in 2019 and 2020. For both years, the single largest outcome category of APDO workload was cases resolved by dismissal (59% in 2020 and 47% in 2019), raising questions about City Attorney charging decisions. See Chapter 4’s discussion of late dismissals for more on this topic.

Table 6:
Public Defender Charge Outcomes, 2019 and 2020
Court Administration Data

	Charges in 2019	% of 2019 Total ⁵⁵	Charges in 2020	% of 2020 Total ⁵⁰
Total PD Closed Charges⁵⁶	2,522	100%	785	100%
Dismissed	1,196	47.42%	461	59.41%
Guilty⁵⁷	1,071	42.47%	266	34.28%
Plead Guilty⁵²	203	8.05%	49	6.31%
Not Guilty	49	1.94%	9	1.16%
No Contest	3	0.12%	0	0.0%

⁵⁵ Refers to the percentage of annual total closed charges for the given year that the number in the preceding column represents.

⁵⁶ Refers to the total number of charges closed by the APDO in the given year. It is unclear why the total charges closed by the APDO in 2020 as reported by the Court Administrator in this set of data (785) is higher than the total for the same metric as reported by the Court Administrator in the data set represented in Table 4 (776).

⁵⁷ Per Court Administration staff, court clerks record a disposition of “guilty” when a defendant is found guilty by the court, and a disposition of “plead guilty” when a defendant enters a plea of guilty voluntarily.

The APDO's new case management system will better equip the Office to prepare staffing assumptions using the City's basis of having attorneys carry 125 active cases apiece. And with a workload study completed, those projections can be even more reflective of staffing needs. Indeed, the APDO is already using its CMS to track attorney time spent on case-related and non-case-related activity, which will be valuable information for a workload study. Still, there will remain challenges in isolating the precise set of cases from which APDO and City Attorney Criminal Division resource comparisons should be made.

Not all data points needed for comparative resource analysis are readily available to the APDO; some information is only kept by Court Administration or the City Attorney. A mechanism to share pertinent data is needed. Additionally, the offices will need to agree on a common approach to reporting on workload: will they report on charges, or on cases? Beyond agreeing whether to report on charges or cases, the analysis should be confined to resources needed to adequately handle that cohort of cases for which the Public Defender is eligible for appointment: *jailable* criminal offenses; not traffic offenses and not juvenile offenses, which reportedly very rarely involve possible jail sentences. Further, the City Attorney has discretion to announce at the outset of a case that carries a possible penalty of jail that it will not seek a punishment of incarceration. This grouping of cases should be eliminated from a resource parity analysis of the two offices' functions.

Even with the benefit of data and analysis from its own CMS, the APDO will continue to need additional system figures from Court Administration and/or the City Attorney's Office about total public defender-eligible cases and the subset of cases where jail is not sought to have a complete picture of resource needs.

To develop resource projections, the APDO needs accurate information to understand, out of the total universe of Municipal Court cases, the projected number that are eligible for its service. That is, how many cases are projected where an individual will face a possible sentence of incarceration? Beyond that, tallies should be available on the posture of all such cases by:

- Number in which the City Attorney announces to the court that it will not seek a jail sentence;
- Number where individual applies for public defender representation;
- Number where individual applies but is determined not eligible for public defender representation;
- Number represented by court-appointed counsel due to a conflict of interest with the APDO;
- Number where the individual client retains counsel;
- Number where the individual proceeds pro se (without counsel); and
- Number handled by the APDO.

Ideally, out of all J Summons cases, the Aurora Municipal Court system should be able to isolate, by both case and charge, those matters that carry a penalty of jail, where the City Attorney has not notified the court it will not seek a jail sentence, and where the accused person is indigent and wants appointed counsel. Another way to think of this is to begin with the total universe of cases where an arrest was made or a summons was issued in Aurora, and the individual seeks appointed counsel, and subtract the following:

- non-jailable offenses,
- non-indigent individuals, and
- cases/charges where the City Attorney waives jail as a possible sentence.

After all of those subtractions, the *remainder* is cases/charges where the APDO can provide representation. This filtering down of cases is illustrated below in Figure 3.

Figure 3:
Aurora Public Defender Case Projection Calculus



More discussion of caseload data appears in the Aurora Criminal Case Workload and Resource Information section below.

Pay Parity

As stated earlier, national standards emphasize the importance of pay parity for attorneys handling the same cases, whether as prosecutor or defender, in the same jurisdiction. There is no excuse for not adhering to the equity principle that individuals performing like work should be paid in comparable fashion. Pay parity connects directly to the quality of applicants who seek employment and to staff retention. Retention of experienced staff directly connects to the quality of advocacy provided to clients. The APDO has experienced significant turnover among its attorneys. As of August 2021, only the two longest-tenured attorneys at the Office have worked there for longer than two years.

Aurora's starting pay for line public defenders has historically been lower than that paid to line city attorneys in Aurora, as has pay for managing attorney positions. Such disparity is not based on performance of vastly different functions. Further, an assertion that reportedly has been advanced that City Attorney staff deserve more in pay because the Office handles more cases is not a sound basis for determining pay scales, but is instead a concern of staffing adequacy.

At the urging of Doug Wilson, the City undertook an effort to examine pay scales for the City Attorney and APDO. The City's Human Resources Department conducted a market study for all APDO attorney positions, from entry level Deputy Public Defender I through the Chief Public Defender. HR staff examined salaries of attorneys with the Aurora City Attorney's Office, the Denver Municipal Public Defender's Office, the Denver City Attorney's Office, and the Colorado State Public Defender who work in comparable positions to public defender attorneys in Aurora. After the year-long review, the Human Resources Department agreed that APDO attorneys should receive an upward pay adjustment.

That analysis paved the way for Wilson to submit a budget supplemental requesting funds to move attorney pay toward parity, and to be retroactive to January 31, 2021. The City approved the request May 24, 2021. In addition to moving attorney pay substantially toward parity, attorneys and administrative staff received pay increases as part of a new City compensation plan. Future efforts, the TTA Team was told, will turn to examining adequacy of pay for administrative and investigator staff at the APDO.

Although the City has made great strides toward pay parity for public defenders, disparities between comparable positions in the APDO and the City Attorney's Office still exist. Table 7 illustrates salary ranges for various attorney positions within the APDO and the City Attorney's Office, effective July 31, 2021. These figures are the result of the pay parity efforts described above in combination with a new pay structure for City employees.⁵⁸ The salary ranges are reference points for starting salaries and pay raises; for example, an entry-level position should be hired at 84% of the average market pay level, and after six years and good performance reviews, pay should be increased to 100% of that level. As Table 7 demonstrates, the disparities between comparable positions in the APDO and the City Attorney's Office increase as one rises both through salary ranges and (generally) to higher positions within the offices' hierarchies, effectively creating a salary disincentive to work longer as a public defender.⁵⁹ The APDO reports that similar disparities exist for administrative staff. The City is to be applauded for its efforts in closing the gap considerably on pay disparities, but further efforts to achieve pay parity are still needed.

**Table 7:
Annual Attorney Salary Disparities Between Aurora Public Defender's Office and City Attorney's Office, by Comparable Positions (Effective July 31, 2021)**

Position	Office	Minimum Salary	Average Market Pay	Maximum Salary
Deputy City Attorney	CA	\$150,547	\$188,184	\$235,230
Chief Public Defender	PD	\$144,128	\$180,160	\$225,200
Difference		\$6,149	\$8,024	\$10,030
Manager of Prosecution	CA	\$128,042	\$160,053	\$200,066
Chief Deputy Public Defender	PD	\$125,731	\$157,164	\$196,455
Difference		\$2,311	\$2,889	\$3,611
Assistant Attorney II (Criminal)	CA	\$87,292	\$109,115	\$136,393
Deputy Public Defender II	PD	\$86,321	\$107,901	\$134,676
Difference		\$971	\$1,214	\$1,717
Assistant Attorney I (Criminal)	CA	\$74,865	\$93,581	\$116,976
Deputy Public Defender	PD	\$73,863	\$92,328	\$115,411
Difference		\$1,002	\$1,253	\$1,565

⁵⁸ Under this new pay structure, the City's Human Resources Department will conduct annual market surveys to determine whether these salary ranges need to be adjusted upward; the ranges will not be reduced.

⁵⁹ It should also be noted that civil city attorneys are paid at a much higher level than criminal city attorneys and public defenders. For example, the salary bands for a civil Assistant Attorney I are \$81,600, \$102,000, and \$127,500, much higher than the counterpart criminal Assistant Attorney I and Deputy Public Defender bands. Interestingly, public defenders in New York City achieved pay parity not just with criminal prosecutors, but also with other government attorneys, many of whom were paid more than prosecutors or public defenders.

Supporting Clients and the Community

The following sections of this chapter address practices that are becoming recognized as integral for high performing defender offices across the country: holistic defense, client-centered representation, client engagement, and community engagement. As they are still evolving from the traditional legal services model, there are not yet accepted national standards or best practices to guide implementation. Approaches therefore are offered of how to more formally integrate the practices into the APDO's workflow.

Holistic Defense and Client-Centered Representation

Clients represented by the APDO receive traditional representation services that include legal analysis, investigation, and advancement of a zealous defense against the charges. While APDO attorneys are committed to providing the best quality representation to their clients, the Office does not formally follow what is referred to as client-centered representation, nor does it use an inter-disciplinary, holistic team model of practice. As national practice norms change, more and more defender offices follow client-centered principles and apply a holistic, team practice model.

Holistic defense is advocating for all of a client's interconnecting needs in the criminal, civil, immigration, housing, and employment contexts, among others, instead of simply representing a client in their criminal case. As conceived by the Bronx Defenders, the "four pillars" of holistic defense are: "seamless access to services that meet legal and social support needs," "dynamic, interdisciplinary communication," "advocates with an interdisciplinary skillset," and "a robust understanding of, and connection to, the community served."⁶⁰ The model recognizes that for many low-income individuals, simply addressing the "four corners" of a criminal case without considering underlying factors, such as mental illness, substance dependence, or housing insecurity, does not substantially reduce the likelihood of repeat criminal legal system involvement.

At the core of client-centered representation is the belief that a client should have primary decision-making authority in determining the direction of their case, and the attorney is supposed to provide neutral and objective legal advice to help achieve the ends that the client seeks.⁶¹ Client-centered representation can be thought of as aiming to accomplish four broad goals: "(1) recognizing the importance of non-legal aspects of the client's case, (2) limiting the role of lawyers' professional expertise, (3) giving primacy to client decision-making, and (4) understanding the client's perspective and values."⁶² In practice, client-centered representation humanizes the client, respects their goals and perspectives about their case, and prioritizes their decisions about how to best resolve their situation. Successful outcomes are defined by the client and not the attorney. Success includes the client experiencing their attorney providing guidance and counsel about all aspects of the case but not making final decisions that are not aligned with what the client wants.

⁶⁰ *Holistic Defense, Defined*, BRONX DEFENDERS, <https://www.bronxdefenders.org/holistic-defense>.

⁶¹ Julie D. Lawton, *Who Is My Client? Client-Centered Lawyering with Multiple Clients*, 22 CLINICAL L. REV. 145, 147 (2015), https://www.law.nyu.edu/sites/default/files/upload_documents/Julie%20Lawton%20-%20Client-Centered%20Lawyering%20with%20Multiple%20Clients.pdf.

⁶² Jonah A. Siegel, Jeanette M. Husseman & Dawn Van Hoek, *Client-Centered Lawyering and the Redefining of Professional Roles Among Appellate Public Defenders*, 14 OHIO ST. J. CRIM. L. 579, 584 (2017), https://kb.osu.edu/bitstream/handle/1811/80794/OSJCL_V14N2_579.pdf.

Ideally, these two approaches complement one another to provide representation that seeks to empower clients and set them up for success within and outside of their criminal case.

The effectiveness of this manner of representation depends on access to holistic and client-centered resources, training, and strategies. Holistic attention to who a client is and the factors that contribute to their court system involvement creates pathways for the prosecution, judge, and public defender to make informed decisions, resolving cases in ways that address the underlying factors that contribute to unlawful conduct. Repeated contacts with public safety and healthcare systems have negative personal and economic impacts on involved people and the communities where they live.

APDO attorneys seek to provide high-quality representation to their clients. Personnel attached to agencies outside of the APDO made several observations that echoed a culture of dedication and zealous advocacy within the Office. Training in holistic strategies and additional personnel to support this structure will expand capacity for addressing underlying conditions that foster repeated contacts with the public safety, healthcare and court systems.

Although staff at the APDO echo client-first beliefs, operationally there is a tension between managing heavy caseloads and prioritizing the time required to discover who their clients are and what is important to them, and then, after providing legal counsel and advice, yielding to client decisions about how to proceed with their cases. The competing tensions are symptomatic of under-resourced staffing, including inadequate access to investigators, social workers, and client advocate personnel.

Holistic representation unlocks access to a plethora of relevant intervention services, including anger management; family counseling; and help managing mental illness, drug addiction, PTSD, homelessness, and unemployment. In Aurora, these services are available through the Wellness Court and the Armed Forces Treatment Court, where formal engagement with service provider partners is structured into the court process. However, those courts serve few individuals: from an average of nine applications per month, the Wellness Court reportedly serves a monthly average of just three or four participants. The APDO attorney assigned to Wellness Court reported that the highest number of participants in one month was seven. Every client who is represented by the APDO is in need of holistic services by virtue of their poverty and the lived experiences that are symptomatic of lack of economic means to access services and meet basic human needs including food, shelter, and clothing.

The capacity of attorneys in the APDO to assess client needs and develop alternatives to incarceration that address those needs are limited. The Office does not have a single social worker, client advocate, or peer navigator to support the work. Attorneys are frequently left to investigating the charges and developing legal defenses and holistic intervention recommendations on their own. The volume of clients represented in each courtroom is high and there is limited time outside of court sessions to assess client needs, find intervention services, secure documentation requirement by providers, enter into agreements to provide those services, and develop case management plans to present to prosecutors and judges for consideration. The outcome of this limited capacity is that if clients are not in the Wellness Court or the Armed Forces Treatment Court, their cases are too often resolved by way of conviction or plea, and result in the imposition of sanctions that do not promote a reduction in the number of contacts with the public safety, healthcare, and court systems in the future. If the APDO had additional personnel to support holistic strategies, the capacity of the court to divert people into services in every courtroom would be strengthened.

Staff at the APDO also sacrifice their time and personal resources to support the needs of clients. Some staff used personal funds for fees charged to connect virtually with clients who were incarcerated during the pandemic. Others provide funds to clients who need assistance with public transportation and access to food. Several attorneys said that the reason they do this work is to make a difference in client lives, and to humanize clients so they do not merely appear as names and case numbers on court dockets.

Client intake conducted at the APDO secures baseline background information about clients. In-depth analysis of a client's lived experiences and current needs is occurring, in large part, only with clients assigned to the specialty courtrooms. APDO attorneys who do not work in the specialty courtrooms report that they try to link clients to services in some cases, but have limited options available. The most effective holistic representation models are structured to serve all clients, regardless of what they are charged with, how many times they are been involved in the court system, or what courtroom or docket they are assigned to.

Client Engagement

Clients are an untapped resource for strengthening public defense in Aurora. People who have been accused of crimes and who have been the subject of Aurora Municipal Court proceedings, especially people who have been represented by the APDO, are in a uniquely knowledgeable position to provide input on ways to improve APDO practices and policies, court procedures, and other elements of the municipal criminal legal system. Clients are a rich source of insight about the history, culture, and social and economic health of the communities where they live. Legal system involvement across the nation is significantly tied to poverty, mental illness, drug addiction, trauma, discrimination, and lack of access to healthcare and quality education. The most effective representation is delivered by attorneys and their teams who understand the history and culture of the environment where the client lives, and pay close attention to what the client needs and how the client would define what effective representation is. A deeper understanding of who clients are cultivates trusted relationships that improve the quality of representation and case outcomes.

The APDO needs additional capacity to engage with current and former clients, as the Office's practice model is presently limited to one-on-one communications with clients who have pending charges before the Municipal Court. The client experience of being represented by an Aurora public defender does not currently influence or inform the identification of opportunities to improve the quality of representation or the development of policy or procedure that meets client needs. The quality of legal services for people experiencing poverty, many of whom are having repeated contacts with the public safety, healthcare, and court systems, and for people who have been disparately impacted by the criminal legal system, can be strengthened through engagement with client perspectives.

The APDO should partner with the Aurora Public Defender Commission to develop a client engagement strategy plan. High-level goals and objectives for the plan should include strengthening clients' assessment of the quality of their representation; strengthening the relationship with clients; relying on clients to identify needs; and providing deeper insight about the impact that services have on individual clients, their families, and the communities where they live. Like community engagement, dialogue between clients, the APDO, and the Commission can cultivate better understanding and decision-making that benefits the needs of the people being served.

Strategies for client engagement could include:

- Development of a client advisory board;
- Invitations to join APDO and Commission meetings to provide feedback;
- Administration of client feedback surveys;
- Consistent dissemination of client satisfaction surveys;
- Creation of a peer client advocate position within the APDO;
- Establishment of one or more client community seats within the Public Defender Commission; and/or
- Engagement with local advocacy groups and service providers to connect with client voices.

Community Support

Engagement with the broader community in the jurisdiction—including present clients, former clients, non-clients, and service providers—is essential to building public trust and confidence and developing holistic defense practice. Through its interviews and review of documents, the TTA team found that the APDO needs additional capacity to engage in community outreach efforts. The Public Defender’s Office exists to serve anyone in Aurora who is accused of a crime and cannot afford counsel, and therefore the Office’s potential client base is expansive. The APDO currently lacks capacity to affirmatively engage with Aurora’s general population about the value and role of public defense. Similarly, the Office lacks capacity to conduct coordinated outreach to service providers who may be able to assist clients and enhance the Office’s provision of holistic defense.

A possible solution lies in the Aurora Public Defender Commission, which could leverage the expertise of its Aurora-based members to partner with the APDO and develop a community engagement plan. Commission members who live in Aurora are a rich resource for identifying and cultivating community partnerships that can support the APDO, including service providers, advocacy groups, school boards, the faith-based community and other entities that work to strengthen Aurora and care for its citizens. The benefits of a robust community engagement strategy can include:

- Cultivating awareness of how the APDO represents clients and problem-solves in ways that benefit the community;
- Identifying ways the community, through its individuals, organizations/groups, and other resources, can support the work of the Public Defender’s Office;
- Promoting dialogue to build a foundation of understanding and identification of mutual goals;
- Keeping the Public Defender’s Office informed about community needs;
- Providing a method for consistent community feedback, help with designing and executing new programs that are informed by the people who will be most directly impacted by the services; and
- Measuring community perception and performance by the APDO and Commission.

The development of a community engagement plan will ideally include the voices of former clients and community members who have experienced the impact of the services provided thus far by the APDO. The strategic plan to build relationships in the community should include written goals, objectives, and procedures that can be updated and available for current and future APDO staff, Commission members, and the community.

One person interviewed during the evaluation period provided insight that summarizes the opportunities for all agencies within city government to support the Aurora community. Paraphrasing what was said:

Behind everything we do as a city is a face and a name of a resident in Aurora. We work for them and because of them. Our responsibility as a government is to ensure that our services effectively meet the needs of everyone. We are stronger if we work together to meet our obligations.

Chapter 4: System-Wide Challenges

In the course of NLADA’s evaluation, the TTA team found issues that are systemic in nature and important to mention in this report. These issues include the need to restructure the current “Big Four” meetings of criminal legal system stakeholders into a more representative body, perhaps in the form of a criminal justice coordinating committee; the independence of Aurora’s public defense function; issues in workflow, motions, and discovery stemming from the Municipal Court’s paper-only filing system; the need for Aurora’s municipal criminal legal system stakeholders to commit to diversity, equity, and inclusion; late case dismissals by the City Attorney’s Office; and the need for alternative sentencing options. The chapter concludes with interviewees’ suggestions for improving municipal indigent defense in Aurora that implicate other segments of the Aurora municipal criminal legal system.

Restructuring the “Big Four”

Many cities, counties, and states throughout the country – including the City and County of Denver; Arapahoe, Adams, and Douglas Counties; and the State of Colorado – have established a criminal justice coordinating committee (CJCC) to collaboratively address systemic challenges facing a jurisdiction’s criminal legal system and to strengthen the overall well-being of their communities by developing and recommending policies and practices that improve public safety; promote fairness, equity, and accountability; and reduce unnecessary incarceration and criminal legal system involvement. Members of such entities include executive leaders of justice system agencies as well as relevant experts and community service providers.

Aurora does not have a CJCC, but it does have a related, informal cohort referred to as “the Big Four.” The Big Four members include the Presiding Judge, Court Administrator, Deputy City Attorney for the Criminal Justice Division, and the Chief Public Defender. The group was started years ago at the suggestion of a former Deputy City Attorney who felt it would be useful for the four agency leads to get together and talk about overarching issues that affect the Municipal Court and its delivery of services. Meetings of the Big Four do not occur on a regular basis.

Cities and counties that have CJCCs tend to find them useful for constructively hashing out system issues and initiating practice and policy changes that improve the criminal legal system. Also, unlike the Aurora Big Four, most CJCCs are assisted by dedicated, neutral full-time staff that can compile and analyze data, perform research and fact-finding, and coordinate meetings. Such support could facilitate more detailed and productive discussions that may require a level of research and preparation that would be too burdensome for Big Four members to take on.

One of the most notable differences between a CJCC and the Aurora Big Four is the absence of several criminal legal system stakeholders from Big Four gatherings, including representation from law enforcement, the City’s executive and legislative functions, and the broader community. Not having all stakeholders at the table limits the scope of issues on which the group can collaboratively make decisions (e.g., proposals that would require input or approval from the police or the Mayor). Creation of an Aurora CJCC would be a natural extension of the existing Big Four by adding other municipal criminal legal system stakeholders—such as the Aurora Chief of Police, one or more members of City Council, representatives from the Mayor’s and City Manager’s offices, former APDO clients, and lay

community leaders—to better advance system improvements.⁶³ Bringing on these additional perspectives would allow for more informed and productive deliberations and decisions about the direction of Aurora’s criminal legal system. The current Big Four could constitute a subcommittee of a new CJCC to discuss customer service issues at the Municipal Court or other topics within the broader scope and authority of the CJCC.

Examples of topics which would be appropriate for consideration by a CJCC that were noted during TTA team’s site work include:

- transition from an all-paper case filing system to an electronic system;
- transition to an electronic sharing system for discovery between the City Attorney and APDO;
- improved data integration for justice agencies, including police, court, City Attorney, APDO, and jails;
- analysis of case continuations, including common drivers of continuations and ways to mitigate them;
- uniform case counting and tracking for City Attorney, Court and APDO;
- identification of needed court rules and/or formalized procedures;
- identification of resources to best equip specialty courts to serve community needs;
- ease of public defender client communication/access at jails; and
- emergency protocols in time of public health crises, such as the COVID-19 pandemic.

Public Defender Independence

The structure of ensuring independence for the public defense function in Aurora stands shoulders above that found in most municipal court systems, and ensures the Public Defender’s Office is able to make decisions that are in the best interests of clients. Still, interviews with various stakeholders in Aurora city government revealed a level of misunderstanding about public defender independence, how independence is operationalized within the APDO and with external City agencies, and why the structure of independence is so critical for the protection of constitutional rights of all citizens. That has caused some friction for the Office. Paraphrasing what one interviewee said,

I get it [defender independence], but that means we can’t support the Public Defender’s Office in the same way that other agencies within the city receive services. Everyone in the city has to report to someone, but not the Public Defender’s Office.

Other interviewee statements revealed a tension with the APDO that appears to function as a barrier to developing collegial partnerships and maximizing collaborative strengthening of justice outcomes in the municipal court. For instance, some stakeholders said they had not previously thought about the value of including the APDO in community outreach initiatives, community celebrations, or public service strategies. One interviewee said they do not understand why the APDO doesn’t cooperate with some of the efforts of the court to help clients. Others said the APDO sometimes “butts heads” with court administration and other divisions within the court agency, all indications of a misunderstanding about the role of public defense and the independent structure.

⁶³ For additional guidance on building out a fully-formed CJCC, *see generally* U.S. DEP’T OF JUST., NAT’L INST. OF CORR. NIC ACCESSION NO. 017232, GUIDELINES FOR DEVELOPING A CRIMINAL JUSTICE COORDINATING COMMITTEE (2002), <https://s3.amazonaws.com/static.nicic.gov/Library/017232.pdf>.

The APDO and the Aurora Public Defender Commission could improve understanding through development of a communications plan that strengthens knowledge of and support for independence, conveys to other criminal legal system stakeholders in Aurora the importance of defender independence and ways that independence has to be operationalized. Such messaging could include examples of how independence functions to protect confidentiality and the attorney/client relationship, and examples of negative consequences in jurisdictions that do not support the need for public defender independence. The ABA's Ten Principles of a Public Defense Delivery System can serve as the outline of a communications plan that can foster better understanding of what independence is and how the public defender function is aligned with some of the same goals and objectives of other City agencies.

Understanding of the importance and role of public defender independence could also improve through increased direct engagement between the APDO and other leaders in City government. Unlike a number of City Departments, the APDO does not have a designated Deputy City Manager as a point of contact in the City Manager's office. Establishment of regular meetings (e.g., quarterly) between the Chief Public Defender and the City Manager would help bridge the gap in communications between these two offices. Similarly, although the Chief Public Defender regularly attends meetings of the City Council's Public Safety, Courts & Civil Service Committee, opportunities for meaningfully communicating the work of the APDO to City Council are limited. This could be improved by arranging for an annual report to City Council by the Chief Public Defender and the Chair of the Public Defender Commission.

Stakeholders should better understand the value that the APDO brings to the court system, public safety, and strengthening community relationships. The APDO should engage with stakeholders in City government much as it does, as discussed above, with residents in Aurora.

Paper-Only Filing: Issues with Workflow and Discovery

A unifying thread throughout the TTA team's interviews with public defenders, prosecutors, and court administration was bemoaning of the Aurora Municipal Court's paper-only filing system. The paper-only system is inefficient and obsolete. Stakeholders across the system noted that the court has always been paper-only and that there is strong desire to shift to an electronic filing and discovery system. Multiple interviewees noted that the Municipal Court's capacity to make changes is an obstacle, as the Court has just four staff to run its information technology system.

The system's reliance on paper extends to discovery. One staff member at the APDO spends most of their time scanning and uploading paper discovery into the Office's LegalServer case management system. Electronic transmission and uploading of discovery would free up that staff member for far more productive, case-related work. The City Attorney's Office reported that it is unable to provide electronic discovery until the Municipal Court adopts electronic filing systems.

The City Attorney's Office also relies on paper files, which can create an impediment to efficient handling of a case. The Office utilizes a horizontal practice, and two prosecutors cannot both have a given physical case file to work from at the same time.

The City Attorney's Office receives police bodycam footage via an electronic link provided by the Aurora Police Department's vendor.⁶⁴ Staff at the City Attorney's Office then downloads police bodycam

⁶⁴ As of the time of writing this report, the Aurora Police Department was in the process of switching vendors for accessing bodycam footage.

footage for a given case onto a compact disc (CD) that they deliver to the APDO. The City Attorney's Office reported that it used to provide the APDO with electronic links to bodycam footage via email, but issues arose in providing some discovery by paper and other discovery by email, along with technical issues with emails bouncing back and bodycam vendor links becoming inaccessible after a period of time.

APDO attorneys reported dissatisfaction with the City Attorney's Office's delivery of discovery. One defender noted, "They're very slow getting discovery over. I have two cases set for trial this week that have body-worn camera evidence, and they gave me that less than a week before trial. It feels like discovery gets to you very late and doesn't let you investigate." This defender added that Aurora Municipal Court judges take discovery issues less seriously than in state court and that they are relatively generous to city attorneys regarding timeliness of discovery.

Diversity, Equity, and Inclusion

In light of the nation's ongoing reckoning with institutional racism in the public safety and criminal legal systems, professionals working in criminal legal systems must recommit to principles of racial and ethnic diversity, equity, and inclusion. The stakeholders in Aurora's municipal criminal legal system are no exception.

In the summer of 2020, after the murder of George Floyd, national attention turned to Aurora as news emerged about the August 2019 death of Elijah McClain, a Black man, following his encounter with police in Aurora.⁶⁵ A City investigation into McClain's death published in February 2021 produced three recommendations: "Review policy, training, and supervision regarding use of force and arrest practices; Improve accountability systems, including more effective review by Major Crime and mandatory review by Internal Affairs; and Clarify and strengthen the transition of an individual from suspect to patient when EMS is called."⁶⁶ The investigation also called for the City to "review its policies, practices, training, and culture regarding implicit bias, to reform its crisis intervention system, to maintain the independence of EMS, and to consider the impact of options other than ketamine."⁶⁷ Notably, the Aurora Police Department brought on a diversity, equity, and inclusion trainer to serve as Chief Community Relations Officer, a role tasked with carrying out the police chief's "A New Way" plan and building trust in the community. The death of Elijah McClain and the resulting spotlight on Aurora in the national reckoning on racial equity and police violence makes it all the more important that all legal system stakeholders in Aurora, not just police, reexamine their internal- and external-facing practices and policies with respect to diversity, equity, and inclusion.

The City of Aurora is one of the most diverse in Colorado, with 39% of residents identifying with a race other than white or Caucasian, and 16% identifying as Black. Twenty-eight percent of residents identify

⁶⁵ See Richard Fausset & Shaila Dewan, *Elijah McClain Died After He Was Detained. Now He's Being Remembered*, N.Y. TIMES (June 30, 2020), <https://www.nytimes.com/2020/06/20/us/elijah-mcclain-police-killings.html>; Claire Lampen, *What We Know About the Killing of Elijah McClain*, N.Y. MAG.: THE CUT (Feb. 22, 2021), <https://www.thecut.com/2021/02/the-killing-of-elijah-mcclain-everything-we-know.html>.

⁶⁶ JONATHAN SMITH, MELISSA COSTELLO & ROBERTO VILLASEÑOR, INVESTIGATION REPORT AND RECOMMENDATIONS 152 (2021), [https://p1cdn4static.civicleve.com/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20\(FINAL\).pdf](https://p1cdn4static.civicleve.com/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20(FINAL).pdf).

⁶⁷ *Id.* at 153.

with being either Hispanic or Latino.⁶⁸ People accused of crimes are disproportionately Black, Brown, and otherwise marginalized by society. Part of being an effective and equitable professional in a criminal legal system is the ability to work with people of different classes and races effectively. Training, such as in how to be an active listener, and in awareness about implicit bias, can help with this. But it is also important to be able to work with colleagues of different backgrounds.

One Aurora Municipal Court judge said there is a lack of sufficient racial diversity among staff at the APDO as well as the City Attorney. Notably, in contrast, the Court Administrator's staff has a good track record of staff diversity, after making diversity a priority in hiring over time. Of 105 staff under the court administrator's authority, 55 are female, 50 are male; 52 are white, 53 are of color.

The City's Human Resources Division reportedly provided a diversity, equity and inclusion course through its on-line learning management system that was mandatory for all City employees, including APDO staff, in fall of 2020. The TTA team's interviews indicated that this training was not sufficient and that additional training and further efforts on diversity, equity, and inclusion are needed.

Late Case Dismissals

As noted in Chapter 3, a significant portion of cases set for jury trial in the Aurora Municipal Court are dismissed by the City Attorney on the day of the trial (at the jury call), or the Wednesday before trial (the jury status date). The practice affects public defenders, who rigorously work up all cases set for trial, despite knowing that any case may be dismissed on the trial date. It also can induce needless anxiety for clients and it raises concerns about the efficiency and dedication of resources in the overall court system.

Alternative Sentencing

For a significant portion of the APDO's clientele, alternative sentencing options can be an effective way to address problems that exacerbate clients' involvement with the criminal legal system. The clients that the APDO serves are, by definition, economically insecure. As a result, most clients experience unmanaged problems such as housing instability, substance abuse, mental illness, barriers to completing education or training, and/or employment instability. These instabilities often connect directly to and over-tax public safety, healthcare, and court systems. Sentencing options that go beyond fines, incarceration, and probation are opportunities for the City of Aurora to strengthen and manage resources that can be depleted by repeated contacts with the public safety, healthcare and court system.

In other jurisdictions, agencies across the criminal legal system partner together to implement strategies intended to support citizens and reduce the drain on government services and resources. Examples of these strategies can be seen in programs like Seattle, Washington's ground-breaking Law Enforcement

⁶⁸ See *Data and Demographics: Population*, CITY OF AURORA, COLO., <https://www.auroragov.org/cms/One.aspx?portalId=16242704&pageId=16394086>.

Assisted Diversion (LEAD) program,⁶⁹ which has been adopted by five jurisdictions in Colorado,⁷⁰ and Bexar County, Texas's Haven for Hope campus, where citizens experiencing economic and health instability can access services.⁷¹ Another strategy that the Atlanta, Georgia municipal court system, among others, has deployed is the restorative justice model. Restorative justice strategies in a court setting are an approach to achieving accountability for unlawful conduct by addressing the harm caused to victims and communities while also embracing the offender as a valued member of the community by addressing their underlying needs.⁷² Atlanta's restorative justice model consists of multiple boards staffed by local volunteer community leaders and residents who are interested in supporting the health and safety needs of their neighborhoods. The boards meet with participants, develop relationships, and establish a community support base that can strengthen chances for individual and community quality-of-life improvements.

Formal sentencing arrangements such as those found in Wellness Court are not always necessary for taking advantage of valuable support services. With knowledge of available community resources and partnership with providers, public defenders can refer clients to these services.

Enhanced Community Responsiveness Through Public Defender Collaboration

Conversations with interviewees revealed missed opportunities for the APDO to collaborate with other agencies and stakeholders in the city, all of whom are working toward the common goal of supporting the community. With a goal of better leveraging complimentary resources, details should be provided to city stakeholders about the mission of the APDO and its services that intersect with other agencies. City agencies, including the public safety, community relations, and communications departments, can benefit from engagement with the APDO to advance their goals and objectives. A mapping of city services could reveal where services are duplicated and where agency activities can be directed to better ensure success of programs and strategies that support Aurora's citizens. A few avenues for improved collaboration including APDO participation identified through this evaluation include:

- Diversity, equity, and inclusion initiatives, including implicit bias training and strategies to diversify leadership and staff supporting City agencies;
- Cross-agency training in mental health first aid, de-escalation, motivational interviewing, and engagement with citizens;
- Joint participation in the Responding to Aurora's Critical Topics (REACT) initiative;

⁶⁹ The flagship LEAD program in Seattle inspired numerous others arrest diversion programs that are collaborative community safety efforts offering law enforcement a credible alternative to booking people into jail for criminal activity that stems from unmet behavioral health needs or poverty. See *generally* LEAD NAT'L SUPPORT BUREAU, <https://www.leadbureau.org>. The Seattle program has evolved away from its roots as a program where police are the gatekeepers to services, and is now known as Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity. See *LEAD Program Transformation and Website Changes*, PUB. DEF. ASS'N (Aug. 14, 2020), <http://www.defender.org/news/lead-program-transformation-and-website-changes>.

⁷⁰ LEAD programs are operating in the municipalities of Alamosa and Longmont and in Denver County and Pueblo County, with another program in development in Lakewood. See LEAD NAT'L SUPPORT BUREAU, <https://www.leadbureau.org>.

⁷¹ See *generally* HAVEN FOR HOPE OF BEXAR CNTY., <https://www.havenforhope.org>.

⁷² See *generally About Restorative Justice*, CTR. FOR JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/#sthash.DQG8SguB.dpbs>.

- Engagement with Aurora’s youth community, including youth Expos (pop-up events that engage youth with food, activities, fun, and opportunities to nurture, encourage confidence, and open doors to youth opportunities);
- Defender participation in the public safety initiative called “A New Way,” bringing the community voice into the efforts to ensure safety and build trust with the community. Citizens benefit from experiencing collaboration and support across agencies in city government.
- Defender engagement with school youth advisory teams to promote know-your-rights education and guidance on how to effectively engage with law enforcement, school authorities, and other persons in the community who exercise levels of supervision or authority over youth;
- Defender engagement with the mental health crisis response team within the police department. Defenders have long standing relationships with some citizens in Aurora that suffer from mental illness. Their insights about clients who are engaged by the crisis response team can strengthen strategies to deescalate crisis behaviors, connect with family and problem-solving strategies.
- City communications with the community, including websites, public service announcements, awareness campaigns, and outreach activities within the community to build trust and understanding, and to dispel negative media perceptions and portrayals of city services.

Interviewee Suggestions for Improvement

To close out this chapter, the TTA Team felt it worth mentioning some thoughtful suggestions from interviewees about desired improvements for Aurora’s public defense system. They speak to the Team’s overall perception of a justice system whose various stakeholders are committed to improving responsiveness to those involved in the criminal legal system.

- One judge suggested there was quite a difference in performance between more experienced attorneys and newer attorneys, particularly around bond issues. Maybe the defenders could have more senior attorneys guiding the newer attorneys, it was suggested, in bond advocacy for clients held in Aurora because of a case in another court.
- One judge noted that in general, because public defenders practice vertical representation of their clients, while city attorneys do not follow that model, public defenders tend to seem more prepared. “The [City Attorney’s] cases get passed and it’s hard because they may get a case transferred to them that they know nothing about. The prosecutors may not have prepared the file well. The public defender is more prepared.”
- Reflecting on the unique status of the Aurora Municipal Court as a very busy court in a very busy judicial district, one judge emphasized the value of having an in-house public defender’s office. “We couldn’t do the work that we do without them, so I value their presence in the courthouse.” The same judge explained that many cases that are filed in Aurora Municipal Court are typically filed elsewhere in Colorado as misdemeanors and even felonies in state courts.
- A judge mentioned delay in getting discovery to defenders, particularly with the growing use of body cameras worn by police. It was said that delay getting bodycam footage to public defenders in a timely enough fashion for them to review it with their client was mentioned as a recurrent topic at the Big Four meetings.

- Availability of additional sentencing options that are alternatives to incarceration was mentioned as a desirable change. Sentencing options in Aurora, we were told, are limited to fines, community service, jail, probation, plus anti-theft and anger management classes.
- One public defender expressed a desire for an office social worker to be able to link homeless clients to housing services and mentally ill clients to treatment services. Another felt that to best serve the community, the City should create a homelessness court rather than a veterans court, as individuals facing housing instability represent the largest population served by the Public Defender's Office.

Chapter 5: Applying National Public Defense System Standards and Best Practices to Aurora

Building on the description of the Aurora Municipal Court and the City's system for indigent defense delivery, this chapter proceeds with analysis of the system, guided by national standards and best practices.

Perhaps the most accessible indigent defense system guidance is the ABA's Ten Principles of a Public Defense Delivery System.⁷³ That publication pulled together key considerations from standards promulgated by the ABA, NLADA, and other sources. Since its release, that resource has set the guideposts for many well-regarded assessments of indigent defense services, and served as an aid when jurisdictions seek to improve their systems, regardless of the service delivery model used. The resource is currently undergoing an update, with an expected release in 2022. The next section examines Aurora's indigent defense system in context of what areas are addressed in the original Ten Principles as well as important areas that will be included in the forthcoming edition, including client-centered practice, race equity, and use of data.

Adherence to ABA Ten Principles

The Ten Principles contain guidance to help jurisdictions operate a public defense delivery system that incorporates best practices. In applying the Ten Principles to Aurora's current indigent defense system, it is possible to identify areas for which there is room for improvement. The following analysis points to the strength and weaknesses of the current system when the Ten Principles are applied, and includes guidance for further evaluation and implementation of improvements.

The black-letter text of the Ten Principles is reproduced in Table 8.

⁷³ See ABA TEN PRINCIPLES, *supra* note 16.

Table 8:
ABA Ten Principles of a Public Defense Delivery System
(Black-Letter Text)⁷⁴

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility and defense counsel is assigned and notified of appointment as soon as feasible after arrest, detention or request of counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Discussion of principles that are particularly relevant to assessing Aurora's municipal public defense system follows.

Principle 1: Defender Independence

Aurora's municipal public defense system is remarkably strong in terms of defender independence. The functions of the Aurora Public Defender's Office are overseen by the Aurora Public Defender Commission, an independent oversight board established by municipal code. The Commission's membership is comprised of four Colorado-licensed attorneys (who need not reside in Aurora) and three lay residents of Aurora, all of whom are appointed, and can be removed with or without cause, by City Council.

Crucially, the Chief Public Defender answers to the Aurora Public Defender Commission, not to City Council or the Municipal Court. The Commission is empowered by statute with the "ability to appoint and discharge the public defender and his or her assistants." By contrast, the City Attorney is appointed by City Council (as are the City Manager, the Presiding Judge, and the Court Administrator). The APDO's separation from the control of the City's executive, legislative, and judicial authorities is essential to independent, zealous representation of people who are accused of crimes. This structure affords the Chief Public Defender and his staff the freedom to take all steps necessary to secure favorable outcomes for their clients. A public defender who has to balance their clients' interests against political pressures of the preferences of political and judicial leaders cannot be a truly effective advocate. Aurora's public

⁷⁴ *Id.* at 1.

defense oversight structure is set up to avoid this undesirable scenario and instead preserve the independence of the municipal public defense function.

Independence is a core measure of quality in representation, and Aurora has a system that supports defender system independence.

Principle 2: Mixed Practitioner Delivery System

The Aurora Public Defender's Office is designated as the primary case handler for clients who qualify for court appointed counsel. Like all institutional defender offices, APDO must refuse to take on cases which present a conflict of interest due to one of various reasons, such as prior representation of the alleged victim in the case, or current representation of a co-defendant. The City's process for managing qualified attorneys willing to serve as court-appointed counsel in conflict cases has improved under Chief Defender Wilson's tenure. In particular, the pay for conflict counsel has been restructured and increased. However, the process lacks in administrative procedures needed to ensure that a sufficient number of qualified counsel are on the list, and that all receive needed support and oversight. It is understandable that Chief Defender Wilson feels some unease about acting as the de facto program administrator for conflict counsel. Ultimately, all clients who receive appointed counsel in Aurora, whether through the Public Defender's Office or through a private practitioner, deserve the same level of quality and support. More should be done to guarantee this is the case in Aurora. If economically feasible for Aurora, the Chief Public Defender and Commission should press for a formalized relationship with the Office of Alternate Defense Counsel to take on conflict panel administration and oversight.

Principle 3: Eligibility and Early Appointment of Counsel

Aurora has made strides forward in ensuring that a public defender is assigned to a client as early as possible. Chief Defender Doug Wilson has worked with the courts to improve several aspects of eligibility for and appointment of public defenders. For one, accused individuals who are in custody automatically have a public defender appointed to them. For non-custodial arrests, an individual who is on a federal assistance program like food stamps or Medicaid can simply show their benefits card in court and that satisfies eligibility requirements. Furthermore, the court has moved the eligibility threshold upward from 125% of the federal poverty guidelines to 150%. These commendable reforms enhance access to justice in Aurora.

It appears, however, that this progress is dependent on an informal agreement between the APDO and the Municipal Court, which raises concerns about the long-term survival of these reforms once the current system stakeholders are no longer in place. Either through amending the municipal code or through institution of court rules, these positive changes should be formalized to ensure their sustainability into the future.

Principle 4: Time and Space to Meet with Clients

An essential component of any criminal defense practice is meetings with clients to discuss case details and strategies. A prerequisite for this communication is having sufficient time, access, and confidential space to for the attorney to meet with the client. The APDO faces a number of obstacles in conducting these meetings, including excessive workloads, obstacles to meeting with in-custody clients, pandemic-related restrictions on client meetings and communications, and inadequate office space.

The most notable barrier to having enough time to meet with clients are the excessive workloads that all APDO attorneys must manage. This problem is examined in greater detail below under Principle 5, but

for purposes of client meetings, it is notable that APDO attorneys expressed in interviews that they do not have enough time to attend to all of their clients' needs, including meeting with clients with the preferred timing and frequency.

The spread of detained clients across four geographically distant facilities, along with Municipal Court case flow, presents obstacles to Aurora public defenders having adequate time to meet with clients and prepare cases. Although the Aurora Detention Center, where newly arrested people can be held for up to 72 hours, is adjacent to the APDO, the three jails where clients are held pre-trial after that are considerably lengthy drives away: starting at the APDO, the Adams County Jail is about a 30- to 45-minute drive north, the Arapahoe County Detention Center is about a 20- to 35-minute drive south, and the Douglas County Jail is about a 30- to 45-minute drive south. The long commute times for Aurora public defenders to visit detained clients presents difficulties in ensuring that there is sufficient time to meet with clients and prepare cases. Furthermore, because the court typically calls detained clients' hearings sooner—which is an overall good practice, as people should not spend more time in detention than absolutely necessary—the public defender has even less time to prepare their case.

The COVID-19 pandemic raised additional barriers to attorney-client contact. The Court should be commended for making concerted efforts to release individuals from jail pending trial due to health concerns. For those remaining detained, however, emergency safety protocols have prevented APDO attorneys from visiting detained clients in person. The county jails only allow for attorney video calls with in-custody clients via the Securus system, which charges \$8.99 per video call. The jail provides ten free video call vouchers per month, but after that, attorneys have to pay out-of-pocket to talk with their clients. Multiple APDO attorneys stated that this system is insufficient for them to engage with their clients on the basis needed for quality representation. One elaborated on the difficulty of communication: "It's impossible to talk to clients who are in jail unless they call us . . . There's only one line in the jail, so we can only talk to one person at a time."

Another limitation on client communication, which has improved over the past year and a half, relates to the APDO's physical office space. At the beginning of 2020, when Chief Defender Doug Wilson joined the Office, attorneys had to share offices because there was not enough space for each attorney to have a private office; this made it impossible for two attorneys who shared the same office to conduct simultaneous meetings with clients in that space. Later that year, Chief Defender Wilson secured unused jury deliberation space to convert into use as a conference room and unused chambers to convert into additional APDO offices. That improved the situation of attorneys "double-bunking," but did not fully meet the APDO's space needs. It also created physical separation of staff in the main office from those located in the new, non-contiguous space. Unfortunately, the APDO is again double-bunking two attorneys. A City of Aurora committee tasked with examining City agencies' office space needs recommended that the APDO receive additional office space as soon as possible. When the easing of pandemic restrictions makes in-office meetings with clients regularly feasible again, the additional space secured in 2020 will be helpful in aiding client communication, and ultimately a move into a larger office space will yield further benefits.

Principle 5: Workloads

The issue of public defender workloads presents an area where the Aurora Municipal Court system needs attention. The APDO suffers from historically lacking a method from which to accurately measure and manage caseload levels. And in interviews, Aurora public defenders across the board noted that

their workloads are unsustainably high. One supervisor noted, “I feel like my clients came last because when I was at work, I was getting pulled in different directions to supervise, run meetings, et cetera. It seemed like in most of my cases, that work came after hours, when I could fit it in.”

The concept of caseload is distinct from workload. In *Securing Reasonable Caseloads*, Professor Norman Lefstein writes, “In evaluating whether a lawyer’s caseload is reasonable, relevant factors include the complexity of the cases, the availability of support services (e.g., investigators, social workers, and paralegals), and the speed at which cases proceed through the court system.”⁷⁵ In addition to performing casework, attorneys must engage in professional activities such as training, or attendance at committees, and perform certain administrative tasks. Thus, as the ABA Ten Principles explains, “Workload is the sum of all work performed by the individual at any given time, which includes the number of cases to which the attorney is assigned, but also includes other tasks for which that attorney is responsible.”⁷⁶

Public defender staffing in Aurora is based on an expectation that attorneys carry 125 active cases. Most caseload standards used by public defenders around the country express caseloads as a prescribed number per year. For example, the outdated yet still frequently referenced NAC standard for misdemeanor cases is 400 cases per attorney per year.⁷⁷ Both the “active” pending standard used by Aurora and this annual target of cases are inadequate measures, as they are not evidence-based measures that are rooted in actual practice demands in Aurora. A workload study is needed to determine appropriate benchmarks for municipal public defense practice in Aurora.

Although numerical standards still need clarification, a potential opportunity to address, in part, the burden of defenders’ workloads is in trial preparation and practices by City Attorneys. Multiple defenders expressed that workloads are unnecessarily high due to a combination of two factors: 1) City Attorneys pursue cases that are unlikely to result in a conviction and are not a good use of city resources; and 2) when City Attorneys dismiss cases, they frequently do so the day of trial or just beforehand, and the defender’s preparation for the trial is no longer useful.

Principle 6: Ability and Training

Aurora has room for improvement in assuring that the training provided to all attorneys, both public defender and court-appointed, is sufficient. At the Public Defender’s Office, there is not a formal initial training program for new attorneys. Strides have been made to offer attorneys more on-going training in-house, but there is not a formal program. For court-appointed conflict counsel, no minimum levels of training are specified. Consideration should be given to provision of training for both public defenders and panel attorneys into aspects of client representation that are foundational to Municipal Court client needs, such as representing clients with mental health needs and working with clients who are experiencing housing instability.

⁷⁵ NORMAN LEFSTEIN, *SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE* 26 (2011), https://www.americanbar.org/content/dam/aba/publications/books/lis_sclaid_def_securing_reasonable_caseload_s.authcheckdam.pdf.

⁷⁶ *Id.* (quoting the ABA Ten Principles of a Public Defense Delivery System).

⁷⁷ NAT’L ADVISORY COMM’N ON CRIM. JUST. STANDARDS & GOALS, *The Defense, in A NATIONAL STRATEGY TO REDUCE CRIME*, Standard 13.12 (1973), <https://www.nlada.org/defender-standards/national-advisory-commission/black-letter>.

Training for the public defender assigned to the Wellness Court is minimal. The assigned defender receives a copy of the Wellness Court’s policy and procedures manual and meets with the program manager to discuss court processes. There is currently no requirement that any public defender representing clients in Wellness Court receive initial training or continuing legal education in supporting clients with mental illness or drug addiction. Defender training also does not presently include: motivational interviewing skills; trauma-informed representation; or diversity, equity, and inclusion strategies.

The APDO can also improve the ability of its attorneys and staff by developing written standard operating procedures delineating proper practices within the office and in court.

Principle 7: Vertical Representation

Best practices for public defender attorneys suggest that the same attorney should represent the client from beginning to end of case. There are many reasons, but chief among them is the importance of bolstering the attorney client relationship, and increasing the level of trust between client and attorney. Another key reason is the certainty that all necessary work is being undertaken in a timely fashion. The Aurora Public Defender’s Office practices continuous, or vertical, representation of clients. The importance of the practice is evident when comparing the Public Defender’s Office with the City Attorney’s Office, which practices on a horizontal basis whereby case files are passed off and handled by multiple attorneys in the Office, depending on court calendaring assignments. Interviewees noted that city attorney prosecutors are often not as familiar with their cases as public defenders are. The notably high late dismissal rate is a manifestation of the lack of attention to cases which the horizontal model exacerbates.

Principle 8: Resource Parity and Equal Partnership

Parity between defenders and prosecutors in pay and resources is essential to sustainably deliver quality representation to people who cannot afford counsel. Through efforts instigated by Chief Defender Wilson, Aurora has recently made exemplary progress on the issue of pay parity between prosecutors and defense attorneys. More needs to be done in ensuring adequacy of resources, including pay for administrative staff, staffing needed to effectively practice holistic defense, and access to core case information. Resource parity issues aside, Aurora’s municipal criminal legal system is appropriately structured to promote the APDO as an equal partner with the City Attorney’s Office and other system stakeholders.

Public defenders must be paid at competitive rates on par with prosecutors in order to attract and maintain talented attorneys. At the outset of the TTA team’s investigation, the lack of pay parity between defenders and city attorneys was a problem that APDO staff across the board flagged in their interviews. As one member of the Aurora Public Defender Commission noted, pay parity “is a question of fairness and a question of getting the best people,” and the APDO “[doesn’t] have pay parity with prosecutors; let’s start there. They should have pay parity not only with them but with bigger muni PD offices like Denver.”

The APDO has had significant turnover among its attorneys. Only the two longest-tenured attorneys at the Office have worked there for longer than two years as of August 2021. This turnover is due in large part to salary restrictions—the Office has only been able to offer salaries that attract less experienced attorneys—and the lack of a defined career progression path within the Office, which in combination

contribute to attorneys leaving to pursue other opportunities. The high rate of turnover illustrates the importance of the APDO being competitive in hiring and maintaining talented attorneys not just in comparison to the City Attorney's Office, but also with their municipal defender counterparts in Denver and the broader field of legal services.

Between the beginning of the NLADA TTA team's examination of Aurora's municipal public defense system and the publishing of this report, however, the City has made substantial progress in the area of pay parity. On May 24, 2021, City Council approved a supplementary budget to increase APDO attorneys' compensation levels retroactive to January 2021, moving public defenders toward pay parity with city attorneys.

The City of Aurora Finance Department, the Office of Budget & Financing, and City Council – in particular the Council's Management & Finance and Public Safety, Courts, and Civil Service Committees – are to be commended for taking decisive, positive action on strengthening the public defense function and the entire municipal criminal legal system through defender pay parity. The City's Human Resources Department is to be commended for its cooperation with Chief Defender Wilson in its extensive research and investigation of comparative salaries for municipal public defenders. And, Chief Defender Wilson is to be commended for his leadership in advocating for the needs of his office and his clients by advancing this essential issue.

Turning to the issue of resource parity, one primary area where defenders are disadvantaged is in access to discovery. The Municipal Court's paper-only filing system—for cases, motions, discovery, etc.—has resulted in the APDO being dependent on the City Attorney's Office to deliver hard copies of discovery, including police body-worn camera footage on compact discs. Public defenders and judges alike noted in their interviews that the City Attorney's Office is not timely in delivering these materials. The disparity with relation to police bodycam footage is particularly telling: the City Attorney's Office receives footage via an online link from the Aurora Police Department's vendor, but the APDO must wait for the City Attorney's Office to deliver a compact disc with the same footage, which defenders noted frequently arrives only just before trial.

These parity-specific issues aside, the structures for guiding and overseeing the Aurora municipal criminal legal system are set up in such a way that the Aurora Public Defender's Office is positioned as an equal partner with the City Attorney's Office and other stakeholders, although there is some room for improvement. The APDO is part of the "Big Four" group of criminal legal system stakeholders who meet regularly to discuss the state and direction of Aurora's municipal criminal legal system. This group also includes Aurora's City Attorney's Office, Municipal Court Administration, and the Presiding Judge. So long as the Big Four is making meaningful decisions on Aurora's criminal legal system, this structure ensures that the APDO has input into that process.

A substantial portion of the advances made during the tenure of Chief Public Defender Doug Wilson have been the result of his initiative and persistent outreach to other stakeholders to improve elements of the system. This stands in contrast to some of his predecessors, who, though empowered with the same position, were considerably more isolated in their leadership of the Office. One member of the Aurora Public Defender Commission noted that a previous Chief Public Defender "had a very heavy caseload and had no management skills with the court or the city." This variation is likely due to different leadership styles, but it is somewhat concerning that the same position can have such different levels of cross-stakeholder engagement based solely on the Chief Defender's outreach efforts. In order

to sustain in the long term the kinds of progress that Chief Defender Wilson has achieved during his tenure, the APDO and Big Four should consider ways to formalize collaboration with the APDO in certain aspects of the criminal legal system.

Principle 9: Continuing Legal Education

Every three years, practicing attorneys in Colorado are required to complete 45 CLE hours. The Aurora Public Defender's Office supports attendance by its attorneys at trainings from which they can earn CLE credits. In 2020 it sent attorneys to the annual training of the state public defender. Due to COVID-19 travel restrictions, in 2021 attorneys attended the Alternate Defense Counsel Office's remote attorney training. In addition, the Office pays for attorneys to attend trainings put on by the National Association of Public Defense and it pays the annual bar registration fees for all attorneys.

The Office's investigator does not receive ongoing professional training that is paid for by the Office. He chooses to pay out-of-pocket for training to retain professional certification. Administrative staff are not provided ongoing professional education.

Principle 10: Supervision and Review of Defense Counsel

The APDO uses a team structure under which deputy public defenders, legal interns, and the investigator report to one of two chief deputy public defenders. The chief deputy public defenders are responsible for providing oversight and supervision to those individuals assigned to them and, accordingly, carry reduced caseloads. Administrative staff follow a similar structure, with the executive assistant overseeing all administrative staff members. Performance evaluations of attorneys are undertaken using evaluation protocols that were updated when Wilson joined the Office. The protocols are based on those used by the State Public Defender, and can be administered every six months or annually, as needed. Technically, administrative staff are subject to formal performance evaluation by the City's Human Resources department, while attorneys are to be evaluated by the Public Defender Commission. The chief deputy public defenders evaluate their deputy public defenders twice per year (mid-year and year-end), and those evaluations are subject to approval by the Chief Public Defender and the Chair of the Public Defender Commission. The Public Defender Commission evaluates the Chief Public Defender annually.

Looking Ahead to the Revised Ten Principles

Finally, worth mentioning are several important elements that the updated Ten Principles will address that were not covered in the original publication, including:

- the need for sufficient and ongoing analytics capacity to assess system performance;
- access to resources for delivering holistic legal services, such as use of social workers;
- attentiveness to systemic issues of racial equity; and
- a call for statewide funding and oversight of indigent defense services.

Aurora can look to the original and the updated Ten Principles as well as the other NLADA and ABA standards mentioned as it makes future decisions about its indigent defense system.

Holistic Defense and Client-Centered Representation

Two elements of quality representation that are expected to be included in the revised Ten Principles are holistic defense (i.e., advocating for all of a client's needs in the criminal, civil, immigration, housing, and employment contexts, among others) and client-centered representation (i.e., empowering the

client to have primary decision-making authority in determining the direction of their case). There is room for improvement in both holistic defense and client-centered representation in the Aurora Municipal Court. Although APDO staff expressed willingness to engage in both holistic defense and client-centered practice, current staff capacity and case practice pose barriers that must be addressed in order for that intent to become realized.

The APDO's current staffing levels and structure are not conducive to holistic practice. Glaringly, the Office does not employ even a single social worker to help clients address problems and needs outside of their criminal case that may underlie their involvement with the criminal legal system. At present, any such work would have to be done by attorneys, who in many instances must also perform their own administrative tasks due to administrative staff being occupied with other duties. Numerous APDO attorneys noted the difficulty of connecting clients to social services in Aurora. This limited capacity is not proportional to the demand for holistic defense services. As mentioned in Chapter 3, in reality, every client who is represented by the APDO is in need of holistic assistance due to the life circumstances that arise from having inadequate economic means to access needed services and meet basic human needs including food, shelter, and clothing.

The APDO does provide representation hewing closer to the holistic model in the Wellness Court and the Armed Forces Treatment Court, but the courts themselves are under-utilized and serve only a very small number of participants; the Wellness Court reportedly serves an average of three or four participants per month. At present, just one attorney is assigned to handle the entire Wellness Court docket, in addition to carrying a caseload from the traditional, non-treatment court. There is no dedicated support staff to assist the Wellness Court defender in handling these complex cases and addressing the multitude of Wellness Court participants' needs.

The APDO does not formally utilize a client-centered practice. When asked about it, staff were not familiar with the term, but all said that they put clients first. This is an encouraging start, and with some structured training, more can be done to formalize what it means to deliver client-centered representation. Although staff at the APDO echo client-first beliefs, operationally there is a tension between managing heavy caseloads and prioritizing the time required to discover who their clients are and what is important to them, and then, after providing legal counsel and advice, yielding to client decisions about how to proceed with their cases. The competing tensions are symptomatic of under-resourced staffing, including inadequate access to investigators, social workers, and client advocate personnel.

Race Equity

The forthcoming update of the ABA Ten Principles is expected to incorporate racial equity principles, and although the details of those guidelines are not yet known, the topic warrants some examination in the Aurora context. It is currently not feasible to meaningfully assess the APDO's performance with respect to race equity in their services because of a lack of data. The APDO does not collect or maintain data on the race, ethnicity, or immigration status of their clients. As a result, the Office does not have a proper statistical basis for understanding the ways its services intersect with race equity. Other defender programs nationally that track their clients' race and ethnicity have been able to leverage those data to file more persuasive motions in court, make more compelling arguments to funders and policymakers, and evaluate their own office's and attorneys' performance with respect to race equity. The APDO

should track and analyze data on race, ethnicity, and immigration status to better understand and improve its services.

Use of Data

As information technology has evolved, it has become essential for indigent defense programs to understand and leverage data in order to improve their advocacy. The APDO has implemented a new case management system, LegalServer, which over time should substantially increase the Office's capacity for collecting, analyzing, and leveraging data on cases, clients, and attorney performance in order to improve the Office's services. At the time of the TTA team's fact-finding, the Office was experiencing some difficulty in transitioning to using the LegalServer system with full efficiency, staff buy-in, and implementation of protocols. Once these "growing pains" issues are resolved, and as the body of cases logged into the system grows, the APDO should see the benefits of devoting resources to having a robust case database, including the tracking of demographic information connected to clients. Race, ethnicity, and immigration status have not been historically tracked but they are essential data points to collect in order to form a basis for persuasive motions in court, compelling arguments to funders and policymakers, and evaluation of the office's and attorneys' performance with respect to achieving race equity.

Chapter 6: Findings and Recommendations

The TTA Team's evaluation concludes with findings from the team's review and recommendations to guide the City of Aurora in its efforts to improve the City's indigent defense and justice systems.

The citizens of Aurora are fortunate to have a municipal public defender office which is a model of its kind, operating under the oversight of the Public Defender Commission, and in the professional environment of the Aurora Municipal Court. As with any organization, there is always room for improvement, and this report has identified a number of areas to direct efforts. One of the most salient needs identified was for creation of standard operating procedures that address basic functions of the Public Defender's Office as well as for the Commission. The Office would also benefit from a professional case-weighting study to establish evidence-based workload standards. Because municipal courts serve a population where many individuals become entangled with the justice system due to challenges stemming from mental illness, substance abuse, and/or housing instability, it is important for municipal public defender offices to be equipped with resources to identify these challenges and assist clients in addressing them. One of the APDO's primary needs is for a full-time social worker. And in general, the Office will benefit from training in holistic practice to best serve clients, plus more formalized initial training for new staff members.

In addition to observations about and recommendations for the Public Defender's Office, this report includes findings and recommendations that address the overall Aurora Municipal Court system. For example, the TTA team found that Aurora would greatly benefit from creation of a criminal justice coordinating committee to collaboratively address justice system issues. The purpose of these suggestions is to strengthen the Municipal Court system and better serve the citizens of Aurora.

Findings

1. **Aurora, Colorado has a strong and effective municipal public defense delivery system and a municipal court that promotes the rule of law and protects individual due process rights.**
2. **The Aurora City Council's action in May 2021 to approve supplementary budget funds to bring APDO attorneys toward pay parity with city attorneys was a substantial, positive step toward improving Aurora's municipal public defense system and the City's criminal legal system more broadly.**
3. **Aurora's structuring of the municipal public defense function under the non-partisan and independent Public Defender Commission is an excellent method of promoting defender independence, in alignment with national standards and best practices. Some stakeholders in the Aurora municipal criminal legal system seem to misunderstand defender independence, its role, its operationalization, and its centrality to constitutional rights. Stakeholders across the system would benefit from education about the core role of defender independence in the functioning of the criminal legal system and in fostering cross-sector collaboration.**
4. **Staffing for the Aurora Public Defender's Office assumes that attorneys will carry an open caseload of 125 active cases. This figure does not appear to be grounded in any empirical basis.** Interviews with attorneys revealed that many felt pressured by workloads, requiring them to work

weekends, particularly to prepare cases set for trial. Further, there is not a workload standard for the office investigator.

5. **A sizable portion of cases that the Public Defender's Office works up for trial are dismissed on the day of trial (at the jury call), or the Wednesday of the week before trial (the jury status date), by the City Attorney's Office.** Concerns over the City Attorney's charging decisions arise, given the high rate of cases that are dismissed on or just before the day of trial and the strong public defender win rate among cases that proceed to trial. Late-in-the-case dismissals substantially and frustratingly increase the workload of public defenders, who fully prepare for all trial cases despite the well-known possibility of late dismissals.
6. **The Aurora Municipal Court operates with an antiquated, all-paper filing system that leads to inefficiencies for the Court, the City Attorney's Office, and the Public Defender's Office.**
7. **Case tracking data maintained by the Court Administrator's office, the City Attorney, and the Public Defender's Office do not apply a common definition of a case, which complicates analysis of overall system workload and resource needs.** Additionally, there is not an integrated case management system used by the three agencies, leading to possible inaccuracy and inconsistency due to different data entry protocols.
8. **The APDO can expect that its recent implementation of the LegalServer case management system will allow it to leverage data to better assess quality of services and improve representation of its clients. It will also produce added certainty that APDO resource assessments are based in accurate workload assessments.** Although progress has been affected by obstacles that are unavoidable in switching from a paper-only system to a dynamic, electronic CMS (such as staff discomfort in learning the new system, and limited staffing capacity for manually inputting data, discovery, and other documents into the system), after these initial issues are resolved the CMS will enhance the APDO's ability to provide quality representation. Having an in-house data source, instead of relying solely on Court Administration or the City Attorney's Office for data, will allow the APDO to refute or confirm other stakeholders' reported numbers and proceed more confidently in leveraging data to improve public defense services. Furthermore, by August 2021, the APDO had already started using LegalServer to develop preliminary time and workload data to inform a workload study.
9. **The APDO does not track several characteristics of the clients they serve, including clients' race, ethnicity, and immigration status, that are essential to understanding quantifiably how the Office's services advance racial and ethnic equity.** In not collecting this data, the APDO inadvertently deprives itself of critical information for understanding their services and the impact of Aurora's municipal criminal legal system.
10. **The City Attorney does not make mandatory discovery information available to the Public Defender's Office in an electronic format, which contributes to significant administrative inefficiencies within the APDO.** As a result of receiving discovery only via hard copy, the APDO's administrative staff spend countless hours scanning and uploading paper discovery, bodycam video evidence, and other electronic and physical evidence into its case management system. Repeated mentions were made that there is frequently delay in receiving police bodycam footage, which is sent to the public defender on a compact disc.

11. **The APDO's current staff capacity and practice model are not suitable for widespread or consistent provision of holistic defense services, a nationally recognized best practice in indigent defense.** At present, cases in the Wellness Court and the Armed Forces Treatment Court are the only cases where the APDO undertakes a holistic approach. The Public Defender's role in the Wellness Court extends beyond legal defense and includes advocacy for access to services that are intended to address the physical, psychological, and economic needs of clients.
12. **The Aurora Wellness Court and the newly established Aurora Armed Forces Treatment Court are well-intentioned initiatives intended to address underlying needs that bring individuals into frequent entanglement in Aurora's criminal legal system. The Wellness Court is under-utilized, considering its longevity.** Poverty, mental illness, homelessness, drug addiction and other social and healthcare problems are often associated with people charged in the Aurora Municipal Court, not unlike populations served by other municipal, county, state, and federal courts across the nation. The Wellness Court and the Armed Forces Treatment Court are tackling some of the problems that contribute to costly and repeated emergency room visits, calls for police and fire, arrests, court involvement, and incarceration. These courts, however, currently serve few participants and are under-utilized considering the resources dedicated to them. The Wellness Court reportedly averages just three or four participants per month out of a monthly average of nine applications. APDO staffing for the Wellness Court is limited to one defense attorney. There are no other Public Defender personnel, such as a social worker, assigned to support clients participating in the program. A single defense attorney with no program-dedicated support staff is unable to optimize the client participation or success rate in the program. This limitation threatens effective assistance of counsel. Although the current number of clients participating in the Wellness Court program is low, each prospective client's case typically has multiple charges and is otherwise complex by virtue of frequent intersections with mental health, substance use disorder, and housing and employment instability issues. The attorney is ethically required to evaluate each charge before advising the client about participating in the program, while also assessing the client's needs. This is especially difficult on Mondays, when the volume of new in-custody clients over the weekends limits the time available for the defense attorney to meet with every candidate for the program and assess their charges prior to the start of the Wellness Court docket on Mondays.
13. **The Aurora Public Defender's Office lacks a formal training program for new attorneys and formal ongoing training for experienced attorneys.** It is important for all public defender offices to have initial training programs for new hires, and perhaps especially so for a municipal public defender program, as many new hires come to the Office with very little prior practice experience. Additionally, the attorney assigned to the Wellness Court does not receive initial training or continuing legal education in supporting clients with mental illness or drug addiction, motivational interviewing skills, or trauma-informed representation. The Office would also benefit from a formalized program for ongoing attorney training, whether such training is provided in-house or through external resources.
14. **The APDO does not have written standard operating procedures to guide attorneys and staff in various administrative office- and court-wide tasks and practices.** Such an internal handbook, drafted many years ago for APDO use, is now obsolete. Many APDO staff expressed in interviews with the TTA team their desire for a written manual or set of SOPs for a variety of procedures, including use of LegalServer, client eligibility screenings, and use of support staff.

15. **Aurora’s informal, cross-stakeholder cohort known as the “Big Four” is not an effective mechanism for addressing wide-reaching municipal criminal legal system issues, problems, and opportunities. The Big Four’s membership – the Presiding Judge, the Court Administrator, the Chief Public Defender, and the Deputy City Attorney for the Criminal Division – excludes some key stakeholders in the municipal criminal legal system, does not meet regularly, and has no dedicated staffing.** Key functions, such as policing and legislation, as well as community input, are notably absent. The absence of these stakeholders may unnecessarily limit the scope of topics that the Big Four can address decisively.
16. **The country’s renewed attention toward racial equity in criminal legal systems nationwide has revealed continuing, significant racial disparities in these systems. Particularly in light of Aurora’s recent history and its diverse population, diversity, equity, and inclusion are necessary areas of focus for all professionals working in Aurora’s municipal criminal legal system. This focus should apply to internal office operations, cross-sector interactions, and the pursuit of equitable treatment of people subject to criminal proceedings.** There is a need to identify policies and practices that have had and/or presently have a disparate impact on Black people and other people of color who are accused of crimes or who work in the system. Training on anti-racism, implicit bias, and trauma-informed competencies are effective tools for achieving reform but are not consistently or robustly available to APDO or other stakeholder agencies working within the court system.
17. **Clients whom the APDO cannot represent due to a conflict of interest are not served by a system that conforms to best practices to the same extent as are clients represented by APDO staff. The system of overseeing and paying private attorneys who take appointments to conflict of interest cases lacks independence and sufficient administrative controls.** By ordinance, compensation for conflict counsel is determined by the Commission, payment is made from the budget of the APDO, and the Court appoints attorneys. Beyond that, there is no official designation of a process or entity responsible for identifying participating attorneys, specifying minimum levels of experience and training, or overseeing their performance. These responsibilities have fallen, perhaps by default, to the Chief Public Defender, but they are undertaken informally at best.
18. **The enthusiasm, expertise, and active involvement of the Public Defender Commission is a significant strength in ensuring that the citizens of Aurora have access to effective representation in the Municipal Court.** The Commission has undertaken oversight of the APDO that involves consistent engagement with Doug Wilson and decision-making focused on staffing, retention and resources that improve the ability of the Office to perform essential functions. Sustaining improvements realized since Wilson took office, and expanding on them have proven to be effective and successful. The Commission is poised to take on more strategies for continuing the positive trajectory of the APDO. One Commission member stated that they are excited to learn about new opportunities to be even more impactful serving the APDO and the City of Aurora in this role.
19. **The Aurora Public Defender Commission faces two notable potential threats to its long-term effectiveness in overseeing the APDO and promoting the independence of the municipal indigent defense function: difficulty of recruiting new members; and the lack of a mechanism to support the Commission’s institutional memory and sustain the levels of engagement and enthusiasm embodied by current Commissioners.** Commissioners are limited to three terms of three years each; once this term limit is reached, members are not permitted to continue in their position and a

vacant seat on the Commission becomes available. Current Commissioners emphasized that attracting suitable candidates to serve on the Commission is challenging. Relatedly, there are no formal resources to help new Commissioners learn about the history, role, and duties of the Commission. If these issues go unaddressed, the effectiveness of the Commission may be reduced significantly when current members cycle out of their roles.

20. **At present, the APDO does not routinely or substantially elicit feedback from current or former clients regarding the quality of the Office's representation and services.** The Office's practice model is presently limited to one-on-one communications with clients who have pending charges before the Municipal Court. The client experience of being represented by an Aurora public defender does not currently influence or inform the identification of opportunities to improve the quality of representation or the development of policy or procedure that meets client needs. Public defenders and their support teams are at their most effective when they understand the history and culture of the place where the client lives, and pay close attention to the client's needs and vision of effective representation in their case.
21. **The APDO currently does not engage in coordinated outreach to the general population of Aurora.** The Public Defender's Office exists to serve anyone in Aurora who is accused of a crime and cannot afford counsel, and therefore the Office's potential client base is expansive. The APDO currently lacks capacity to affirmatively engage with the broader community, including both clients and non-clients, in educating Aurora's general population about the value and role of public defense. Similarly, the Office lacks capacity to conduct coordinated outreach to service providers who may be able to assist clients and enhance the Office's provision of holistic defense.
22. **A City of Aurora committee that examined office space needs of City agencies recommended that the Public Defender receive additional office space as soon as possible.** This need persists even after the APDO expanded its office into unused jury deliberation and judicial chamber space in 2020, which eased the immediate problem of multiple attorneys sharing a single office, but did not meet the APDO's full needs for adequate physical space.
23. **The COVID-19 pandemic substantially disrupted the functioning of the Aurora Municipal Court, the work of municipal criminal legal system professionals (including APDO attorneys and staff), and communications between public defenders and their clients.** In particular, there have been obstacles to effective and confidential communication between APDO attorneys and their in-custody clients.

Recommendations

1. **The Aurora City Council should allocate funding in its annual budgeting processes to ensure that municipal public defenders continue to receive pay parity with city attorneys, and with municipal public defenders in Denver. Similarly, City Council should take action to bring the APDO's administrative and other non-attorney staff to pay parity with their counterparts in the City Attorney's Office as well as their counterparts in the Denver Municipal Public Defender's Office.**
2. **In addition to ensuring pay parity, the APDO should work with the City's Human Resources department, the City Manager, and City Council to ensure adequate resources to provide holistic representation to all clients across all courtrooms in the Aurora Municipal Court. A multidisciplinary team with core skillsets to address both the allegations and the underlying**

drivers that foster repeated contacts with the health, public safety, and court systems is critical to achieving the goals and objectives of each agency in Aurora that intersects with people in need of supportive interventions. At minimum, a social worker position is needed not just to sustain the APDO's ability to provide effective representation in the Wellness Court and Armed Forces Treatment Court, but also to expand the capacity for the Office to seek out interventions for clients appearing in every courtroom. If the APDO seeks to expand its holistic capacities, other staff positions that would enhance its capacity for achieving best outcomes for clients include: client advocate positions, which support intake processes and effective access to both counsel and social workers, and peer-to-peer navigators, who support client success in the community.

3. **The Aurora Public Defender should undertake a case-weighting study to establish workload standards appropriate to the varying types of cases it handles and their individual complexities.** Those standards, along with caseload projections based on data from the Court and on its own case management system, will significantly assist the Office in preparing accurate projections of attorneys needed to effectively serve its clients.
4. **The Public Defender Commission and the APDO should develop a communications plan for providing city stakeholders with information about why independence is critical to the mission of the Office, and what steps are necessary to operationalize and protect independence.** The net effect will be improved understanding of the APDO's role and value to the city's population. Unfamiliarity with the rationale behind defense function independence can breed underlying and unnecessary tension amongst agencies that do not have the level of agency independence that the APDO has.
5. **The Public Defender Commission and the APDO's communications plan about independence should be accompanied by a communications plan for city stakeholders about the advantages of APDO collaboration with other City agencies.** Independence does not mean isolation or lack of collaboration. Stakeholders should better understand the value that the APDO can bring to the court system, to public safety, and to strengthening community relationships. Communication should be shared about defender services that intersect with other agencies, and ways the APDO and other agencies can work together to strengthen Aurora. One example is improved defender engagement with the police department's mental health crisis response team. Defenders have long-standing relationships with some citizens in Aurora that suffer from mental illness. Their insights about clients who are engaged by the crisis response team can strengthen strategies to deescalate crisis behaviors, connect with families, and enhance problem-solving strategies.
6. **To optimize collaborative decision-making about issues facing Aurora's criminal legal system, Aurora should officially create a criminal justice coordinating committee (CJCC).** The CJCC should have dedicated, neutral staffing support to facilitate, among other things, meeting preparation, fact-finding, and data compilation and analysis. By virtue of its current membership—the Presiding Judge, the Court Administrator, the Deputy City Attorney for the Criminal Division, and the Chief Public Defender—the Big Four is somewhat limited in what issues it can address decisively. In establishing a CJCC, the City should broaden the current “Big Four” to include other key stakeholders in the municipal criminal legal system, such as leaders in policing, City Council, the Mayor's and City Manager's offices, former APDO clients, and the lay community. The current Big Four could

constitute a subcommittee within the new CJCC to allow for continuity in that group's discussions related to customer service at the Municipal Court.

7. **The Aurora Municipal Court system should adopt an electronic filing system for all case filings, motions, and discovery, and be equipped with the necessary staff capacity to maintain such a system.** Ideally this system would provide information to the City Attorney's Office and the APDO in a way that allows for data to integrate seamlessly with those offices' respective case management systems (i.e., without need for a staff member to manually re-enter the information in their CMS).
8. **Whether instigated by the existing Big Four group or a newly created criminal justice coordinating committee, Aurora's core criminal legal stakeholders need to commit to producing and sharing data that utilize common case definitions and counts.** Until justice system inputs and outputs can be analyzed effectively and compared for accuracy, in an "apples to apples" fashion, Aurora cannot be sure that it is providing adequate resources to meet needs across the police, court, prosecutorial, or public defender functions.
9. **Whether it is undertaken by the existing Big Four group or a new criminal justice coordinating committee, analysis should be undertaken of the high rate of case dismissals by the City Attorney on the Wednesday of the week before trial (the jury status date) or on the day of trial (at the jury call).** The goal of such an analysis should be to discover opportunities for collaborative improvements to avoid problems stemming from late dismissals.
10. **As the APDO management becomes more adept with its new case management system it should rely on the CMS to produce data reports that substantiate practice goals and document practice issues.** For example, it will be able to track inputs, outputs and outcomes for clients of treatment courts to determine whether services provided are meeting individual client and overall system goals. Another example is the ability to analyze average attorney time spent on various case types. In addition, consideration should be given to identification of factors that are not currently collected in order to accurately understand services provided to its client base. For example, the Office should track race and ethnicity of all clients, which it currently does not do. It should also track whether or not the client is experiencing housing insecurity. These are examples of data questions that should be collected from all clients at intake. They rely on client input, rather than assumptions by staff undertaking the intake, and they will be important factors to help analyze client needs and understand whether they are met.
11. **The Chief Public Defender and Aurora Public Defender Commission should work to ensure that Aurora is served by a coordinated, independent system for providing counsel to clients for whom representation by the Public Defender's Office would present a conflict of interest. The system should comport with the same standards and best practices to which the APDO is held.** Such a system will correct deficiencies with the current informal process of administering conflict of interest cases. There should be a formal process to apply for inclusion on the list of attorneys who can receive conflict case appointments. Minimum levels of experience and training should be specified and verified. Appointment of cases should follow a systematic rotation process so there is no suggestion of favoritism or overburdening of cases on any particular attorney. And there should be a process to periodically review those individuals who are on the panel to ensure they remain interested and qualified, and to determine if recruitment of additional panel members is warranted. If economically feasible for Aurora, the Chief Public Defender and Commission should press for a

formalized relationship with the Office of Alternate Defense Counsel to take on conflict panel administration and oversight.

12. **The APDO should partner with the Public Defender Commission to develop a client engagement strategy plan.** Clients are an untapped resource for strengthening public defense in Aurora. High-level goals and objectives for the plan should include strengthening clients' assessment of the quality of their representation; strengthening the relationship with clients; relying on clients to identify needs; and providing deeper insight about the impact that services have on individual clients, their families, and the communities where they live.
13. **The Aurora Public Defender Commission should leverage the expertise of its Aurora-based members to partner with the APDO and develop a community engagement plan.** Commission members who live in Aurora are a rich resource for identifying and cultivating community partnerships that can support the APDO, including service providers, advocacy groups, school boards, the faith-based community and other entities that work to strengthen Aurora and care for its citizens. The development of a community engagement plan will ideally include the voices of former clients and community members who have experienced the impact of the services provided thus far by the APDO. A strategic plan to build relationships in the community should include written goals, objectives, and procedures that can be updated and available for current and future APDO staff, Commission members, and the community.
14. **To assist in the on-boarding of new Commission members, the Aurora Public Defender Commission should develop a resource for Commissioners that sets out authority for the body, provides key information about APDO and Municipal Court operations, and contains guidance about Commission roles and responsibilities.** Such a resource will serve current and future commission members by easing their onboarding and equipping them to be productive members as early in their terms as possible.
15. **The APDO should enlist volunteers from the current attorney Commissioners to develop an initial staff training curriculum that APDO staff can update as needed. That curriculum should cover traditional defender trial advocacy skills as well as other skills and principles considered important to providing the most effective representation to a client base that has limited economic means and routinely experiences effects of systemic discrimination and disadvantage.** An example of a valuable skill to cover is motivational interviewing. Examples of principles to cover include client-centered representation, holistic practice, implicit bias, cultural awareness, and effects of disparate treatment of individuals in the criminal legal system.
16. **To supplement ongoing training delivered in-house, the APDO budget should continue to include adequate funds for all attorneys to attend external training that supports their representation of clients in the Aurora Municipal Court.** Beyond attorney training, the Aurora Public Defender's Office should provide ongoing training for all employees, including administrative and investigative staff.
17. **All staff at the Public Defender's Office should receive basic mental health and addiction training, and staff assigned to the Wellness Court and the Armed Forces Treatment Court programs should receive additional comprehensive training in understanding mental illness, addiction, and trauma.** Such training is critical to ensuring effective holistic representation for clients. Implicit bias;

motivational interviewing; cultural awareness; and diversity, equity, and inclusion training can also enhance performance and promote best outcomes for clients.

18. **The APDO should enlist volunteers from the Commission to guide development of an employee procedures handbook.** It would differ from general employee guidance offered in City Human Resources Department materials and instead contain APDO protocols and standard operating procedures on office functions, such as client indigency screening, client interactions, and use of LegalServer. The manual should also address holistic defense principles for practice in not just the treatment courts but also in the traditional court dockets. The manual should include a values and mission statement, business process map, required forms, training standards, client communication protocols, court team and service provider directory and protocols for engagement with them, data collection and record keeping requirements, and performance standards. The manual should also identify measures for evaluation of performance and client success.
19. **All stakeholders in the Aurora municipal criminal legal system should reassert their commitment to diversity, equity, and inclusion, not only in the system's interactions with people who are accused of crimes and communities of color, but also in their staffing and internal office operations.** This recommendation applies equally to the Aurora Police Department, Aurora Municipal Court judges and staff, the Aurora Public Defender's Office, and the Aurora City Attorney's Office. This responsibility is incumbent on all criminal legal system stakeholders nationwide, and the TTA team's findings reinforced the need for such steps to be taken system-wide in Aurora. System stakeholders should consider engaging external assistance to understand and address these internal- and external-facing issues. Areas for focusing efforts include practice and strategies to support workforce diversity, equity, and inclusion, and to ensure equitable treatment of all individuals involved in court proceedings. Stakeholders should consider internal strategies to improve disparities, such as intentional opportunities for diversity in leadership positions and intentional recruitment of a diverse workforce that is representative of the people being served.
20. **The APDO, the Aurora City Attorney's Office, the Aurora Municipal Court Administrator, and the Presiding Judge should collaboratively investigate and consider opportunities to expand the reach of Aurora's treatment courts.** Areas for review potentially include participant eligibility requirements, consequences and safety nets for failure while participating in the program, and staffing capacities and requirements within the relevant City agencies.
21. **The APDO should be moved to an expanded office space that will accommodate usage needs and is located off-site, but near to, the Aurora Municipal Court building.** Perceptually, locating a defender office separately from City Attorney and Court operations is important for reinforcing to clients that the defender office is a law firm committed to advocating on their behalf, and is not an extension of the court and prosecutorial functions. In particular, public defender offices that are co-located in a facility that also houses prosecutorial and law enforcement personnel can have a chilling effect and discourage clients from attending attorney visits or freely sharing confidential material during those visits.
22. **Aurora should plan to accommodate continued disruption of court practice through pendency of the COVID-19 pandemic, and possible similar disruptions in the future.** Those plans should make appropriate adjustments to address effects on public defense attorneys, and solicit input from public defenders and their clients in considering contingencies.

Appendix A: Spotlight on Aurora’s Municipal Wellness Court and Holistic Public Defense Services

The Wellness Court was established at the prompting of former Judge Richard Weinberg in 2016. The goal of creating this specialty docket was to support the needs of individuals experiencing mental health and substance use disorders so that their number of contacts with the criminal legal system would be reduced.

The program has matured since its inception and is currently presided over by Judge Peter Frigo. The core team that manages this program includes a representative from the Aurora Mental Health Center (AuMHC), a court program manager, a representative from the probation department, a prosecutor, and a public defender. The number of participants in the Wellness Court program fluctuates but reportedly averages just three or four individuals per month.

The structure of operations in this court is generally governed by a Wellness Court handbook, which provides policy and process guidance. Each stakeholder working in this program receives a copy of the handbook, along with basic training on its contents provided by the court program manager. In addition to the policy and process included in the handbook, the core team meets regularly to collaborate about the program and adjust protocols as needs occur. The final arbiter of new process and policy is the court’s presiding judge.

Criteria for Eligibility

Participation in the Wellness Court program is reserved for people who have had at least eight contacts with law enforcement, emergency medical technicians, hospitals and/or the fire department in the span of twelve months. Examples of qualifying contacts include emergency room visits for mental health crisis, or repeat encounters with law enforcement officers or fire department staff.

If the person is mentally ill, suffering from drug addiction, or both, they are eligible to participate. However, if the person is severely mentally ill, the program does not currently have the capacity needed to offer services. Additionally, a person will be disqualified from participating in Wellness Court if:

- the person’s case is already set for trial;
- the person has one or more convictions for sexual offenses;
- the person has a conviction for domestic violence in the three years leading up to possible participation in the Wellness Court program;
- the person has an open domestic violence case; or
- the person has a conviction for a crime of violence in the last three years.

If a person meets all eligibility factors, the core team votes on whether to accept them into the program. Once accepted into the program, participants are required to plead guilty to their charges, be placed on up to two years of probation (unless the prosecutor agrees to defer the judgment), and submit to weekly drug testing. People accepted to participate in the program have access to mental health and addiction services, housing, family counseling, assistance with securing Social Security disability benefits, assistance with attaining or regaining a driver’s license or state identification card, and assistance with accessing public benefits. Significantly, no fees are required to be paid by the program participants for treatment, housing, probation, or other services.

Program Mechanics

The Wellness Court program is designed to last up to eighteen months for each participant. The court manager is a licensed clinical social worker (LCSW) and is qualified to conduct clinical assessments and develop individual case management plans for each participant. A summary of the clinical assessment is provided to the core team members. It provides information about what individual needs have been identified, along with a recommendation for services to be included in the case management plan. Each core team member contributes to additional development of the initial recommended plan through a collaborative process, with the presiding judge functioning as final arbiter if there is unresolved agreement among the team. A complete case management plan is provided to each core team member once the plan is finalized.

The Wellness Court convenes every Monday. The process begins with a pre-meeting of the core team, including the Presiding Judge, prior to the start of the court session. During this meeting the status of current program participants is reviewed and potential new participants are evaluated for eligibility. Each core team member contributes to the assessment of how current participants are progressing and decisions about whether changes to the case management plans are needed. Acceptance of new program participants occurs by majority vote of the core team, excluding the judge who is a non-voting participant. When this meeting is complete, the judge takes the bench and begins the public court session, calling upon participants to report on their status.

When clients report to court, the judge evaluates their progress and functions to support and motivate continued improvements in each participant's course of recovery. A system of rewards and sanctions are in place as part of the program strategy. If a client successfully continues participating in the program, progress is celebrated by placing their name on the "Rock Star Board." Three consecutive weeks of remaining on the Rock Star Board earns participants modest gift cards for use in accessing food and personal items. For those participants who are struggling in the program, the judge and core team work to problem-solve with the participant. Various adjustments can be made to the case management plan and new levels of support added. Sanctions can also be imposed, including up to one week in jail and/or removal from the program.

Each participant in the program is initially required to appear in court each week. Required court appearances lessen in regularity as participants advance through their case management plan. Each participant is provided a computer tablet while in the program so they can remain connected to the public defender, probation department, and the court program manager throughout the course of their participation. Each participant is linked to service providers within the community who have the expertise needed to address mental health and substance use disorders. Core providers include AuMHC, Mile High Behavioral Healthcare, and the Mental Health Corporation of Denver (MHCD). Service providers remain connected to the court program manager throughout the course of providing services to the participants. Additional support for program participants includes calls with the probation department twice weekly. If any problems arise while receiving services, the service provider will notify the court manager, who will in turn notify members of the core court team. If problems need immediate attention, the public defender will only learn about them if the court program manager provides prompt notification.

Public Defender's Role and Program-Specific Operations

The Public Defender's role in Wellness Court extends beyond legal defense and includes advocacy for access to services that are intended to address the physical, psychological, and economic needs of clients. Interviews and review of documents and data have revealed strengths and a positive forecast for the provision of quality representation in treatment courts by the APDO. The Office's ability to execute this role is hindered, however, by the present lack of program-dedicated personnel to serve Wellness Court participants, as well as limitations with the Office's training and case management system.

Public Defense Procedure at Wellness Court

All clients represented by the Public Defender's Office, including clients participating in the Wellness Court (WC) program, receive legal advice and defense advocacy for allegations lodged against them. The APDO provides defense attorneys at the arraignment and in-custody dockets, where candidates for the Wellness Court are initially identified. At present, the APDO has one attorney who takes on all Wellness Court cases (in addition to carrying a caseload in the traditional court).

Attorneys assigned to manage the in-custody and first appearance dockets will provide the WC defender with a list of candidate names. Thereafter, the WC defender will make contact with the candidates for further evaluation of the case and consideration for joining the program. The WC defender gathers additional details about the client. If the WC defender is unavailable, other APDO staff will work with candidates to complete the Wellness Court application.

If the defender questions whether the client is able to make an informed decision about their case or is unable to participate in their own defense, the attorney is ethically required to seek a competency evaluation prior to proceeding with the case. Even when a client expresses interest in participating in the program, the defense attorney is ethically required to ensure the client is making an informed decision about joining the program, including understanding what the program requires and what the consequences are if the client is not successful in meeting the requirements. A request for a competency evaluation is made by the defense attorney during the core team meetings that occur prior to the start of the Wellness Court every Monday, and prior to the core team making a decision on whether to accept the client into the program. If the judge grants the request for a competency evaluation, the case will be placed on a 60-day hold to allow for the evaluation to take place and issuance of the findings during the next scheduled court date. If competency concerns are not a factor for consideration, the core team reviews the candidacy during the team meetings and votes on acceptance into the program. During both a competency request and candidate review processes, the public defender must advocate for a course of action that is in the best interest of the client. The defense attorney is prohibited from disclosing confidential client communications to the core team, but does advance details about the client and the charges that assist the team with making informed decisions about program acceptance.

The APDO maintains confidential notes, court documents, and all other written matters pertaining to each client's case. The APDO tracks court dates and inserts progress notes in the client file as case events proceed. While the client is receiving services the defense attorney is staffing other court dockets and representing clients who are not in the WC. The client caseload for this attorney is about 100 open and active cases on an ongoing basis, including clients in the program. During the height of the COVID-19 pandemic, however, the number of people arrested in Aurora decreased. That, coupled with the warmer months ahead for Aurora as of the time of this evaluation, forecasts an expected increase in the current client caseload.

The Public Defender's role in the Wellness Court extends beyond legal defense and includes advocacy for access to services that are intended to address the physical, psychological, and economic needs of clients. This holistic model of representation is widely regarded as a best practice because it provides pathways to improved health and wellness strategies.

APDO Staffing of Wellness Court

As stated, the APDO currently has one attorney who is solely responsible for all clients participating in Wellness Court, in addition to carrying a caseload in the traditional, non-treatment court. There are no other Public Defender personnel, such as a social worker, assigned to support clients participating in the program. These limitations in personnel capacity to handle Wellness Court cases raises a number of concerns about the APDO's ability, at current staffing levels, to effectively serve clients and undertake holistic defense practice.

For one, the Office's relatively low capacity to serve Wellness Court participants threatens effective assistance of counsel. Although the current number of clients participating in the Wellness Court program is low, the number of outstanding charges attached to each client is high. Eligibility criteria require, at minimum, eight prior entanglements with public safety entities and/or emergency medical services over the preceding year. The defense attorney is ethically required to conduct a thorough evaluation of each charge and each incident prior to advising clients about their case options.

A single defense attorney with no program-dedicated support staff is unable to optimize the client participation or success rate in the program. Once a client is accepted into the program and a case management plan is in place, the defense attorney has minimal contact with the client. The client has access to the defense attorney, but the attorney is not able to stay actively connected to the client to ensure their success outside of consultations during scheduled court appearances. The program is structured with court personnel that are dedicated to monitoring the progress of participants, but the limited nature of the APDO's involvement impedes oversight of concerns related to the effective provision of services in the community and management of threats to the successful completion of the case management plan. Although the court program manager has the discretion to notify the attorney if a problem develops, this process does not promote early intervention and advocacy on behalf of the client. In other holistic defense models, public defender personnel—including social workers, client advocates, and peer-to-peer navigators—are assigned to support client success. This strategy strengthens the effectiveness of client representation and partnerships with service providers. It promotes expanded opportunities for people in need of services and also cultivates the ability to attract both local and national supplemental program support.

The volume of new in-custody clients arrested over weekends sometimes exceeds the time available for the defense attorney to meet with every candidate for the program prior to the start of the WC docket on Mondays. The program manager meets with clients who are in-custody, sometimes before the public defender does. Clients who do not meet with the public defender first are at risk for disclosing confidential information about their case that is not protected by the attorney-client relationship, and therefore, can be used against them.

Data and Case Management System Limitations

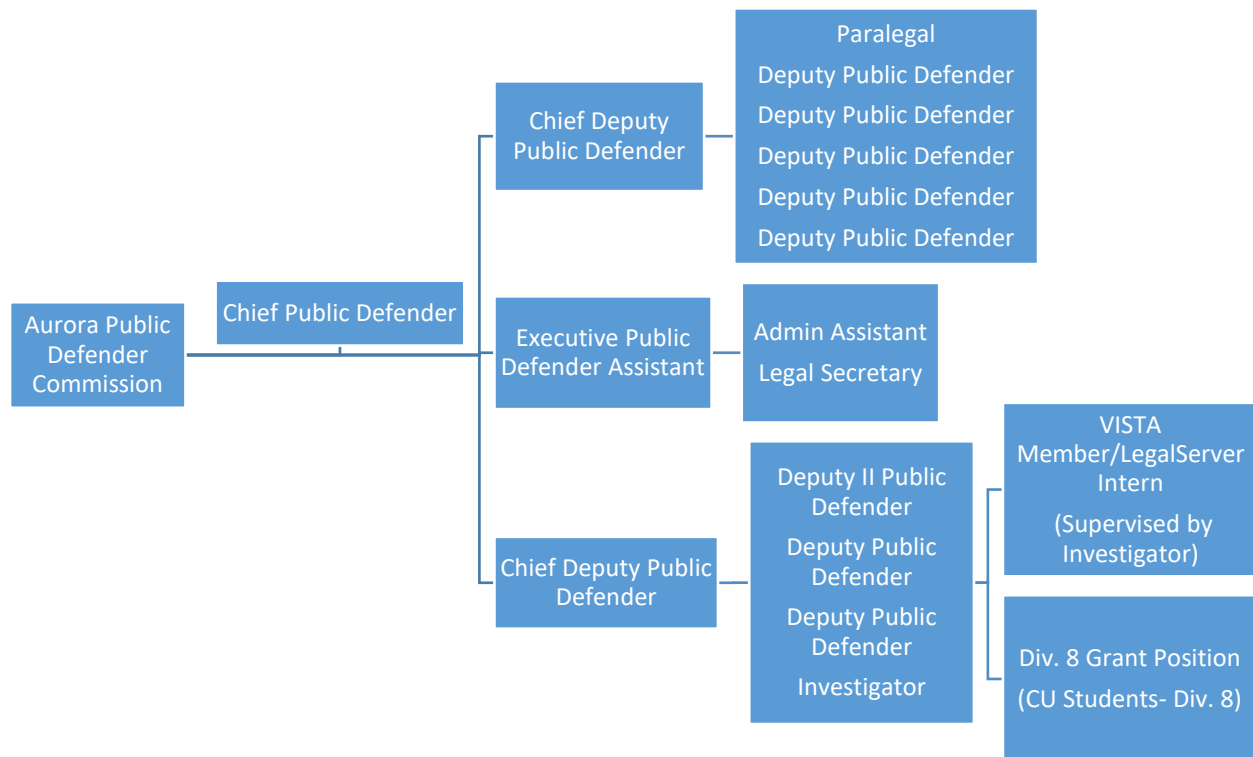
The Public Defender's Office implemented a new electronic case management system, LegalServer, in January 2021. For now, robust reliance on the electronic case management system is strained by staffing

capacity to manually input data and case materials, including internal documents, discovery material, court notifications, and other materials not electronically available across stakeholder agencies. Further, eligibility in the Wellness Court program depends on frequent entanglement with the Aurora justice and social service system. Over time, public defender staff will be able to retrieve valuable, prior year case information for clients who have been repeatedly represented by the Office. For now, historic “look back” information is only available for cases assigned after the January 2021 launch of the new case management system. Temporarily, the Office is still limited in the ability to compare the current situation of a client with historical information about prior charges, prior court interventions or prior status of family and community supports that may have changed. Like a patient medical record, a client history can inform the public defender and equip them with important details that can influence decisions about how to protect the best interests of the client.

Training

Training for public defenders assigned to the Wellness Court is minimal. Defenders receive a copy of the Wellness Court’s policy and procedures manual and meet with the program manager to discuss court processes. There is currently no requirement that a public defender representing clients in Wellness Court receive initial training or continuing legal education in supporting clients with mental illness or drug addiction. Current defender training also does not presently cover: motivational interviewing skills; trauma-informed representation; or diversity, equity, and inclusion strategies.

Appendix B: Aurora Public Defender's Office Staff Organizational Chart



(Note: This chart is current as of January 2021.)

Appendix C: Aurora Chief Public Defender's Accomplishments and Ongoing Projects (January 2020-August 2021)

Explanatory Note: As part of its evaluation of Chief Defender Doug Wilson at the end of 2020, the Aurora Public Defender Commission asked Chief Defender Wilson for a list of the APDO's accomplishments during his leadership of the Office, which began in January 2020. A revision of that list, updated in August 2021, is reproduced below.

1. Created direct reports
 - a. Three teams
 - b. Management team of three supervisors
 - c. Require weekly meetings with teams
 - d. Monthly office meetings.
2. Required performance evaluation completion for team members.
3. Procured first appearance grant money for Division 8 (including \$85,000 returned to the APDO): part-time attorney, grant-funded position represents in Division 8.
4. Oversaw new office space build-out and worked with City Space Committee for new office space.
5. With Human Resources (HR), created new intermediate attorney position.
6. Working with HR on securing attorney pay parity with City Attorney (CA) via salary comparison with Denver Municipal Public Defender, Denver City Attorney, Colorado State Public Defender, and Aurora City Attorney. After protracted negotiation, it appears to be going forward.
7. Worked with Court and CA to restructure and streamline indigence determination and application process in order to streamline process for clients.
8. Presented to City Council's Public Safety, Courts & Civil Service Committee regarding this streamlined process and competency determination changes.
9. Worked with Court, CA, and Aurora Mental Health Center (AuMHC) to institute a policy where case dismissed and handed-off to AuMHC for evaluation and potential treatment if client, after evaluation by professional, is found to be legally incompetent to proceed.
10. Created new procedure/referral process for mental health cases where client may not be incompetent, has serious mental illness (SMI) resulting in our ability to request intervention and help from AuMHC. Working with AuMHC, forensic doctors, and Equitas.
11. Instituted monthly training for the Office.
12. Managed hundreds of cases when COVID-19 hit, including personally arguing approximately 100 COVID-related motions in Court and helping write and prepare hundreds more:
 - a. Release on personal recognizance (PR)
 - b. Reconsideration
 - c. Opposition to mistrial motions
 - d. Objections to jury trial protocol, including proposed voir dire time limitations
 - e. Request for addition of specific voir dire questions regarding race, protests, and law enforcement.
13. Oversaw purchase and continuing implementation of Office's first case management system (CMS); it will help us with workload analysis and resource requests.

14. Helped interview and hire AmeriCorps VISTA member who started in November 2020 and helps with implementation of CMS.
15. Successfully applied for a federal CARES Act grant-funded position who started working with APDO on September 1, 2020 (\$86,000).
16. Worked with City/Budget staff concerning the budget cuts (reduction, not cuts for APDO) and furloughs.
17. Worked with the Denver Municipal Public Defender, Colorado University (CU) Law School clinic director, and the Office of the Alternate Defense Counsel to set up first municipal court-specific training for September 14, 2020.
18. Worked with CU clinic director and attorneys in the clinic regarding picking up sixteen cases for APDO: body-worn camera video collage and unlawful order motions (also private attorneys helped draft as well).
19. Attended and working with Judge Day and other stakeholders for the building and implementation of a veterans' treatment court (the Aurora Armed Forces Treatment Court).
20. Set up and oversaw three meetings with Tim Young, Ohio Public Defender, for input into development of new mission, vision, and value statements for the Office.
21. Continued oversight and supervision throughout the COVID-19 pandemic.
22. Worked for fifteen months with HR, City Council's Management & Finance Committee, and Council to procure our first-ever pay parity. Effective June 2021, retroactive to January 31, 2021.
23. Appointed to City-wide Compensation Committee.
24. Appointed to City-wide Benefits Committee.
25. Appear at City's Federal, State & Intergovernmental Relations Committee.
26. Spoke at work session at Council Member Curtis Gardner's request in support of restorative justice.
27. Member of Adams County Criminal Justice Subcommittee on Alternative Sanctions.
28. Negotiating contract with Office of the Alternate Defense Counsel for conflict representation.
29. Working with City Manager, Budget Director, and Council for new FTE positions through the SLARS process.
30. Developed mental health program with AuMHC and University of Denver Psychology Department including fellows helping with evaluations.
31. Instituted Lunchtime Training Programs as least monthly.
32. Awaiting announcement concerning funded social worker position for State Fees and Fines Committee.

Appendix D: Aurora Municipal Court Criminal Summons Form

CITY OF AURORA SUMMONS AND COMPLAINT

MUNICIPAL COURT IN AND FOR THE CITY OF AURORA,
STATE OF COLORADO, THE CITY OF AURORA BY AND
ON BEHALF OF THE PEOPLE OF THE STATE OF COLORADO

SUMMONS # **J** **#####**

CASE # _____

VS

Arrest Number: _____

CONNECTING CASE _____

DEFENDANT	Last	First	Middle	ADDRESS			City	State	Zip		
Drivers Lic. #	PRESENTED YES <input type="checkbox"/> NO <input type="checkbox"/>		Date of Birth	State	CDL	Race	Sex	Height	Weight	Hair	Eyes
Home Phone	Cell Phone		Employer Address & Phone								
Veh. Lic. & Type	State	Vehicle Make	Model	Style	Year	Color	Com. Veh.	Haz. Mat.			

YOU ARE HEREBY ORDERED TO APPEAR BEFORE THE MUNICIPAL COURT AT THE ADDRESS OF 14999 E. ALAMEDA PARKWAY,

AURORA, COLORADO 80012 ON _____ AT _____ AM / PM

TO ANSWER TO THE CHARGE(S) OF VIOLATING THE FOLLOWING SECTION(S) OF THE CITY CODE OF THE CITY OF AURORA, STATE OF COLORADO, AS AMENDED, AT THE APPROXIMATE LOCATION OF _____ IN THE CITY OF

AURORA, STATE OF COLORADO WHICH OCCURRED ON _____ AT THE APPROXIMATE TIME OF _____ AM / PM

☐ DOMESTIC VIOLENCE

☐ JUVENILE, ONE PARENT MUST APPEAR

☐ RELEASED ON SUMMONS
☐ IN CUSTODY

✓ SEC NO.	RELATING TO	DISPO	✓ SEC NO.	RELATING TO	DISPO	✓ SEC NO.	RELATING TO	DISPO
94-378	OBSTRUCTING / INTERFERENCE	4899	94-218 (b)	POSSESSION OF CANNABIS TWO OUNCES OR LESS	3562	94-71 (1)	TRESPASS SIGN POSTED	5707
94-381	FALSE STATEMENT TO CITY PERSONNEL	4899	94-221 (a)	DRUG PARAPHERNALIA	3565	94-71 (2)	REFUSAL TO LEAVE WHEN ORDERED	5707
94-383	RESISTING ARREST	4801	94-341	JUVENILE CURFEW	6300	94-71 (4)	SCHOOL PROPERTY / FAILURE TO OBEY INSTRUCTION	5707
94-36	ASSAULT	1313	94-6	ACCESSORY TO ORDINANCE VIOLATION		94-71 (5)	TRESPASS / UNPRIVILEGED ENTRY / REMAIN	5707
94-37	BATTERY	1399	98-56	VIOLATION OF PARK CURFEW	5707	94-71 (7)	POSTED SCHOOL GROUNDS	5707
94-38	RECKLESS ENDANGERMENT	7099	94-109	SOUND AMPLIFYING EQUIPMENT	5312	94-71 (8)	AFTER WRITTEN NOTICE GIVEN	5707
94-39	FALSE IMPRISONMENT	1099	94-7	SELLING OF MERCHANDISE	6102		HARASSMENT	94-42
94-41	MENACING		94-81	DEFACING PROPERTY		94-42 (1)	HARMFUL, PAINFUL / OFFENSIVE CONTACT	5311
94-73	INJURY TO PROPERTY		94-107	DISTURBING THE PEACE	5312	94-42 (2)	FOLLOWING IN PUBLIC	5311
94-79	CRIMINAL TAMPERING		94-72	LOITERING - SCHOOL GROUNDS	6399	94-42 (4)	THREATS / OBSCENITIES	5309
94-386	VIOLATION OF COURT ORDER	5003	94-112	LOITERING - DRUG RELATED ACTIVITY	6399	94-42 (5)	TELEPHONE / NO LEGITIMATE PURPOSE	5309
94-74 (a)	THEFT		94-312	UNLAWFUL SALE OF ALCOHOL BEVERAGE	4102	94-42 (7)	INSULTS / TAUNTS / CHALLENGES	5311
94-74 (d)	THEFT / DEFRAUD ESTABLISHMENT	2607	66-34	FIREWORKS PROHIBITED	521		POSSESSION / CONSUMPTION OF ALCOHOLIC BEVERAGE	94-313
94-75	MOTOR VEHICLE THEFT	2404		DISORDERLY CONDUCT	94-110	94-313 (a)	PUBLIC PLACE UNDER 21	4104
94-83	MOTOR VEHICLE TRESPASS	5707	94-110 (1)	ABUSIVE LANGUAGE / THREATS CREATING DANGER OF VIOLENCE	5311	94-313 (b)	PUBLIC PLACE OPEN CONTAINER	4104
94-144 (a)	CARRYING A CONCEALED WEAPON	5202	94-110 (2)	FIGHTING	5311	94-313 (c)	GLASS CONTAINER / PARK / RECREATION AREA	4104
94-144 (c)	UNLAWFUL DISPLAY OF WEAPON	5299	94-110 (3)	DISPLAY DEADLY WEAPON	5311		PROSTITUTION	94-216
94-145 (a)	POSSESSION OF ILLEGAL WEAPON	5212	94-110 (4)	ALTER / BEFOUL PROPERTY	5311	94-216 (b)	OFFERS / AGREES TO PERFORM SEX FOR THINGS OF VALUE	4004
94-146 (a)	DISCHARGING OF WEAPON IN THE CITY	5213	94-110 (5)	FAILURE TO OBEY ORDER	5311	94-216 (c) (1)	PURCHASES / OFFERS TO PURCHASE SEX	4004
94-150	POSSESSION FIREARM UNDER INFLUENCE / INTOXICATED	5212		TRESPASS	94-71	94-216 (c) (2)	FURTHERING	4004

1. SEC. NO. _____ RELATING TO: _____
2. SEC. NO. _____ RELATING TO: _____

RIGHT INDEX FINGER

VICTIM(S): _____

A TRUE COPY OF THIS SUMMONS AND COMPLAINT WAS DULY SERVED ON THE ABOVE NAMED DEFENDANT AS PROVIDED BY LAW;
ISSUED AND SERVED BY:

AURORA POLICE OFFICER _____ ID NO. _____ DATE _____

COURT COPY

APD 084 (Revised 03.25.2019)

