

WASHINGTON STATE JUDICIAL BRANCH
2012 SUPPLEMENTAL BUDGET REQUEST

Detailed Decision Package

Agency: Office of Public Defense

Decision Package Title: Immigration Consequences Advisement

Budget Period: 2013 – 2015 Biennium

Budget Level: Policy Level

Agency Recommendation Summary Text

Due to recent changes in case law, an expansion of the Washington Defender Association's immigration consequences program is required. The program makes possible the provision of effective assistance of counsel by public defense attorneys, which is constitutionally mandated.

Fiscal Detail

Operating Expenditures		<u>FY 2014</u>		<u>FY 2015</u>		<u>Total</u>
001-1 State General Fund		\$100,000		\$100,000		\$200,000
Staffing		<u>FY 2012</u>		<u>FY 2013</u>		<u>Total</u>
FTEs		-0-		-0-		-0-

Package Description

The U.S. and Washington supreme courts decided cases in 2010 and 2011 that require public defense attorneys to advise their noncitizen clients of the immigration consequences of convictions. Since then, the immigration consequences program maintained by Washington Defender Association has been inundated by public defense attorney requests for assistance in meeting this requirement, and funding for another attorney is needed.

Narrative Justification and Impact Statement

Washington Defender Association (WDA) is a resource agency for Washington's 1,200-plus public defense attorneys. For many years, WDA has received state funding for basic services that promote the effective assistance of public defense counsel, which is constitutionally mandated. One of WDA's services is its Immigration Project, which provides case-by-case assistance to criminal defense counsel representing noncitizens accused of crimes. The laws regarding immigration consequences are numerous and

extremely convoluted. The services of the WDA Immigration Project are unique; no other immigration advisement service is available to public defenders.

In 2010, the U.S. Supreme Court decided *Padilla v. Kentucky*, holding that noncitizen defendants in criminal cases must be afforded an accurate advisement of the effect of conviction on their deportation status. In 2011, the Washington Supreme Court decided *State v. Sandoval*, holding that the *Padilla* decision must be followed and that the public defense attorney's advice in the case prejudiced the defendant. Under both these cases, a defense attorney's failure to render proper advisement regarding immigration consequences is ineffective assistance of counsel, requiring reversal of a conviction.

- **Reason for Change**

Since *Padilla*, WDA's immigration case consultation requests have increased exponentially. In FY 2007-8, there were 845 public defender requests; in FY 2011-12, more than 3,000 requests.

Due to the critical and emergent nature of these requests, the WDA Board of Directors committed to using reserves for FY 2012-13 to hire a new full-time attorney for the project for one year. However, WDA cannot sustain the position for more than one year through its extremely restricted reserves. Without additional funding, the new attorney will be let go and the project will be forced to turn down many hundreds of public defender requests beginning in FY 14.

- **Required changes to existing Court Rule, Court Order, RCW, WAC, contract, or plan**

None

- **Alternatives explored**

n/a

- **Distinction between one-time and ongoing costs**

The costs will be ongoing.

- **Effects of non-funding**

Public defense attorneys throughout Washington will be unable to provide accurate immigration consequences advisements to their noncitizen clients. An undetermined number of legal immigrants who do not understand the consequences of criminal charges against them will unknowingly make case decisions that will result in their deportation. Ineffective assistance of counsel appeals will increase, as will remanded trial level cases.

Expenditure Calculations and Assumptions

<u>Object Detail</u>	<u>FY2014</u>	<u>FY2015</u>	<u>Total</u>
Staff Costs	\$ -0-	\$ -0-	\$ -0-
Non-Staff Costs	\$100,000	\$100,000	\$200,000
Total Objects	\$100,000	\$100,000	\$200,000