

Washington State Judicial Branch 2025 Supplemental Budget Defense Experts & Litigation Costs

Agency: Office of Public Defense

Decision Package Code/Title: S2 – Defense Experts & Litigation Costs

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding to cover increased costs for defense experts in dependency and termination of parental rights cases, and for litigation costs including trial transcripts and clerk's papers in appellate cases.

Fiscal Summary: Funding is requested for defense experts and litigation costs.

	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	\$0	\$1,549,000	\$1,549,000	\$0	\$0	\$0
4E Federal Reimbursement	\$0	(\$159,000)	(\$159,000)	\$0	\$0	\$0
Total Expenditures						
	\$0	\$1,390,000	\$1,390,000	\$0	\$0	\$0

OPD is a subrecipient (DCYF) of federal Title IV-E funding. Certain child welfare-related expenditures, including legal services, are eligible for partial federal reimbursement. State funding appropriated to implement this decision package is projected to generate federal Title IV-E reimbursement as noted above.

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

Yes.

Package Description:

Maintenance-level expenditures are increasing for defense experts and litigation costs in cases for which OPD is required to provide public defense representation. OPD had to utilize Judicial Stabilization Trust Account (JSTA) funding to cover Fiscal Year 2024 cost overruns, depleting JSTA resources for the rest of the biennium. OPD requests supplemental appropriation for Fiscal Year 2025 to cover expenditures for defense experts in dependency and termination of parental rights cases, and for litigation costs including trial transcripts and clerks' papers in appellate cases.

Expert Services for Parents Representation Program

Pursuant to Chapter 2.70 RCW and Chapter 13.34 RCW, OPD-contracted Parent Representation Program attorneys represent indigent parents when the state puts their children in foster care or seeks to permanently terminate parental rights. OPD's contracted Parents Representation Program attorneys obtain independent medical, psychological, and social service experts to present relevant scientific information or other supportive information to the court in dependency and termination cases.

Effective parent representation requires attorneys to utilize experts as appropriate to a specific case. An attorney may be found ineffective partially due to their inability to obtain an expert. *Dependency of V.R.R. v. DSHS*, 134 Wn. App. 573 (2006). See also *In re Yarbrough Minors.*, 314 Mich.App. 111 (2016) (Overturning a termination of parental rights and finding that the parents had a due process right to funds for consultation with a medical expert regarding alternate causes for a child's injuries). [The ABA Practice for Parent Attorneys](#), [Family Justice Initiative Attorney Attributes](#), [Washington Supreme Court Standards on Indigent Defense](#), and [Washington State Bar Association Standards for Indigent Defense Services](#) all highlight the need for experts to assure attorney representation is effective. In particular, WSBA Standard Four directs public defense administrators to "provide reasonable compensation for expert witnesses necessary for preparation and presentation of the case," and establishes that attorneys "should be free to retain the expert of their choosing and shall not be required to select experts from a list pre-approved by either the jurisdiction, the court, or the prosecution." Washington Rules of Professional Conduct [1.8\(m\)](#) further provide that a lawyer should not bear the cost of expert services under a government contract for indigent defense representation, such as OPD's contract for parent representation.

OPD Parents Representation Program managers review contract attorney requests for experts and approve costs that are reasonable for the particular case and that qualify under agency policy. Approved expert services range from simple lab analysis such as DNA testing to confirm paternity or hair follicle testing to determine drug use, to more complex and individualized evaluative services such as home studies of parents or other relatives who may be suitable caregivers, or assessing the parenting capacity of a developmentally delayed parent. Expert services may include comprehensive written reports and testimony at a hearing or trial, or can be limited to a brief professional consultation to help an attorney understand potential medical issues.

Cases involving complex medical issues appear to be a major cost driver for Parents Representation Program expert services in recent years. These are cases where the Department of Children, Youth, and Families (DCYF) alleges that a parent has purposely harmed a child involving, for example, Munchausen by Proxy/Factitious Disorder, failure to thrive, shaken baby syndrome/abusive head trauma, or mysterious child bruising and fractures. Without independent experts to evaluate the evidence, such allegations can result in wrongful termination of parental rights. In some cases, an independent expert demonstrates that a child's injuries are due to a previously undiagnosed/misdiagnosed or improperly treated medical condition, and are not the result of abuse.

Reflecting inflation as well as increasingly complex case issues, costs are up significantly for defense experts in dependency and termination cases. From Fiscal Year 2019 to Fiscal Year 2024, annual expenditures for expert services increased from \$937,609 to \$1,757,005, and OPD projects additional increases in fiscal year 2025.

Litigation Costs for Appellate Cases

Pursuant to Chapter 2.70 RCW and the Washington Rules of Appellate Procedure (RAP), OPD-contracted appellate attorneys represent indigent clients who have a constitutional or statutory right to counsel to pursue an appeal from Superior Court. Trial transcripts and clerk's papers from the trial court provide the legal record upon which an appeal is based. Transcripts reflect the official verbatim report of proceedings at trial, and clerk's papers comprise all trial exhibits as well as other documents filed in a case. OPD must pay for these documents for indigent appeals, in addition to appellate attorney contract fees.

[RAP 9.7](#) authorizes fees for clerk's papers, and [RAP 15.4](#) requires OPD to pay the costs of clerk's papers and transcripts for indigent persons on appeal. Supreme Court [Order 25700-B-582](#) directs OPD to pay \$3.65 per page for trial transcripts. The rates have not changed in recent years, but longer transcripts and more clerk's papers are driving up OPD expenditures.

Also contributing to increased expenditures on transcripts and clerk’s papers is OPD’s addition of 11 appellate contract FTEs in Fiscal Year 2025 to address growing workload and a backlog of appellate case assignments. (See Appellate backlog decision package for the 2025 supplemental budget.)

Fully describe and quantify expected impacts on state residents.

This decision package directly impacts indigent clients by ensuring legal services to which they are entitled. Funding this request indirectly impacts Washington taxpayers generally by reducing potential liability exposure that could arise if OPD failed to provide reasonable expert services.

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

In the short term, OPD used Judicial Stabilization Trust Account (JSTA) funding to cover expenditure overruns in Fiscal Year 2024. JSTA is a flexible biennial fund, and an agency is allowed to use the appropriations from the fund in either year of the biennium. Because JSTA was used to cover Fiscal Year 2024 costs, it is not available to cover Fiscal Year 2025 costs, which are projected to exceed current General Fund appropriations.

What are the consequences of not funding this request?

Not funding this decision package would put OPD in the position of not being able to pay for Fiscal Year 2025 expert services and litigation costs that are necessary to ensure effective assistance of counsel in dependency/termination cases and indigent appeals.

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

No. This request maintains an existing level of service.

Decision Package expenditure, FTE and revenue assumptions:

Use Standard Costs?

No.

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 24	FY 25	FY 26	FY 27	
Contracts					
Expert Services	\$0	\$1,390,000	\$0	\$0	Payments for Parents Rep experts in dependency and termination cases, and for trial transcripts & clerk’s papers in appellate cases.

Note: OPD receives federal Title IV-E reimbursement for the Parents Representation Program portion of this decision package, reducing state funding as indicated. The total request for Parent Representation defense experts is \$800,000, with OPD asking the state to fund 80% (\$641,280), and projecting federal Title IV-E reimbursement at 20% (\$158,720).

Office of Public Defense
Maintenance Level – S2 – Defense Experts & Litigation Costs

2025 Supplemental Budget		
Court Reporters / Trial Transcripts		\$618,000
County Clerks Papers		\$131,000
Total Appellate		\$749,000
Parents Rep Experts		\$800,000
4E Federal Reimbursement	-0.1984	(\$159,000)
Total Parents State Funding		\$641,000
Total State Appellate & Parents		\$1,390,000

FY25 Appellate Attorney Staggered starts	XT FTEs	# of months	Monthly	Total	38.11	FY24 actual							
July	2	12	\$18,217.00	\$437,208	40.11								
September	3	10	\$18,217.00	\$546,510	43.11								
October	3	9	\$18,217.00	\$491,859	46.11								
November	3	8	\$18,217.00	\$437,208	49.11	FY25 Actual							
TOTAL	11	39		\$1,912,785									
Staggered Expert Increases		July	September	October	November								
Attorney FTEs	38.11	40.11	43.11	46.11	49.11								
	FY24	FY25											
CR month	\$142,697	\$150,185	\$161,418	\$172,651	\$183,884								
CC month	\$19,840	\$20,881	\$22,443	\$24,005	\$25,567								
Total month	\$162,537	\$171,067	\$183,862	\$196,656	\$209,451								
CR Annual	\$1,712,361	\$1,802,225	\$1,937,021	\$2,071,818	\$2,206,614								
CC Annual	\$238,082	\$250,576	\$269,318	\$288,060	\$306,802								
TOTAL	\$1,950,443	\$2,052,802	\$2,206,339	\$2,359,877	\$2,513,415								
38.11 FTE	\$3,744												
	\$521												
Staggered Experts Summary	Base Increase	2 months	1 month	1 month	1 month	1 month	7 months	TOTAL	Base Fundi	FY25			
CR Prorated	\$112,361	\$300,371	\$161,418	\$172,651	\$183,884	\$183,884	\$1,287,191	\$2,105,517	\$1,600,000	Prorated			
CC Prorated	\$38,082	\$41,763	\$22,443	\$24,005	\$25,567	\$25,567	\$178,968	\$292,745	\$200,000				
Total	\$150,443	\$342,134	\$183,861	\$196,656	\$209,451	\$209,451	\$1,466,159	\$2,398,262	\$1,800,000				

Court Reporter	\$112,361
	\$505,517
Total	\$617,878
County Clerk	\$38,082
	\$92,745
Total	\$130,827
Total CR & CC	\$748,705

Office of Public Defense
Maintenance Level – S2 – Defense Experts & Litigation Costs

Parents Rep Expert Expenditure History								
Sum of trans_amt	Column Labels							
Row Labels	2018	2019	2020	2021	2022	2023	2024	Grand Total
COUNTY CLERKS	\$2,598	\$656	\$7,810	\$675	\$833	\$3,365	\$2,230	\$18,166
COURT REPORTERS	\$13,027	\$29,017	\$30,233	\$47,691	\$37,984	\$57,527	\$63,514	\$278,992
DEPOSITION	\$16,258	\$15,642	\$19,475	\$31,258	\$20,121	\$4,215	\$23,981	\$130,950
DRUG ALCOHOL RELATED	\$8,499	\$2,942	\$5,819	\$24,454	\$33,939	\$19,453	\$17,162	\$112,269
DV EVALUATION	\$4,230	\$7,757	\$4,220	\$6,040	\$36,846	\$56,872	\$34,054	\$150,018
HOMESTUDY	\$84,711	\$100,934	\$109,882	\$111,436	\$79,001	\$66,131	\$67,329	\$619,424
INTERPRETER SERVICES	\$42,269	\$36,825	\$53,451	\$52,443	\$72,048	\$272,262	\$154,699	\$683,998
INVESTIGATOR	\$9,718	\$1,280	\$5,293	\$2,222	\$3,429	\$420	\$14,234	\$36,595
MEDICAL FORENSIC REVIEW	\$191,350	\$254,417	\$339,505	\$293,675	\$442,383	\$438,150	\$721,542	\$2,681,022
MEDICAL RECORDS	\$5,195	\$8,570	\$5,114	\$7,741	\$3,568	\$2,811	\$13,730	\$46,729
OTHER	\$11,127	\$41,311	\$97,274	\$24,673	\$23,648	\$17,677	\$37,278	\$252,989
PARENTING EVAL/BONDING ATTACHMENT EVAL	\$81,238	\$101,491	\$147,872	\$237,281	\$251,772	\$175,925	\$156,245	\$1,151,823
PATERNITY TESTING	\$5,804	\$7,786	\$3,844	\$7,807	\$6,150	\$3,475	\$1,675	\$36,541
POLYGRAPH	\$7,846	\$9,475	\$12,050	\$8,800	\$9,950	\$9,750	\$5,050	\$62,921
PSYCHOLOGICAL/MENTAL HEALTH	\$109,028	\$166,455	\$187,954	\$245,491	\$124,727	\$103,154	\$157,404	\$1,094,215
PSYCHOSEXUAL	\$9,923	\$13,318	\$5,438	\$24,335	\$17,015	\$7,800	\$24,138	\$101,965
SW FORENSIC REVIEW	\$102,246	\$121,592	\$110,822	\$121,358	\$158,004	\$249,301	\$444,377	\$1,307,700
TRAINING/CLE	\$9,105	\$44,274	\$59,701	\$28,830	\$90,065	\$225		\$232,199
TRIAL TESTIMONY	\$57,032	\$31,867	\$40,058	\$27,769	\$20,659	\$15,947	\$83,993	\$277,325
Grand Total	\$771,203	\$995,609	\$1,245,815	\$1,303,980	\$1,432,141	\$1,504,459	\$2,022,635	\$9,275,843
Funding			\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	
Over budget			(\$45,815)	(\$103,980)	(\$232,141)	(\$304,459)	(\$822,635)	
Parents Rep was able to cover within its overall budget								
Parents Rep was not able to cover within its existing budget and agency-wide funding (from all other programs/non proviso'd) covered the overage								
While there was enough excess discretionary funding in FY24 to cover this overage from other programs, that will not always be the case and is a set up for a funding emergency as expenditures will not be decreasing in this program. Each program must be able to support its own expenditures via adequate funding levels.								
Parents Rep Managing attorneys have been promoting/campaigning for contract attorneys to use more experts due to the positive case outcomes.								

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

Fair and Effective Administration of Justice

This decision package supports fair and effective administration of justice by providing defense experts and litigation services, functions that are critical to ensuring effective assistance of counsel and due process.

Access to Necessary Representation

This decision package supports access to necessary representation by ensuring that contracted public defense attorneys have expert services, trial transcripts, and clerk's papers that are necessary for them to provide effective assistance of counsel.

How does the package impact equity in the state?

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

Racial disproportionality is well-documented in the criminal legal system and the child welfare system, significantly impacting BIPOC families. For instance, black children are nearly twice as likely as white children to end up in foster care after an initial dependency case is opened, and Indigenous children are approximately three times as likely as white children to end up in foster care. This decision package ensures necessary legal services for indigent BIPOC clients involved in a dependency/termination case or an appeal.

Describe how the agency conducted community outreach and engagement.

OPD did not conduct outreach for this proposal.

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

Explain why and how these equity impacts will be mitigated.

This proposal is not expected to result in any disproportionate impacts.

Are there impacts to other governmental entities?

Yes. If OPD is not funded to adequately cover defense experts and appellate litigation costs, then OPD-contracted attorneys may need to seek continuances in the trial courts and may miss appellate court deadlines. Such delays can impact court efficiency. Additionally, in dependency cases, which are subject to state and federal timelines, procedural delays can cause children to remain longer in foster care at significant cost to the state.

Stakeholder response:

OPD expects contracted attorneys to support this request because it maintains critical tools they need to provide effective legal representation.

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

Yes. The U.S. and Washington Constitutions as well as Washington statutes guarantee the right to counsel for parents facing the loss of their children, and for certain appeals. Courts have established that the right to counsel means the right to effective counsel, which includes access to the services provided in this decision package.

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?

- Related to access to experts for parent representation in dependency/termination cases:
 - *Dependency of V.R.R. v. DSHS*, 134 Wn. App. 573 (2006), provides that an attorney may be found ineffective partially due to their inability to obtain an expert. See also *In re Yarbrough Minors.*, 314 Mich.App. 111 (2016) (Overturning a termination of parental rights and finding that the parents had a due process right to funds for consultation with a medical expert regarding alternate causes for a child's injuries).
 - [The ABA Practice for Parent Attorneys](#), [Family Justice Initiative Attorney Attributes](#), [Washington Supreme Court Standards on Indigent Defense](#), and [Washington State Bar Association Standards for Indigent Defense Services](#) all highlight the need for experts to assure attorney representation is effective.
 - RPC [1.8\(m\)](#) provides that a lawyer should not bear the cost of expert services under a government contract for indigent defense representation.
- Related to transcripts and clerk's papers for indigent appeals:
 - [RAP 9.7](#) authorizes fees for clerk's papers.
 - [RAP 15.4](#) requires OPD to pay the costs of clerk's papers and transcripts for indigent persons on appeal.
 - Supreme Court [Order 25700-B-582](#) directs OPD to pay \$3.65 per page for trial transcripts.

Are there information technology impacts?

No.

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