

Washington State Judicial Branch

2023-25 Biennial Budget

Children's Representation Contractor Vendor Rate Adjustment

Agency: Office of Civil Legal Aid

Decision Package Title: AD – Children's Rep. Contractor VRA

Agency Recommendation Summary Text:

Funding is requested to adjust Children's Representation Program contract attorney (vendor) rates to levels necessary to facilitate recruitment and retention of qualified attorneys to provide standards-based representation for children and youth eligible for appointed counsel in dependency and termination cases as required by RCW 13.34.212. (General Fund-State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.00	0.00	0.00	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1	\$697,435	\$1,018,285	\$1,715,720	\$2,404,900	\$1,666,541	\$4,071,441
Total Expenditures						
	\$697,435	\$1,018,285	\$1,715,720	\$2,404,900	\$1,666,541	\$4,071,441

Package Description:

Background:

In 2014, the Legislature enacted a right to appointed counsel for children and youth in dependencies when six months had passed following the termination of their parents' legal rights ("legally free" children and youth) as well as children and youth in extended foster care. These provisions are now codified at RCW 13.34.212(1). Administration was assigned to the Office of Civil Legal Aid. RCW 2.53.045.

In 2021, the Legislature enacted SHB 1219 establishing a right to appointed counsel for all children ages 8 and above in dependency cases and for all children regardless of age in termination of parental rights (and the related dependency) cases. RCW 13.34.212(3). The Office of Civil Legal Aid was directed to fully implement a statewide program for appointed counsel for children and youth over a five-year period commencing July 1, 2022. RCW 13.34.212(3)(c). Contract attorneys must adhere to the revised caseload, practice, and training standards adopted upon legislative request by the Washington Supreme Court's Commission on Children in Foster Care. Sec. 9(2), ch. 210, laws of 2021.

During 2024-25, OCLA will contract with a combined total of 70 FTE private attorney contractors to represent legally free children and children entitled to appointed counsel in counties in which the new right to counsel program will be operational. In accordance with the county-by-county implementation schedule, this number will increase to nearly 140 FTE attorney contractors by the end of FY 2027.

Problem:

The legislature directed OCLA to recruit, train, and oversee the performance of contract attorneys engaged in the representation of children and youth in dependency cases in accordance with the professional practice standards, caseload limits, and training guidelines adopted by the CCFC.

OCLA’s Children’s Representation Program (CRP) is the analogue to the Office of Public Defense’s (OPD’s) pre-existing Parents Representation Program. Consistent with prior legislative guidance and directives, OCLA’s approach to contracting and oversight has followed the OPD model. This includes OCLA’s approach to compensation of its CRP attorney contractors. Under this model, OCLA engages contractors on a full-time-equivalent (or percentage thereof) basis. Compensation rates are designed to cover the fully loaded costs of standards-based attorney representation. These include, among other things:

- Salaries and benefits for the attorney contractor
- Taxes
- Salaries and benefits for essential support staff and/or contracted support services
- An allocated percentage of business and professional expenses (e.g., technology, rent/overhead, general business and malpractice insurance, legal research, accounting, payroll, financial services)
- Travel
- Training
- Contribution to retirement program
- Student loan debt repayment
- Other essential operational expenses

OCLA’s current contract rate for a full-time, experience CRP attorney is \$144,000/year. Actual compensation comes at the end of the chain of expenses that the attorney must incur to perform responsibilities under the contract (net compensation after expenses). As OCLA has not previously requested a vendor rate adjustment for the CRP program, CRP attorneys are finding it increasingly hard to make ends meet at current compensation levels. Compounding the problem is the fact that OCLA’s CRP compensation rate falls substantially below that of OPD and even further behind the fully loaded cost of the assistant attorneys general representing the state in dependency and termination cases. In FY 2022 a “fully loaded” full-time AAG with a quarter-time support staff (legal assistant/paralegal) costs the state \$261,863 per year in Seattle, and \$249,922 in other locations throughout the state.¹ The current average OPD rate for full-time contract attorneys in its Parents Representation Program is \$161,500.

Dependency representation is a unique area of practice. Attorneys drawn to the practice do so because they are committed to ensuring equity and justice for the families and children involved – not for the money. It is not unusual for attorneys to move from one subarea of child welfare practice to another; a dynamic that results in increasing competition between the state (AGO), OPD, and OCLA for high quality candidates. The pay differentials between the AGO, OPD, and OCLA create dynamics that make it increasingly difficult to recruit, train, and retain qualified attorneys throughout the state to represent children and youth in dependency and termination cases. There is an increasing risk that OCLA will (a) not be able to attract the number of new attorneys into CRP practice needed to comply with the schedule for implementation of the expanded right to appointed counsel established in RCW 13.34.212(3), and (b) not be able to retain attorneys currently under contract but who are significantly underpaid relative in both absolute terms as well as relative to the compensation offered by the AGO and OPD. If compensation parity is not achieved in a reasonable time, there is significant risk of flight away from children’s representation to either state or parent representation.

Solution:

The gap between OCLA and OPD and, more importantly, the much larger gap between OCLA, OPD and the AGO must be addressed. Attorneys working in this area should be meaningfully compensated for their services net of the costs associated with providing the same. The risks of significant competition and a resulting game of “musical chairs”

¹ Data provided by Washington Attorney General’s Office on May 26, 2022, pursuant to OPD public records request.

amongst the child welfare system legal providers/contractors compels the urgency for the Legislature to chart and fund a “glide path” to child welfare system representational parity.

This Decision Package represents the first step toward addressing the parity gap and OCLA’s related contract recruitment and retention issues. Funding requested will allow OCLA to make substantial progress toward achieving parity for attorneys in the child welfare space over time – regardless of who they represent (state, parents, children/youth). As outlined in the chart below, requested funding will progressively increase total compensation over four years from the current \$144,000 to an average contract value of \$235,350 per FTE contract attorney by FY 2027. This is consistent with the target of OPD’s parallel requested vendor rate adjustment.

CRP Contractor Comparability Adjustments				
Base	\$144,000	% Increase	FTE	Total Increase
FY 2024	\$168,480.00	0.17	35	\$856,800.00
FY 2025	\$191,224.80	0.135	55	\$1,250,964.00
FY 2026	\$219,908.52	0.115	103	\$2,954,423.16
Fy 2027	\$235,302.12	0.7	133	\$2,047,348.32

It is important to note the difference between “compensation” and “net income” or “take home pay”. Total compensation is intended to underwrite an attorneys total costs associated with representing children. These “fully loaded” costs include, but may not be limited to, the categories expenditure listed above. Information from CRP contractors suggests that many go without essential support capacity (legal assistant/paralegal support; business and payroll services; on-line legal research services; essential technology systems and support; etc.). This compromises their ability to provide standards-based legal representation. Further, few full-time contractors are able to purchase meaningful health insurance packages, and even fewer are able to meaningfully contribute to 401(k) or other retirement accounts. Net after-tax and expense compensation often falls in the low to mid-\$70,000 – low-\$80,000 range for a full-time attorney with years of child welfare experience. This is unsustainable.

Fully describe and quantify expected impacts on state residents and specific populations served:

OCLA is legally mandated to contract with attorneys to represent children and youth in dependency and termination cases. Upon full implementation of the program in FY 2027, OCLA contracted attorneys will represent well over 3,200 children and youth ages 8 and above, and a significant number beyond that below 8 years of age who are involved in parental rights termination cases. OCLA’s capacity to meet this mandate is a function of its ability to recruit, train, and contract with qualified attorneys in every corner of the state. It will also facilitate OCLA’s ability to maintain continuity of counsel over time (as required by RCW 13.34.212) as these attorneys will begin to realize fair and equitable compensation (and not be subject to risk of recruitment away from this practice).

Explain what alternatives were explored by the agency and why they were rejected as solutions:

CRP is a mandatory state program. There is no other source of funding to address the compensation parity challenges OCLA and its contractors face. Doing nothing is not an option as that will further increase the parity gap and the corresponding risks that (a) OCLA will be unable to attract sufficient numbers of attorneys to represent children and youth in the counties into which the right to appointed counsel for children and youth is scheduled to come online, and (b) OCLA will lose increasing numbers of attorneys due to inadequate compensation levels and competition from other legal representation providers in the child welfare space (AGO and OPD).

What are the consequences of not funding this request?

Not funding this request likely will exacerbate current difficulties recruiting and retaining attorneys who are qualified to accept an OCLA CRP contract to provide statutorily mandated representation of children and youth. This could result in

significant delays in the appointment of counsel for children and youth in these cases, which would in turn threaten the progress of dependency and termination cases (placing the state in jeopardy of failing to meet federally mandated permanency timelines). This would effectively result in children spending more time in foster care or courts proceeding to make decisions in cases without appointed counsel at the risk of future challenge.

Is this an expansion or alteration of a current program or service?

This request will ensure continuity of existing CRP programs and OCLA’s ability to timely implement the directive for expansion of appointed counsel for children and youth set forth in RCW 13.34.212(3)(c).

Decision Package expenditure, FTE and revenue assumptions:

Expenditures by Object	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
C Personal Service Contracts	856,800	1,250,964	2,954,423	2,047,348
S Inter-agency Reimbursement	(159,365)	(232,679)	(549,523)	(380,807)
Total Objects	697,435	1,018,285	2,404,900	1,666,541

Note: Per legislative directive, OCLA enters into an interagency agreement with the Department of Children, Youth & Families to secure partial reimbursement from the federal government for Title IV-E qualifying expenses (shown in Object S). The average reimbursement rate is 18.6% and is assumed in the budget information above.

How does the package relate to the Judicial Branch principal policy objectives?

A vendor rate adjustment will help ensure that OCLA/CRP can recruit and retain adequate numbers of qualified attorney contractors to effectively represent indigent persons who have a right to legal counsel in certain types of cases. The decision package serves the following judicial branch objectives.

- Fair and Effective Administration of Justice
- Accessibility
- *Access to Necessary Representation*

Are there impacts to other governmental entities?

Funding this request would not create any impact or obligation on other agencies, courts, or governments.

Failure to fund this request could result in delayed appointment of counsel for children and youth, which in turn could impact case backlogs in the trial and appellate courts – and push the state further behind federal dependency timeliness requirements.

Stakeholder response:

Non-governmental stakeholders include existing and potential future CRP attorneys as well as existing and future clients. OCLA anticipates that both will actively support the Decision Package. We are unaware of any entities that will oppose this request.

Are there legal or administrative mandates that require this package to be funded?

RCW 13.34.212 directs that children and youth be appointed counsel in certain dependency and termination cases. This decision package ensures OCLA’s capacity to meet these mandates over the course of the next biennium and beyond.

Does current law need to be changed to successfully implement this package?

The decision package does not require change to any state laws, court rules, or contracts.

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Are there impacts to state facilities?

No.

Are there other supporting materials that strengthen the case for this request?

Detailed budget information showing the caseload and corresponding expenses associated with OCLA’s CRP is attached.

Are there information technology impacts?

No.

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