

Washington State Judicial Branch

2025 Supplemental Budget

Appellate Backlog Response

Agency: Office of Public Defense

Decision Package Code/Title: S1—Appellate Backlog Response

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding to cover an emergent backlog of case assignments and increased workload in the Appellate Program. A software error concealed the magnitude of growing workload until June 2024. To address the workload and avoid a greater backlog and court delays, OPD is adding 11 FTE contract attorneys for Fiscal Year 2025. OPD requests .3 FTE attorney trainer to develop and implement training for newly recruited and less-experienced appellate contractors. OPD further requests funding to cover an appellate workload study as recommended by the Washington State Bar Association.

Fiscal Summary: Funding is requested for 0.3 FTE OPD appellate attorney trainer, 11 FTE contract attorneys for the Appellate Program, and an appellate workload study.

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.00	0.30	0.30	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1	\$0	\$2,152,000	\$2,152,000	\$0	\$0	\$0
Total Expenditures						
Total	\$0	\$2,152,000	\$2,152,000	\$0	\$0	\$0

Will this decision package be submitted in the 2025-2027 biennial budget? Yes

Package Description:

Backlog of Case Assignments and Increased Workload – 11 FTE Contract Attorneys and .3 Trainer

The Office of Public Defense (OPD) Appellate Program provides contracted attorneys to represent indigent clients before the Washington Court of Appeals and Supreme Court in criminal, juvenile offender, dependency and termination, and civil commitment cases. A full-time appellate contract attorney handles the equivalent of 36 cases per year at an average 350 transcript pages, as mandated by current Supreme Court Standard for Indigent Defense 3.4. Appellate attorneys are credited for one case assignment for each case assigned, as well as for every 800 pages of trial transcript, based on data showing that counting an additional credit every 800 pages maintains an average of 350 pages or less per case credit.

Factors Contributing to Workload Increase

While the number of filings in the Court of Appeals and Supreme Court have not increased, other factors contribute to significant growth in workload for OPD's contracted appellate attorneys.

- The workload increase is due in large part to more cases presenting very long trial transcripts. Transcript lengths averaged approximately 800 pages between Fiscal Year 2020 and Fiscal Year 2023, but rose to an average 929 pages in Fiscal Year 2024. Ninety-nine more case credits were assigned for long transcripts in Fiscal Year 2024 than in Fiscal Year 2023.
- The workload increase is also partly due to more appointments of appellate counsel for children in dependency and termination cases on appeal. RCW 13.34.212(3), provides a phased-in right to counsel for children in dependency and termination cases. As this right to counsel expands to cover more counties, more children

receive counsel at trial in dependency and termination cases, and the number of children requiring appellate counsel increases as well. The number of children receiving appellate counsel in dependency and termination cases rose from eight in Fiscal Year 2023 to 24 in Fiscal Year 2024.

- In addition, appellate counsel increasingly is needed for indigent clients in minor guardianship cases under RCW 11.130.200(5). Counsel was appointed on three such cases in Fiscal Year 2023, and nine in Fiscal Year 2024.

Software Error Creates Backlog of Case Assignments

Compounding the workload growth, a latent error in the Appellate Program's case management software concealed much of the workload increase until June 2024 – the end of the fiscal year. At that time, OPD discovered that more than 100 cases were not properly counted by the defender Data software. Ultimately, Fiscal Year 2024 closed with a backlog of 117 case credits. The software bug did not cause the backlog, but it prevented OPD from implementing a more timely response to the growing workload.

OPD has made policy changes to address the software problem and prevent future case management errors. Going forward OPD will reconcile its primary case management reports with contractor records on a quarterly basis to ensure no cases are omitted from the case credit count. OPD has consistently performed quarterly caseload audits in the past, but the audits reconciled case assignments only, they did not verify that assigned cases were correctly counted in case credit tracking reports.

OPD Response

To address both the workload growth as well as the case assignment backlog, OPD is adding contract attorneys for Fiscal Year 2025. Of these, 3.25 FTE contracts are covering the workload growth and 5.75 FTE contracts are tackling the backlog of case assignments, in order to eliminate the backlog as quickly as is practical and avoid delays in the courts. OPD estimates that this approach will resolve the case assignment backlog within Fiscal Year 2025.

Most of the newly contracted appellate attorneys do not have significant appellate experience. To ensure that they can comply with the Supreme Court's Standards for Indigent Defense and provide competent representation to their clients, OPD is adding .3 FTE attorney trainer. Washington State Bar Association (WSBA) appellate guidelines require attorneys to be supervised on their first five appellate briefs, and an OPD attorney trainer can provide oversight to facilitate contractor compliance. The OPD attorney trainer also is responsible for training, issue spotting, reviewing briefs, helping contractors prepare for oral arguments, staffing cases, researching novel legal issues, and providing technical assistance to contractors.

Additional Resources to Support Large Contract Firms

The Appellate Program software error most severely impacted OPD contractor Nielsen, Koch & Grannis (NKG). NKG is one of OPD's two Seattle-based law firms with appellate contracts. The software bug resulted in 100 more case credits being assigned to NKG than their contract authorized. NKG agreed to keep the excess cases in exchange for an increased contract fee to allow them to add 1 FTE contract position to their appellate practice. This approach permits NKG to manage the excess case credits with less administrative waste and negative impact on clients than would follow if 100 cases were reassigned across multiple contractors.

Separately, OPD is funding an additional 1 FTE contract position at its other Seattle-based appellate contractor, Washington Appellate Project (WAP). WAP is OPD's largest Appellate Program contractor, employing 14.58 attorney FTEs. Due to its size, WAP faces persistent Family and Medical Leave Act (FMLA) absences that it is unable to cover without an additional attorney position. Hiring temporary coverage for individual FMLA leave periods is impractical; by the time a temporary attorney is trained and performing efficiently, the original attorney is back from leave and the

temp must be let go. OPD determined that the best solution is to add a full-time attorney position for WAP so that sufficient staff are available to cover case assignments when WAP attorneys take FMLA.

A Study to Inform Appellate Caseload Standards, as Recommended by the Washington State Bar Association

Upon recommendation of the Washington State Bar Association (WSBA), OPD requests funding to study appellate attorney workloads and develop appropriate caseload standards for public defense providers in criminal and certain civil appeals where there is a right to counsel.

The WSBA and its Council on Public Defense recently considered caseload standards for appellate public defense attorneys, and based on a review of information presently available they determined that additional study is required to develop a final standard. Several other states have performed appellate workload studies, and a Council subcommittee reviewed these studies in hopes of using them to support updated caseload standards in Washington. However, differences in appellate procedure among the states limited the ability to rely on existing studies to inform Washington standards. No state that has performed a workload study of appellate practice is a close enough analogue to Washington to use as a baseline for developing a revised standard. For that reason, the Council and WSBA proposed that a workload study be performed specific to Washington appellate practice.

The WSBA will administer the workload study and has issued an RFP, which is attached to this decision package.

Fully describe and quantify expected impacts on state residents.

Funding this decision package will ensure that, to the extent practical, indigent clients have counsel timely appointed and their rights effectuated. Some delay is inevitable, as the assignment backlog already exists. But OPD's solution ensures that well-resourced, professional appellate contractors are assigned to cases in an orderly, fair, and reasonably swift process.

Adding an in-house appellate attorney trainer is the most cost-efficient way to ensure new appellate contractors can meet caseload standards and comply with performance guidelines. This position provides the oversight necessary for OPD to contract with attorneys who do not meet the minimum requirements for filing appellate briefs without supervision, greatly expanding the pool of potential contract applicants in a tight labor market.

Explain what alternatives were explored by the agency and why this was the best option chosen.

OPD considered waiting until the Fiscal Year 2025-2027 biennial budget to add contract attorneys, instead of hiring immediately and seeking supplemental funding. That delay would double the existing backlog, assuming Fiscal Year 2025 workload neither increases nor decreases compared to Fiscal Year 2024. It would require OPD to request substantially more FTEs to tackle a much larger backlog, increasing costs to the state and further delaying appellants' right to counsel.

OPD also explored contracting with 3.25 FTEs immediately to prevent the backlog from growing, and requesting additional contracted FTEs in the biennial budget to begin reducing the backlog. This alternative risks expanding the backlog because OPD cannot guarantee that workload will remain constant. Even if the backlog does not grow, this alternative would delay assignment of counsel for much longer than is ideal, frustrating effective appellate relief for many and delaying the enforcement of vital constitutional rights for many others.

Adding an in-house appellate attorney trainer is the most cost-efficient way to ensure new appellate contractors can meet caseload standards and comply with performance guidelines. This position provides the oversight necessary for OPD to contract with attorneys who do not meet the minimum requirements for filing appellate briefs without supervision, greatly expanding the pool of potential contract applicants in a tight labor market.

What are the consequences of not funding this request?

Office of Public Defense
Maintenance Level – S1—Appellate Backlog Response

With a backlog of 117 case credits, up to 117 clients with a constitutional or statutory right to counsel are projected to be put on a waiting list for appointment of counsel. Due to the delay in appointment of counsel, clients with short sentences might serve their entire sentences before appellate relief can be provided. And, although OPD is prioritizing appointment of counsel for dependency and termination clients, there may be a wait list for these cases as well if filings exceed OPD's capacity. In that event, parents wrongfully separated from their children might find reunification impossible. When delays occur in dependency and termination cases parents can lose hope and suffer relapses or recurrences of mental health issues, making reunification impossible even if their dependency or termination cases are ultimately reversed on appeal. OPD believes this decision package strikes the right balance between reduction of the delay and fiscal responsibility.

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

No. This decision package addresses timely operations in OPD's Appellate Program.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Job Title Classification	Workload Assumptions/Description	
	FY 25	
OPD Attorney Trainer	0.30	OPD attorney trainer

Use Standard Costs?

No.

If No, Explain Additional Costs	Description/Assumptions	
	FY25	
Contracts	\$1,912,773	11 appellate contract attorneys @ \$218,598 each staggered hiring approach – see grid below
Goods and Services	\$22,000	OPD Staff Training/Attorney Training
	\$11,000	One-time Start up costs for OPD staff
Travel	\$11,000	OPD Staff – Attorney Trainer
Equipment		Included in one-time start-up costs
Contract	\$150,000	Appellate Workload/Standards Study

Staggered Starts	XT FTEs	# of months	Monthly	Total	38.11	FY24 Base
July	2	12	\$18,217	\$437,196	40.11	Hired
September	3	10	\$18,217	\$546,510	43.11	In-process
October	3	9	\$18,217	\$491,859	46.11	Future
November	3	8	\$18,217	\$437,208	49.11	Future
TOTAL	11			\$1,912,773		

Office of Public Defense
Maintenance Level – S1—Appellate Backlog Response

Appellate Response - Atty Trainer		
		FY25
11 Appellate Contrators		\$1,912,773
Range 77M .3 FTE		
Attorney Trainer Salary		\$34,635
Benefits		\$9,695
Total		\$44,330
Appellate Caseload Standards Study		\$150,000
Start-up		\$11,000
Training		\$22,000
Travel		\$11,000
TOTAL		\$2,151,103

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

Fair and Effective Administration of Justice

This decision package reduces wait times experienced by indigent clients with a constitutional or statutory right to counsel, ensuring that the right to appeal and the availability of appellate relief are protected.

Accessibility

This decision package maintains timely access to appellate counsel for indigent clients with disabilities who would have great difficulty accessing the courts without the assistance of counsel.

Access to Necessary Representation

This decision package maintains access to counsel for indigent clients with a constitutional or statutory right to appeal.

Commitment to Effective Court Management

This decision package avoids severe delays in appointment of counsel which could lead to a waste of judicial and court resources. Appellate courts are unable to process cases unless defense counsel is available to complete critical case stages such as filing the opening brief.

Sufficient Staffing and Support

This decision package ensures that OPD's Appellate Program has adequate in-house training and oversight as well as sufficient contractors to address a backlog of cases and cover continuing appellate workload levels. The workload study will provide data to inform future decisions about the appropriate number of contractors.

How does the package impact equity in the state?

Address any target populations or communities that will benefit from this proposal.

Indigent clients who face a loss of liberty or family due to state action benefit from appellate counsel being assigned in a timely manner to effectuate their rights.

Describe the how the agency conducted community outreach and engagement.

OPD consulted with contract attorneys about their needs. The agency also participated in the WSBA's review of appellate caseload standards, which produced the WSBA's recommendation for an appellate workload study.

Consider which target populations or communities would be disproportionately impacted by this proposal.

Explain why and how these equity impacts will be mitigated.

The justice system already disproportionately impacts communities of color, indigenous communities, and communities with low socioeconomic opportunity, all of which are more likely to utilize public defense when summoned to court. This proposal ensures continued availability of high quality appellate public defense representation for these communities.

Are there impacts to other governmental entities?

This decision package assists efficient operations of the appellate courts and prosecuting agencies. Delays in assignment of counsel will be reduced and courts will experience fewer disruptions to case processing schedules. Prosecuting attorney's offices and the Attorney General's Office will be able to proceed with work on cases that are on appeal.

Stakeholder response:

Appellate contractors support OPD's requests to address the case assignment backlog, keep up with workload growth, and fund an appellate workload study to inform updated caseload standards.

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

The appellate cases at issue all involve clients with a constitutional or statutory right to counsel and right to appeal. Funding this decision package ensures that delays in the assignment of counsel are reduced and will avoid major delays in clients accessing legal help to which they have a constitutional or statutory right.

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

No

Are there impacts to state facilities?

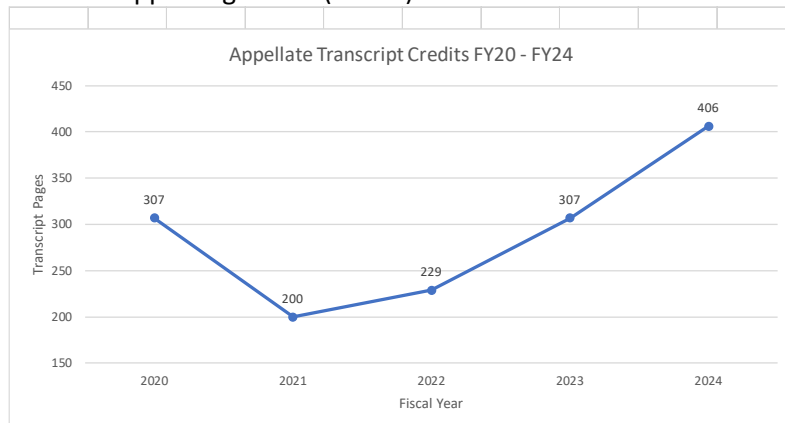
No

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

- WSBA's draft RFP for an appellate workload study.
See Attachment A: S1 – Appellate Backlog Response – WSBA Appellate Workload Study
- Letter from Washington Appellate Project regarding appellate workload study.
See Attachment B: S1 – Appellate Backlog Response – Washington Appellate Project Cover Letter to OPD

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- Supporting charts (below) illustrate factors that contribute to increased workload:



Children's Rep Appeals	
FY	Credits
2020	5
2021	9
2022	8
2023	7
2024	26

Guardianship Appeals	
FY	Credits
2021	1
2022	1
2023	3
2024	9

Are there information technology impacts?

No

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