

# Washington State Judicial Branch

## 2025-2027 Biennial Budget

### Expert, Investigator, Litigation Costs for Parents Rep, 71.09 & Appeals

**Agency:** Office of Public Defense

**Decision Package Code/Title:** 1D – Expert, Investigator, Lit. Costs

**Agency Recommendation Summary Text:**

The Office of Public Defense (OPD) requests funding to cover litigation costs for indigent appeals, defense experts in dependency and termination of parental rights cases, and defense experts and investigators in civil commitment cases under Chapter 71.09 RCW.

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

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
<b>Staffing</b>						
FTEs	0.00	0.00	<b>0.00</b>	0.00	0.00	<b>0.00</b>
<b>Operating Expenditures</b>						
Fund 001-1	\$2,408,000	\$2,408,000	<b>\$4,816,000</b>	\$2,608,000	\$2,608,000	<b>\$5,216,000</b>
4E Federal Reimbursement .1984	(\$198,000)	(\$198,000)	<b>(\$396,000)</b>	(\$238,000)	(\$238,000)	<b>(\$476,000)</b>
<b>Total Expenditures</b>						
	<b>\$2,210,000</b>	<b>\$2,210,000</b>	<b>\$4,420,000</b>	<b>\$2,370,000</b>	<b>\$3,2,370,000</b>	<b>\$4,740,000</b>

*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:**

Maintenance-level costs are increasing for litigation services, defense experts, and investigators in cases for which the Office of Public Defense (OPD) is required to provide public defense representation. OPD requests funding for the 2025-2027 biennium to cover costs for litigation services for indigent appeals, for defense experts in dependency and termination of parental rights cases, and for defense experts and investigators in RCW 71.09 civil commitment cases.

**Litigation Costs for Indigent Appeals**

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. 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 trial transcripts and more clerk's papers are driving up OPD expenditures.

From Fiscal Year 2023 to Fiscal Year 2024, costs for clerk's papers increased 70 percent and costs for transcripts increased 15 percent. OPD submitted a supplemental budget request to cover projected increases in Fiscal Year 2025. OPD presents this biennial decision package so the agency can continue to meet its obligation to pay for trial transcripts and clerk's papers for indigent appeals.

#### **Expert Services for Parents Representation Program**

Pursuant to Chapter 2.70 RCW and Chapter 13.34 RCW, OPD-contracted Parents Representation Program attorneys represent indigent parents who have a right to counsel when the state puts their children in foster care or seeks to permanently terminate parental rights. OPD's 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 ensure that 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 could be limited to a brief professional consultation to help an attorney understand potential medical issues.

Cases involving complex medical issues are 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 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. OPD has submitted a supplemental budget request to cover projected increases in Fiscal Year 2025. OPD presents this biennial decision package so the agency can continue to meet its obligation to pay for defense experts for parents in dependency and termination cases.

**Expert and investigator Services for RCW 71.09 Civil Commitment Defense**

Pursuant to Chapter 71.09 RCW, OPD provides the constitutional right to counsel to indigent respondents when the state petitions to civilly commit them for an indefinite period after completing their criminal sentence. The Legislature transferred responsibility for these legal services from the Department of Social and Health Services (DSHS) to OPD July 1, 2012.

RCW 2.70.025(4) directs OPD to “... establish procedures for the reimbursement of expert witness and other professional and investigative costs.” When it became responsible for RCW 71.09 defense in 2012, OPD adopted expert and professional services policies that largely mirrored those that had been used by DSHS since 2007. OPD’s policy, *Chapter 71.09 RCW Program Defense Expert Services and Litigation Costs Policy*, Section F (1), Payment Rate Schedule and Restrictions, caps expert fees at \$200 per hour for all services including record review, testing, client meetings, report writing, and \$250 an hour for testimony. Section F (2) of the policy sets investigator rates at \$46 per hour.

Payment rates for RCW 71.09 defense experts and investigators have remained substantially the same for 17 years and are no longer competitive. Qualified experts and investigators are increasingly drawn to opportunities in other jurisdictions that offer higher compensation for their specialized services. OPD-contracted attorneys report that low hourly payment rates for experts hinder their ability to secure the experts they need to effectively address issues in particular cases. In some instances, trial courts are rejecting defense experts’ opinions due to the diminishing quality of work and limited expertise that is available from the experts willing to accept OPD’s hourly rate. (See attached court orders for examples.)

Effective representation in the specialized RCW 71.09 practice area requires attorneys to utilize experts as needed in a specific case. Standard Four of the [Washington State Bar Association Standards for Indigent Defense Services](#) 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 to represent clients facing civil commitment under Chapter 71.09 RCW.

To better serve both OPD-contracted attorneys and their clients, OPD requests funding to increase RCW 71.09 expert and investigator hourly rates consistent with inflation as measured by the Consumer Price Index (CPI). To bring the 2007-era rates into alignment with the 2024 cost of living, the Bureau of Labor Statistics [CPI Inflation Calculator](#) indicates that OPD should pay up to \$300 per hour for expert services, \$350 per hour for expert testimony, and \$70 per hour for investigator services.

**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. This decision package indirectly impacts Washington taxpayers generally by reducing potential liability exposure that could arise if OPD failed to provide adequate litigation services and defense experts and investigators.

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

OPD is obligated to pay for litigation costs and defense experts and investigators. In the short term, OPD used limited Judicial Stabilization Trust Account (JSTA) funding to cover expenditure overruns in Fiscal Year 2024 and submitted a supplemental budget request for Fiscal Year 2025. To meet its ongoing obligations to cover costs over the longer term, OPD has no alternative but to submit this biennial decision package.

**What are the consequences of not funding this request?**

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Not funding this request will put OPD in the position of not being able to pay for litigation costs and expert and investigator services that are necessary to ensure effective assistance of counsel in indigent appeals, dependency/termination cases, and RCW 71.09 civil commitment cases.

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

No. This request maintains existing service requirements.

**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	
No FTEs					

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 26	FY 27	FY 28	FY 29	
Contracts					
Goods and Services	\$2,210,000	\$2,210,000	\$2,370,000	\$2,370,000	Litigation costs in appeals, Expert costs for parent representation, and expert and investigator rates for RCW 71.09 civil commitment.

Agency-Wide Expert Funding Request	FY26	FY27	25-27 Bi	FY28	FY29	27-29 Bi
<b>Appellate</b>						
Court Reporters	\$718,975	\$718,975	\$1,437,950	\$718,975	\$718,975	\$1,437,950
County Clerks	\$144,884	\$144,884	\$289,768	\$144,884	\$144,884	\$289,768
<b>Total</b>	<b>\$863,859</b>	<b>\$863,859</b>	<b>\$1,727,718</b>	<b>\$863,859</b>	<b>\$863,859</b>	<b>\$1,727,718</b>
<b>Parents Rep</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$2,000,000</b>	<b>\$1,200,000</b>	<b>\$1,200,000</b>	<b>\$2,400,000</b>
4E Federal Reimbursement .1984	(\$198,400)	(\$198,400)	(\$396,800)	(\$238,080)	(\$238,080)	(\$476,160)
<b>State Request</b>	<b>\$801,600</b>	<b>\$801,600</b>	<b>\$1,603,200</b>	<b>\$961,920</b>	<b>\$961,920</b>	<b>\$1,923,840</b>
<b>71.09</b>						
Full Evaluations	\$355,000	\$355,000	\$710,000	\$355,000	\$355,000	\$710,000
Testimony/Trials	\$70,000	\$70,000	\$140,000	\$70,000	\$70,000	\$140,000
Partial Evaluations	\$33,000	\$33,000	\$66,000	\$33,000	\$33,000	\$66,000
Investigators	\$86,000	\$86,000	\$172,000	\$86,000	\$86,000	\$172,000
<b>TOTAL</b>	<b>\$544,000</b>	<b>\$544,000</b>	<b>\$1,088,000</b>	<b>\$544,000</b>	<b>\$544,000</b>	<b>\$1,088,000</b>
<b>Agency-Wide Experts Total</b>	<b>\$2,209,459</b>	<b>\$2,209,459</b>	<b>\$4,418,918</b>	<b>\$2,369,779</b>	<b>\$2,369,779</b>	<b>\$4,739,558</b>
<b>Total Request</b>	<b>\$2,408,000</b>	<b>\$2,408,000</b>	<b>\$4,816,000</b>	<b>\$2,608,000</b>	<b>\$2,608,000</b>	<b>\$5,216,000</b>
4E Federal Reimbursement	(\$198,000)	(\$198,000)	(\$396,000)	(\$238,000)	(\$238,000)	(\$476,000)
<b>State Request</b>	<b>\$2,210,000</b>	<b>\$2,210,000</b>	<b>\$4,420,000</b>	<b>\$2,370,000</b>	<b>\$2,370,000</b>	<b>\$4,740,000</b>
	\$2,210,000	\$2,170,000	\$4,380,000	\$2,350,000	\$2,330,000	\$4,680,000

### Policy Level – 1D – Expert, Investigator, Lit. Costs

[illegible]

Office of Public Defense  
Policy Level – 1D – Expert, Investigator, Lit. 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
<b>Grand Total</b>	<b>\$771,203</b>	<b>\$995,609</b>	<b>\$1,245,815</b>	<b>\$1,303,980</b>	<b>\$1,432,141</b>	<b>\$1,504,459</b>	<b>\$2,022,635</b>	<b>\$9,275,843</b>
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.								

71.09 Expert Summary - Projected Rate increases										
	Ave number of years	Fiscal Year Average	Current	Total Hours	Annual Hours	New Rate				
Experts	11.08 FY	Ave per FY	Hourly	Annual Hours	Ave FY Hours	Proposed Rate	AveFY* PR Cost per FY	Inc per FY	Biennial	
Full Eval \$10K	\$7,871,714	\$710,444	\$200	39,359	3,552	\$300	\$1,065,665	\$355,222	\$710,444	
Testimony/Trial	\$322,845	\$29,138	\$250	1,291	117	\$350	\$40,793	\$69,930	\$139,861	
Parial Eval \$5.5K	\$741,113	\$66,887	\$200	3,706	334	\$300	\$100,331	\$33,444	\$66,887	
Apart From \$6K	\$2,733,236	\$246,682	\$200	13,666	1,233	\$300	\$370,023	\$123,341	\$246,682	
								\$581,937	\$1,163,874	
Travel							\$65,000	\$65,000	\$130,000	
Litigation	11.08 FY	Ave per FY	Hourly	Annual Hours	Ave FY Hours	Proposed Rate	AveFY* PR Cost per FY	Inc per FY	Biennial	
Invesitgators	\$1,817,627	\$164,046	\$46	39,514	3,566	\$60	\$70	\$75	\$80	
						\$213,973	\$249,635	\$267,466	\$285,297	
					Increase per FY	\$49,927	\$85,589	\$103,420	\$121,251	
					Biennial	\$99,854	\$171,178	\$206,840	\$242,502	

## 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 funding litigation services and defense experts and investigators – case-related services 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 indigent clients, through OPD’s contracted public defense attorneys, have trial transcripts, clerk’s papers, and expert and investigator services that are necessary for 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 and child welfare systems, 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. In addition, many system-involved persons experience a variety of disabilities. This decision package ensures equity in legal services provided for indigent clients involved in an appeal, a dependency/termination case, or an RCW 71.09 civil commitment case.

**Describe how the agency conducted community outreach and engagement.**

OPD received input from its contracted attorneys representing indigent clients involved in the case types addressed by this decision package.

**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?**

Perhaps. If OPD is not funded to adequately cover litigation costs, defense experts, and investigators, then OPD-contracted attorneys may need to seek continuances in the trial courts or they may miss appellate court deadlines. Such delays could 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:**

The OPD Advisory Committee voted at its September 12, 2024 meeting to approve this decision package. OPD anticipates that its contracted attorneys will support this request because it maintains their ability to access services they need in order to provide effective legal representation to indigent clients.

**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 certain indigent appeals, for parents facing the loss of their children, and for respondents facing civil commitment under Chapter 71.09 RCW. Courts have established that the right to counsel means the right to effective counsel, which includes access to the services funded by 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 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.
- 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 access to experts and investigators for RCW 71.09 Civil Commitment Defense:
  - Standard Four of the [Washington State Bar Association Standards for Indigent Defense Services](#) directs public defense administrators to "provide reasonable compensation for expert witnesses" and establishes that attorneys "should be free to retain the expert of their choosing."
  - RPC [1.8\(m\)](#) provides that a lawyer should not bear the cost of expert services under a government contract for indigent defense representation.
  - Examples of recent court orders that reject the quality of review presented by defense experts.  
See Attachment A: 1D – Expert, Investigator, Lit. Costs – 20230728 Mulkins Order  
See Attachment B: 1D – Expert, Investigator, Lit. Costs – 2024 Order

**Are there information technology impacts?**

No.

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