

Washington State Judicial Branch

2025-2027 Biennial Budget

Vendor Rate Adjustment – Contract Attorneys

Agency: Office of Public Defense

Decision Package Code/Title: 1B – Atty Vendor Rate Adjustment

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding to adjust vendor rates for attorneys who provide the right to counsel for indigent clients on appeal, in dependency/termination cases (including pre-petition representation), youth access to counsel, and forensic civil commitment cases. The rate adjustment helps recruit and retain qualified attorneys, a critical step to achieve updated appellate and family defense standards. The rate adjustment provides OPD-contracted defense counsel with compensation and resources comparable to government attorneys who prosecute the cases, consistent with state and national standards. The rate adjustment also includes funding for a quarter-time support staff per 1 FTE attorney contract. The Legislature previously funded the first two years of a four-year plan.

Fiscal Summary: Funding is requested to adjust vendor rates for 226 FTE OPD-contracted attorneys.

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	1.0	1.0	1.0	1.0	1.0	1.0
Operating Expenditures						
Fund 001-1	\$2,939,000	\$7,161,000	\$10,100,000	\$7,161,000	\$7,161,000	\$14,322,000
4E Federal Reimbursement .1984	(\$419,000)	(\$919,000)	(\$1,338,000)	(\$919,000)	(\$919,000)	(\$1,838,000)
Total Expenditures						
State Request	\$2,520,000	\$6,242,000	\$8,762,000	\$6,242,000	\$6,242,000	\$12,484,000

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.

Package Description:

Background:

OPD contracts for 226 FTE attorneys statewide to provide mandatory defense services funded by the state.

The Office of Public Defense (OPD) provides legal services through contracts with qualified attorneys to represent indigent clients in the trial courts in certain specialized types of non-criminal cases -- primarily parent representation in dependency and termination cases (including pre-petition representation), and forensic civil commitment cases under Chapter 71.09 RCW and Chapter 10.77 RCW. OPD also contracts with attorneys to staff specialized telephone consultation services for parents involved in the child welfare system and for youth facing police investigation. Additionally, OPD provides counsel for indigent appeals in all criminal and certain non-criminal matters to the Washington Court of Appeals and the Supreme Court. These are mandatory services to which indigent persons are entitled under state statutes as well as the U.S. and Washington constitutions.

- *Parents Representation Program.* OPD contracts for 126 FTE attorneys throughout Washington to represent parents involved in dependency cases and in cases where the state's Department of Children, Youth, and Families (DCYF) seeks to permanently terminate parental rights. OPD-contracted defense attorneys represent

approximately 7,000 cases a year. (In order to avoid legal conflicts of interest, children in these cases are represented by the state Office of Civil Legal Aid (OCLA)).

- *Pre-petition Representation.* OPD's Representation Program includes 2.25 FTE contract attorneys serving six counties to provide pre-petition representation when referred for pregnant parents and parents of newborns at risk of removal by DCYF. This representation can help prevent unnecessary dependency petitions and child removal. To date, OPD contractors have served 858 pre-petition clients.
- *Voluntary Placement Agreement (VPA) Hotline.* OPD contracts with 10 attorneys on an on-call basis to cover a telephone consultation service for parents who are being asked by DCYF to sign a voluntary placement agreement. This is a statewide program that helps parents understand their rights prior to signing an agreement to place their child into state custody. Like pre-petition representation, the VPA hotline can prevent children from being removed unnecessarily. Since its initial launch on January 1, 2024, through June 30, 2024, the hotline has served 358 clients.
- *Forensic Civil Commitment.* OPD contracts with 40.5 FTE attorneys throughout Washington to represent indigent respondents facing indefinite civil commitment under Chapter 71.09 RCW and to represent indigent respondents civilly committed as not guilty by reason of insanity (NGRI) under Chapter 10.77 RCW. OPD-contracted attorneys represent about 462 respondents in these case types, with each case extending over many years from initial filing through release.
- *Youth Access to Counsel (YAC) Hotline.* OPD contracts with nine FTE attorneys to staff a 24/7 access-to-counsel phone line. Washington statutes require law enforcement to provide youth under age 18 with an attorney consultation during certain phases of police investigation. The program ensures that youth understand their constitutional rights in stressful circumstances where studies show that without legal assistance they are unable to comprehend their legal choices, exercise their rights, or meaningfully consider the consequences of their choices. The hotline serves 2,000 -2,500 clients annually.
- *Appellate Program.* OPD contracts with approximately 40.5 FTE attorneys throughout Washington to represent indigent persons who have a right to appeal a Superior Court decision to the Washington Court of Appeals or Supreme Court. These comprise appeals in criminal and juvenile offender cases as well as certain non-criminal matters, including dependencies, parental terminations, RCW 71.09 cases, as well as other types of civil commitment cases. OPD-contracted attorneys represent about 1,000 indigent appellants a year.

In all of these program areas, OPD contracts with a variety of highly qualified individual practitioners, non-profit entities, county agencies, and small law firms. The Washington State Bar Association (WSBA) Board of Governors recently updated public defense standards for appeals and family defense, which further impact OPD's need to recruit and retain well-qualified contractors.¹

¹ At its September 2024 meeting, the WSBA Board of Governors voted to adopt updates to family defense and appellate standards. The updated family defense standards direct attorneys, including OPD Parents Representation Program contractors, to limit annual caseloads to 45 clients and 60 open cases by July 2025 and 35 clients and 40 open cases by July 2026. The updated appellate standards direct attorneys to limit annual caseloads to 25 appeals per year pending completion of a time study. The WSBA has not yet posted the updated standards to its website, but a pdf document is attached at the end of this decision package.

Problem:

OPD vendor rates are low.

OPD vendor rates are too low to fund public defense contracts commensurate with national principles and state standards, which are grounded in the concept of parity of resources for public defense and prosecution.

- Principle 2 of the American Bar Association (ABA) [Ten Principles of a Public Defense Delivery System](#) provides that “compensation for lawyers working for Public Defense Providers should be appropriate for and comparable to other publicly funded lawyers. Full-time public defender salaries and benefits should be no less than the salaries and benefits for full-time prosecutors.”²
- Standard One of the Washington State Bar Association (WSBA) [Standards for Indigent Defense Services](#) directs that “Compensation for public defense attorneys in contract and assigned counsel systems shall reflect the professional experience, time, and labor required for effective and quality representation. Compensation shall also be based on the comparable compensation and benefits associated with prosecution or other opposing party offices in the area. Compensation shall also include necessary administrative costs described in Standard Five, support services costs described in Standard Seven, and training and supervision costs described in Standards Nine and Ten.”³

OPD’s contracted defense counsel receive fewer resources than state-employed attorneys prosecuting the cases.

OPD’s opposing counsel in all dependency and 71.09/10.77 civil commitment cases and in many appeals are Assistant Attorneys General (AAGs) -- state government employees compensated according to progressive salary schedules with routine cost-of-living increases, pensions, paid holidays, significant other paid time off, and robust health insurance and other employer-provided benefits. Many are represented by employee bargaining units. AAGs also are fully supported by professional staff, such as legal assistants and paralegals.

By contrast, OPD-contracted defense attorneys receive an annual contract fee from which they must cover attorney salaries and business expenses, including office lease and equipment, staffing costs, retirement contributions, vacations and sick leave, health and other insurance, and all applicable taxes.

- **OPD:** In Fiscal Year 2025 the OPD vendor rate for 1 FTE contract attorney ranged from **\$200,347 to \$218,598** depending on the OPD program, contractor experience, and location. The vendor rate must cover all salary and business costs, including support staff, for 1 FTE contract defense attorney.
- **AAG:** In Fiscal Year 2024, a “fully loaded” 1 FTE Assistant Attorney General representing DCYF with paralegal (1.15 FTE attorneys per 1 paralegal) and legal assistant support (5.84 FTE attorneys per 1 FTE legal assistant) cost the state **\$335,700 per year in Seattle, and \$322,837 in other locations** throughout the state.⁴
- **Equity gap:** Each AAG receives \$117,102 to \$122,490 more resources annually than an OPD-contracted attorney. This resource gap presents significant inequities between defense and prosecution, and is at odds with

² American Bar Association Ten Principles of a Public Defense Delivery System (2023). Approved by the ABA House of Delegates August 2023.

³ Standard One, Washington State Bar Association Standards for Indigent Defense Services (revised March 8, 2024), further citing American Bar Association, *Standards for Criminal Justice*, 5-2.4 and 5-3.1. National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.7 and 13.11. National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-4. National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-10 and III-11. 2

⁴ Data provided by Washington Attorney General’s Office on June 28, 2024, pursuant to OPD public records request.

ABA and WSBA public defense standards. OPD-contracted attorneys are disadvantaged in defending indigent clients against State action.

Shortage of qualified counsel.

Lack of parity in resources contributes to difficulty in recruiting and retaining sufficient numbers of qualified contract defense attorneys to ensure that mandatory counsel can be appointed in a timely manner. For example, for several RFQs in multiple counties in fiscal years 2023 and 2024, OPD continued to have difficulty securing qualified contract attorneys even with increases in vendor rates in those years. Continued progress on vendor rates is necessary to ensure sufficient contract attorneys. Improved compensation is critically important to help OPD engage the additional contractors needed to implement WSBA updates to family defense and appellate caseload standards.

Difficulty recruiting for Parents Representation Program contracts can cause serious case delays, directly and negatively impacting families involved in the dependency process. Supreme Court Standards currently establish a full-time Parents Representation Program caseload of up to 80 dependency cases, so delay in filling even one contract FTE will impact up to 80 parents and their children. Delays in dependency cases can mean longer stays for children in foster care, at significant state expense and personal harm for families.

In OPD's Appellate Program, two Seattle-area law firms report substantial difficulty hiring and retaining qualified attorneys to fulfill their OPD contracts due to the low vendor rate. In addition, when a Spokane-area contractor retired from practice, few qualified applicants were interested in the Eastern Washington opportunity.

In its 2023-2025 decision package to increase vendor rates, OPD stated that, "To date, OPD has managed to avoid the chaotic attorney shortage experienced in other states, including Oregon. Ensuring equitable resources is necessary to avoid such dire situations." That is no longer true, as explained in a memorandum sent to the Washington State Supreme Court on November 27, 2023.⁵ OPD Director Larry Jefferson explained to the Court that public defenders are leaving the practice, and the two biggest reasons that public defenders are leaving is low pay and high caseloads.

Proposed Solution:

OPD requests funding to significantly narrow the prosecutor-defense resource gap and support OPD's recruitment and retention of qualified contract attorneys to provide mandatory right-to-counsel services.

- The requested funding increases attorney vendor rates in all OPD programs to an average annual contract value of \$235,400 per FTE contract attorney by Fiscal Year 2027. While still below the AG's per-FTE resources, this makes meaningful progress toward narrowing the gap.
- The annual percentage increase per FTE contract attorney varies depending on the OPD Program. By Fiscal Year 2027 the vendor rate for contract attorneys in all OPD programs is roughly equivalent.
- By Fiscal Year 2027, compensation for OPD contract attorneys also is comparable to compensation for representation of children provided by the Office of Civil Legal Aid (OCLA). (See OCLA decision package for Vendor Rate Adjustment.)
- The vendor rate adjustment allows OPD contract attorneys to cover basic business expenses, purchase health and disability insurance, pay into a retirement plan, employ necessary law office staff, and take home a salary comparable with their professional peers in the AG's Office.
- The vendor rate adjustment includes funding for a quarter-time support staff per 1 FTE attorney contract. Contracted attorneys may use funding to directly pay for support staff, or they can ask OPD to retain the support staff funding to establish a pool of contracted paralegal/legal staff for use by contractors who do not employ staff. OPD will hire 1 FTE agency paralegal to administer the support staff pool.

⁵ Memorandum from Larry Jefferson to the Justices of the Washington State Supreme Court (attached), November 27, 2023.

- The vendor rate adjustment positions OPD to recruit and retain the additional attorneys that are needed to reduce caseloads consistent with the WSBA's updated standards.
- Because of the higher cost of doing business in King county, this decision package provides a 5% compensation premium for contract attorneys serving King County, similar to the AG's salary premium for their Seattle office.
- Contract attorneys staffing the two telephone hotlines follow a different compensation model than OPD's other contracted attorneys, and they receive a comparable percentage increase.

Federal Reimbursement Provided.

Title IV-E of the federal Social Security Act provides partial reimbursement to states for qualifying expenditures on child welfare activities, including legal services for parents involved in dependency and termination cases as well as for pre-petition legal services. OPD has an approved Interagency Agreement in place with the Department of Children, Youth, and Families (DCYF) to secure partial reimbursement to the state for all vendor fees for Parents Representation Program contract attorneys and for Appellate representation in dependency and termination appeals.

- Current IV-E reimbursement is calculated at 18.94% of costs for all OPD Parents Representation Program cases and for the Appellate Program cases associated with dependency and termination appeals

Fully describe and quantify expected impacts on state residents.

OPD ensures that public defense counsel is appointed to represent all indigent persons who have constitutional and statutory rights to appeal a decision in the state appellate courts; all indigent parents whose children are removed by DCYF; and all indigent persons facing indefinite civil commitment under Chapter 71.09 RCW or Chapter 10.77 RCW. Washington statutes also require OPD to offer a Voluntary Placement Agreement hotline for parents and to provide legal consultations for youth facing police investigation.

Across its contracted services programs OPD provides the right to counsel for more than 12,000 clients per year. OPD's public defense clients are from every geographic area of Washington State, but they are more likely to be from poor neighborhoods and to be people of color than non-indigent people who can afford to pay for an attorney of their own choosing.

A vendor rate adjustment for OPD's contracted public defense attorneys will allow nearly 250 FTE contracted attorneys to be resourced comparably to the attorneys who prosecute these cases, consistent with ABA national principles and WSBA public defense standards. An OPD vendor rate adjustment will ensure that thousands of Washingtonians who are entitled to public defense counsel will receive timely appointment of qualified, effective attorneys.

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

OPD considered the following alternatives and rejected each for the reasons noted:

- *Doing nothing.* Rejected because it would put the state's public defense contracts even further behind national principles and state standards of parity, and would risk the due process rights of thousands of clients.
- *Converting all public defense contracts to state employees.* Rejected because the Legislature has previously declined opportunities to provide mandatory defense services with employees instead of contractors. The Legislature most recently chose a contract model for defense attorneys in 2023 when it directed OPD to provide public defense for persons found not guilty by reason of insanity (NGRI) and civilly committed under Chapter 10.77 RCW.

What are the consequences of not funding this request?

Not funding this decision package will perpetuate inequities between AAGs and OPD-contracted defense counsel, and will put OPD further behind in complying with national and state-endorsed standards for public defense. Not funding this request likely will exacerbate current difficulties recruiting and retaining attorneys who are qualified to accept an OPD contract to represent indigent persons. OPD's inability to contract with qualified attorneys will delay appointment

Office of Public Defense
Policy Level – 1B – Atty Vendor Rate Adjustment

of counsel for indigent persons involved in certain types of cases for which OPD is obligated to provide effective counsel. Potential consequences of failure to appoint counsel include:

- Violating clients' constitutional rights to due process. The Washington Supreme Court has overturned convictions for failure to appoint counsel.
- In dependency cases, children could spend more time in foster care at substantial state expense and personal harm.
- The contract attorney recruitment difficulties in Washington could escalate and require urgent intervention, as happened in Oregon. In July 2022, a lack of state-contracted public defense attorneys left more than 180 Oregonians without counsel for an extended period of time. The Oregon Legislature approved \$100 million in emergency state public defense funding, including a vendor rate adjustment to \$158 per hour or approximately \$284,400 per year per FTE contract attorney.

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

This decision package adjusts vendor rates for OPD's public defense attorney contracts.

Decision Package expenditure, FTE and revenue assumptions:

Staffing assumptions

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 26	FY 27	FY 28	FY 29	
OPD Paralegal	1.0	1.0	1.0	1.0	OPD staff paralegal to administer the contracted paralegal pool

Use Standard Costs?

No.

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 26	FY 27	FY 28	FY 29	
Contracts – Attorney Vendor Rate Increase	\$2,579,000	\$6,812,000	\$6,812,000	\$6,812,000	Vendor rate adjustment for OPD contract attorneys.
Contracts for Paralegal Pool	\$349,000	\$349,000	\$349,000	\$349,000	Contracts for pool of paralegals and other legal support professionals.
Start-up Costs	\$11,000				ODP Staff start-up costs

Office of Public Defense
Policy Level – 1B – Atty Vendor Rate Adjustment

Agency-Wide Vendor Rate Increase Summary & Paralegal Pool							
Program	FTEs	FY26	FY27	25-27 Bi	FY28	FY29	27-29 Bi
Appellate	40.5	\$313,000	\$977,000	\$1,290,000	\$977,000	\$977,000	\$1,954,000
Parents	126	\$1,764,000	\$4,284,000	\$6,048,000	\$4,284,000	\$4,284,000	\$8,568,000
71.09	20.5	\$191,000	\$601,000	\$792,000	\$601,000	\$601,000	\$1,202,000
NGRI	20	\$186,000	\$586,000	\$772,000	\$586,000	\$586,000	\$1,172,000
VPA	10	\$78,000	\$162,000	\$240,000	\$162,000	\$162,000	\$324,000
YAC	9	\$47,000	\$202,000	\$249,000	\$202,000	\$202,000	\$404,000
TOTAL	226	\$2,579,000	\$6,812,000	\$9,391,000	\$6,812,000	\$6,812,000	\$13,624,000
OPD Paralegal	1.0	\$87,000	\$87,000	\$174,000	\$87,000	\$87,000	\$174,000
Benefits	0.25%	\$22,000	\$22,000	\$44,000	\$22,000	\$22,000	\$44,000
Start up costs		\$11,000	\$0	\$11,000	\$0	\$0	\$0
Total	1.0	\$120,000	\$109,000	\$229,000	\$109,000	\$109,000	\$218,000
Para Pool		\$240,000	\$240,000	\$480,000	\$240,000	\$240,000	\$480,000
Total Para Program		\$360,000	\$349,000	\$709,000	\$349,000	\$349,000	\$698,000
TOTAL		\$2,939,000	\$7,161,000	\$10,100,000	\$7,161,000	\$7,161,000	\$14,322,000
Total Vendor Rate +		\$2,579,000	\$6,812,000	\$9,391,000	\$6,812,000	\$6,812,000	\$13,624,000
Total Para Program		\$360,000	\$349,000	\$709,000	\$349,000	\$349,000	\$698,000
Total Request		\$2,939,000	\$7,161,000	\$10,100,000	\$7,161,000	\$7,161,000	\$14,322,000
Parents VR+ & Paralegal Pool		\$2,124,000	\$4,633,000	\$6,757,000	\$4,633,000	\$4,633,000	\$9,266,000
-0.1984		(\$419,000)	(\$919,000)	(\$1,338,000)	(\$919,000)	(\$919,000)	(\$1,838,000)
State Request		\$2,520,000	\$6,242,000	\$8,762,000	\$6,242,000	\$6,242,000	\$12,484,000

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

Fair and Effective Administration of Justice

This decision package promotes the fair and effective administration of justice by fairly compensating and properly resourcing OPD-contracted defense counsel.

Access to Necessary Representation

This decision package helps OPD 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. OPD is responsible on behalf of the state to ensure counsel in these cases.

How does the package impact equity in the state?

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

This decision package helps OPD recruit and retain qualified contract attorneys who come from the same communities as the clients they represent. Low contract compensation has been an impediment to achieving this goal.

Describe how the agency conducted community outreach and engagement.

OPD met with contractors to learn about their compensation requirements for legal services. OPD is working with Washington law schools and colleges to make sure that students understand the opportunities available in public defense, including OPD's contracts.

Consider which target populations or communities would be disproportionately impacted by this proposal. Explain why and how these equity impacts will be mitigated.

This decision package does not create disproportionate impacts. Competitive contract compensation mitigates existing disproportionate impacts and helps OPD recruit and retain qualified attorneys from impacted communities.

Are there impacts to other governmental entities?

Well-resourced, skilled attorneys are prepared and provide excellent representation, which positively impacts court operations.

Stakeholder response:

At its September 12, 2024 meeting, the OPD Advisory Committee voted to approve this decision package. OPD Many attorneys have clearly communicated to OPD that they require higher compensation in order to continue as OPD contractors.

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

Standard One of the Washington State Bar Association (WSBA) [Standards for Indigent Defense Services](#) directs that “Compensation for public defense attorneys in contract and assigned counsel systems shall reflect the professional experience, time, and labor required for effective and quality representation. Compensation shall also be based on the comparable compensation and benefits associated with prosecution or other opposing party offices in the area. Compensation shall also include necessary administrative costs described in Standard Five, support services costs described in Standard Seven, and training and supervision costs described in Standards Nine and Ten.”⁶ This decision package helps OPD recruit a sufficient pool of qualified attorneys to implement WSBA-adopted appellate and family defense standards.

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?

- American Bar Association (ABA) [Ten Principles of a Public Defense Delivery System](#)
- Washington State Bar Association (WSBA) [Standards for Indigent Defense Services](#)
- AGO-provided data showing state expenditures for fully-loaded AAGs.
See Attachment A: 1B – Atty Vendor Rate Adjustment – Avg Costs
- Memorandum to the Washington State Supreme Court, November 27, 2023.
See Attachment B: 1B – Atty Vendor Rate Adjustment – Memo to WSCC on Workload
- WSBA updated standards for appeals and family defense.
See Attachment C: 1B – Atty Vendor Rate Adjustment – WSBA Standards for Indigent Defense

⁶ Standard One, Washington State Bar Association Standards for Indigent Defense Services (revised March 8, 2024), further citing American Bar Association, *Standards for Criminal Justice*, 5-2.4 and 5-3.1. National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, 1973, Standards 13.7 and 13.11. National Legal Aid and Defender Association, *Standards for Defender Services*, Standard IV-4. National Legal Aid and Defender Association, *Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts*, 1984, Standard III-10 and III-11. 2

Office of Public Defense
Policy Level – 1B – Atty Vendor Rate Adjustment

Are there information technology impacts?

No

Agency Contact:

Sophia Byrd McSherry
OPD Deputy Director for Government Relations
360-878-0550
Sophia.byrdmcsherry@opd.wa.gov