

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: OPD Office Lease

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

Funding is requested to cover increased lease costs to provide sufficient office space for OPD employees.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$0	\$124,983	\$91,848	\$91,848
Total Cost	\$0	\$124,983	\$91,848	\$91,848
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	0	0	0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object ED	\$0	\$91,848	\$91,848	\$91,848
Object ER/J* One-time local area network (LAN) costs	\$0	\$33,135	\$0	0
Total	\$0	\$124,983	\$91,848	\$91,848

Package Description:

Background:

The Office of Public Defense (OPD) resided at Town Square Complex in Olympia from 1996 through June 2005. At that time OPD had 5 FTEs, one client service program (Appellate) and a biennial budget of \$11,520,544.

In July 2005, OPD relocated to Evergreen Plaza in downtown Olympia with 5 FTEs.

In the 16 years since 2005, the Legislature has expanded OPD's duties to include four statewide client service programs (Appellate, Parent Representation, Trial Court Improvement, and RCW 71.09 Civil Commitment), as well as substantial administrative

and fiscal duties, with a biennial budget of \$112,465,000. OPD now employs 29.2 FTEs – more than six times the staff size when OPD moved into its current office suite.

The 2021-2023 biennial budget appropriated funding for OPD to hire 1.5 FTEs associated with HB 1140 (Juvenile Access to Attorneys) and another 3 FTEs to administer a statewide grant and resentencing project associated with the Supreme Court's *State v. Blake* decision. At that time, funding was not requested to expand agency office space. (The new positions are included in the current 29.2 FTE count.)

In recent months it has become clear that OPD's existing office space is insufficient to ensure a COVID-safe environment that can accommodate the staff whose work is best handled at the OPD office.

OPD employees speak on a daily basis with agency contractors and clients involved in the criminal justice and child welfare systems, often about sensitive and sometimes disturbing subjects that should not be overheard by others in their home or a shared office space. In addition, attorney and law office ethics rules require that at least some of these conversations must be kept confidential. To maintain confidentiality, it is necessary for many OPD employees to work onsite at a private work station.

As agency programs and staff grew over the years, OPD created office space and work stations by remodeling within its existing footprint. For example, OPD converted the agency's conference room, a supply/copy room, and a storage area into offices. Currently, several employees must continue to work remotely on a full-time basis and several others must alternate remote work and shared onsite work stations. This arrangement is not conducive to an effective law office environment on an ongoing basis.

Funding request:

OPD requires additional office space to adequately meet the needs associated with current staffing levels, as well as four new positions requested in the 2022 supplemental budget.

OPD requests funding to lease a medium sized suite on the 7th floor of Evergreen Plaza. This suite would provide work stations for at least seven OPD employees at a cost of \$7,654 per month. Other options in the building are available at a similar monthly rate in the event another tenant takes the 7th floor suite prior to OPD securing funding in the supplemental budget.

Expanding to another suite within Evergreen Plaza will keep all OPD staff in the same building, maintaining a cohesive work environment among the agency's administrative functions and client service programs.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted

to the program or service. Please include current expenditure authority level and FTEs.

OPD has worked efficiently and creatively for the past 15 years, remodeling existing space to carve out as many work stations as possible within its current footprint.

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

The 7th floor suite proposed for additional OPD office space leases for \$7,654 per month, a total of \$91,848 per year, \$183,696 each biennium. There would be an additional one-time cost of \$33,135 for initial electrical and IT work. OPD assumes it would secure most office furnishings through the state surplus program, which has reliably supplied much of the existing OPD office space.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

N/A

Accessibility.

N/A

Access to Necessary Representation.

Adequate OPD office space allows OPD employees to provide confidential consultations by telephone and video to OPD contracted attorneys and other legal professionals throughout the state. This technical assistance helps OPD contractors and other attorneys provide constitutionally required representation for indigent clients.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

In order to adequately staff OPD's constitutionally and statutorily required programs to keep current with the agency's present and expected future workload, OPD needs additional office space.

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

Over the course of the past 15 years OPD has converted conference and storage areas into as many work stations as possible. No further options are available to add work stations within the existing office footprint. OPD requires additional office space to adequately house employees working onsite.

OPD has not requested funding for additional office space since 2005 and has exhausted available space within the current configuration.

What are the consequences of not funding this request?

Without additional office space, numerous OPD staff would be required to share onsite offices and work stations, which could compromise the law office's ethical duty to ensure the confidentiality of many daily conversations. Shared office space also would reduce the social distancing that is recommended to prevent spread of COVID-19 and other easily transmissible diseases.

Other supporting materials:

N/A

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

Yes. In order to expand into another suite within Evergreen Plaza, one-time funding is required for wiring, server, equipment (computer and phone) installation needs. Detailed one-time costs are included on the next page for LAN expansion within Evergreen Plaza.

☐ No

☒ Yes

Local Area Network (LAN) expansion quote from Washington State University Extension Service, which provides IT support for OPD.

One-time Costs for Equipment/Labor	LAN Expansion to 7th Floor
Fibre connection	\$4,000
CH20/Olympic Telephone	\$2,135
Wall-mounted rack cage	\$1,000
Dell switches	

<p>In new office space: Minimum 24 ports total, a few combo ports, 6 ports with PoE, support for VLANs and port aggregation.</p> <p>Single Dell EMC PowerSwitch N2224PX-ON (\$2,649 msrp) meets these requirements.</p> <p>In existing office space: switch to bridge fiber connection with existing switch stack. Minimum 8 Ethernet ports total, 2 combo ports, and support for link aggregation.</p> <p>Single Dell EMC PowerSwitch N1508 would meet this requirement, but Dell has listed these as out of stock for a long time.</p>	\$8,000
Additional wifi hardware	\$500
Contract for low-voltage wire installation	\$2500
WSU Labor	\$15,000
TOTAL	\$33,135

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Language Access Services

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

OPD requests funding to improve language access services and provide more equitable services for public defense clients with limited English proficiency. To achieve greater equity in ensuring services for people with limited English proficiency, OPD plans to make its commonly used forms and documents more accessible by converting them into [Plain Talk](#) and translating them into the most frequently used languages.

OPD also faces increasing costs from its contract attorneys for language interpreter expenses. Interpreter services are integral to ensuring the constitutional right to counsel, and OPD must provide interpreters just as it provides defense experts and investigators.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$0	\$25,000	\$25,000	\$25,000
Total Cost	\$0	\$25,000	\$25,000	\$25,000
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	0	0	0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object N	\$0	\$25,000	\$25,000	25,000
Total	\$0	\$25,000	\$25,000	\$25,000

Package Description:

OPD supports all types of public defense services throughout Washington State. The agency contracts with more than 250 attorneys and social workers to represent thousands of clients each year in appeals, dependency and termination cases, and civil commitments under RCW 71.09.

OPD also provides technical assistance and sample resources, such as model forms, to cities and counties for their local criminal and juvenile public defense services. RCW 10.101.020 directs local public defense services to use OPD indigence screening forms.

Many public defense clients statewide have limited English proficiency. Not only do they face language barriers, but they also commonly experience cultural misunderstandings due to lack of familiarity with the American legal system. According to [data reported by the Office of Financial Management](#), in some counties up to 54.9% of households use non-English languages. Likewise, in some counties up to 29% of households speak English less than “very well.” While limited English skills may be sufficient for survival in some contexts, effective and equitable participation in legal proceedings requires complete linguistic comprehension. Legal matters in Washington are based entirely on the English language – written and spoken arguments, testimony and statements, and written orders from the court.

OPD requests funding to support its increasing demand for interpreter and translation services, and to make more written materials accessible to people with limited English proficiency. Specific forms, documents, and instructions that have broad-based applicability will be selected for (1) conversion into *Plain Talk* to make legal concepts more understandable in English for people lacking legal background; and (2) translation into the most commonly used languages. Examples of documents that will be converted include the following:

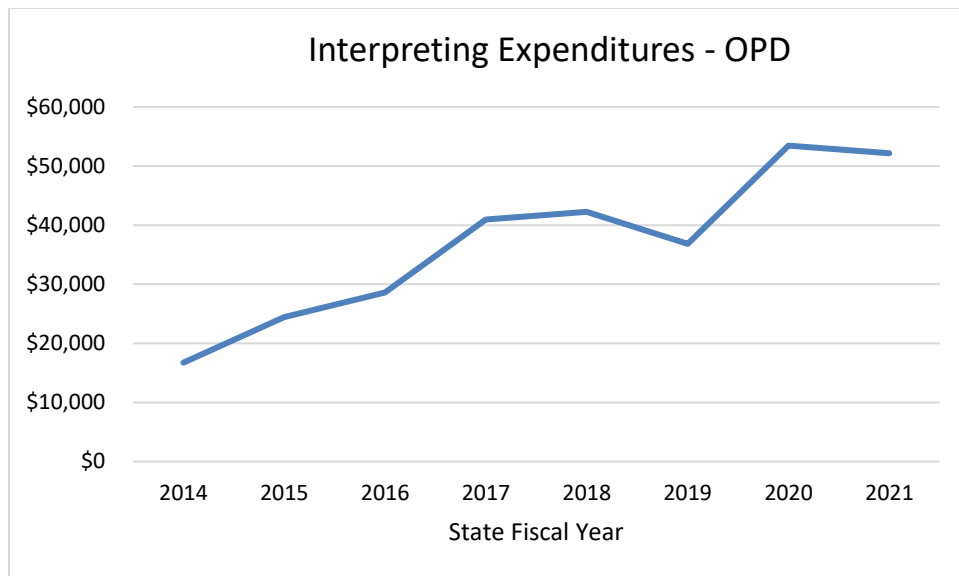
- Model indigency screening form
- Model client complaint form with accompanying FAQ and instructions
- Model letters for attorneys to communicate with clients including introductory letters upon court appointment, scheduling meetings, reminders of upcoming court hearings, and explanations of legal rights
- Descriptions of legal procedures and how cases progress from start-to-finish

After being converted to *Plain Talk*, materials will be translated into the most commonly used languages in Washington courts including:

- Spanish
- Russian
- Vietnamese
- Arabic

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

OPD currently spends more than \$50,000 per year for interpretation of attorney-client and witness meetings. These expenses have grown exponentially in recent years:



Additional funds are needed to keep pace with the increased demand for interpreter services, and to translate written materials to ensure quality communication and understand among the limited English proficient clients of OPD contractors.

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

Increased interpreting services	\$5,000
<i>Plain Talk</i> conversion of model forms and informational guides	\$15,000
Translation of model forms and informational guides into commonly used languages	\$30,000
Total:	\$50,000

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

Converting written information into *Plain Talk* and translating it into the most commonly used languages will help achieve more fair and effective administration of justice. Indigent clients with limited English proficiency will have a clearer understanding of legal rights and procedures, giving them a more equitable playing field to participate effectively in legal proceedings. Judges, court staff, and public defense attorneys will spend less time clarifying misunderstandings, which will allow for more effective focus on managing the legal process. Interpreter services for OPD contract attorneys help them better represent clients' interests and be better prepared for court proceedings.

Accessibility.

Providing public defense services for indigent persons who have a right to counsel includes ensuring the means for effective communication between clients and their lawyers. Clear, understandable information about legal rights and procedures makes the court system more accessible to more people. Reducing confusion due to language barriers allows more people to effectively participate in their cases.

Access to Necessary Representation.

Translation of materials and increased access to interpretation will greatly improve OPD contract attorneys' communication with their limited English proficient clients. Translated written materials are crucial so that clients can read and re-read materials to better understand legal rights and court procedures.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

Increased access to interpretation and translation of written materials are necessary resources to support the work of public defense attorneys, including OPD staff and contractors.

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

Providing the constitutional right to counsel includes providing interpreter services, so that OPD contractors can communicate with limited English proficient clients and witnesses. Interpreter expenditures have tripled since FY 2014. The law does not allow for an alternative to adequately funding interpreter services.

Likewise, there is no equitable alternative to providing translation of written materials.

What are the consequences of not funding this request?

Interpretation expenses are expected to continue rising. Finding funds from the current budget for these costs will further reduce OPD's likelihood of translating written materials.

Other supporting materials:

N/A

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Fiscal Analyst

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

OPD requests funding to hire a Fiscal Analyst to meet current workload demands.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$0	\$78,416	\$75,918	\$77,807
Total Cost	\$0	\$78,416	\$75,918	\$77,807
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	1.0	1.0	1.0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object A	\$0	\$59,688	\$61,224	\$62,748
Object B	\$0	\$13,728	\$14,694	\$15,059
Object J One-time start-up costs	\$0	\$5,000	\$0	\$0
Total	\$0	\$78,416	\$75,918	\$77,807

Package Description:

Over the past 10 years, the Office of Public Defense (OPD) has added and expanded client service programs as authorized by the Legislature.

The agency has accommodated these program expansions with only three budget and accounting FTEs, who can no longer keep up with the workload. OPD requires an additional Fiscal Analyst to meet current workload demands.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority and FTEs.

Since the early 2000s, OPD has employed three accounting / budget staff responsible for all accounting and budget duties that are required of a state agency. Since 2012 the agency budget has more than doubled as the Legislature established new OPD client services programs and expanded others. These additions and expansions did not include budget and accounting staff. The existing workload exceeds current staff abilities to accurately accomplish the required work in a timely manner within a standard 40-hour work week.

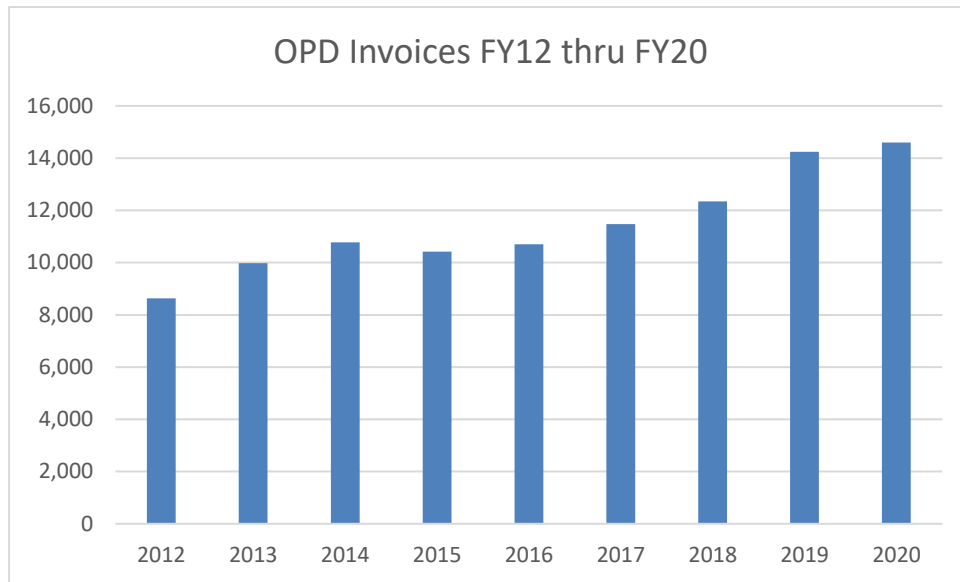
Due to the increased volume of work created by new and expanded programs, it is necessary to hire an additional person to assist with budget, accounting, general ledger reconciliations, encumbrances, deposits, journal voucher corrections, salary projection system (SPS), allotments (TALS), Budget Works, month-end reporting and projections, contracts, and grant duties. OPD is required to do the same budget and accounting job functions as other state agencies. Due to the ongoing complex budget and accounting duties OPD needs to hire a Fiscal Analyst 5, whose job duties would be split between budget/contracts and accounting/grant functions.

In 2012 OPD processed 8,635 invoices a year. In 2020, the number of invoices increased to 14,598 - a 69% increase. Invoice processing is complex due to the variety of programs OPD implements and the types of invoices OPD receives. For example, OPD staff must spend substantial time verifying compliance with various policies specific to expenditures for experts and litigation services, as well as general state policies regarding travel expenses.

A recent survey revealed that OPD is responsible for the same type of budget/accounting/fiscal work as the Administrative Office of the Courts, and OPD processes more invoices annually than the larger agency, and OPD does so with 75% fewer staff. It's become necessary for OPD staff to come in early, stay late, work weekends, and defer vacations in an attempt to stay current on work. This approach is unsustainable and threatens employee health and safety.

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

Program	2012	2013	2014	2015	2016	2017	2018	2019	2020
Admin	340	406	403	364	436	368	348	584	529
Appellate	6,197	5,471	5,434	4,532	4,798	5,364	5,036	5,111	4,752
Parents									
Rep	1,962	2,148	2,347	3,107	3,126	3,402	4,013	5,179	6,206
Trial Court	136	78	82	107	139	192	260	315	286
Grants	0	0	138	143	93	61	0	0	0
71.09	0	1,878	2,375	2,172	2,109	2,085	2,691	3,057	2,825
Grand Total	8,635	9,981	10,779	10,425	10,701	11,472	12,348	14,246	14,598



AOC Financial Services compared to OPD

Administrative Office of the Courts		FTE	Office of Public Defense	FTE
MSD Director	Budget/Accounting/Staff Services (Building/Printing)	1		0
Budget			Budget Manager	0.5
			Budget, AP & AR, encumbrances	
Comptroller	Oversees Budget/Accounting	1	SPS, Budget Works, Grants	0
Budget Analyst	Budget	1	Deposits, Budget Reports & Projections	0
			State & Federal Audits	
Accounting			Accounting Manager	1
			Grants, Deposits, Assets	
Financial Services Manager	Oversees Accounting	1	Year-end Close, AP & AR, Travel	
Lead Financial Analyst	Assists FSM	1	General Ledger Accounting	
Principal Financial Analyst	General Ledger Accounting, Supreme Court invoices	1	Customer Service, State & Federal	
Senior Financial Analyst	Purchasing and Deposits	1	Audits	
Senior Financial Analyst	Accounts Payable COA, OCLA and AOC invoices	1		
Financial Analyst	Travel, Arbitration & Guardianship invoices	1		
Fiscal Tech	JIS Link passwords, customer service, filing,	1		
	criminal cost and pro-tem invoices		Fiscal Analyst 2	1
			Enters invoices in AFRS	
# Of invoices processed/paid in FY20	11,724		14,598	
Contracts				
Contract Manager		1	Contract Manager	1
Contract assistant		1	Contract Asst - PRP	0.5
			JCTS, contracts, encumbrances, create	
			invoices for all contractors each year	
TOTAL FTEs		12		4

The Office of Public Defense (OPD), like the Administrative Office of the Courts (AOC) and all executive agencies, is required to do the same budget and accounting activities: biennial and supplemental budget submissions, decision packages, BudgetWorks, biennial and annual allotments, salary projections (SPS), annual compensation impact model (CIM), grant tracking and grant claims, accounts payable, accounts receivable, encumbrances, contract tracking (OPD had 380 contracts in FY21 and that number will increase in FY22 due to the *Blake* decision), general ledger reconciliations, year-end close, and all other budget/accounting/contract and grant activities.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

Contracted attorneys, expert witnesses, and other public defense professionals require prompt payment for their services to the justice system.

Accessibility.

N/A

Access to Necessary Representation.

N/A

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

At present, OPD does not have sufficient staffing to effectively cover mandatory budget and accounting duties.

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

In comparing OPD to another agency within the Judicial Branch, the workload demands are extremely similar in terms of all budget / accounting jobs; however, OPD is functioning and attempting to meet a higher workload with two-thirds less staff.

What are the consequences of not funding this request?

Failure to fund this request will jeopardize the health and safety of current staff and will substantially risk staff turnover. Accounting errors will be more likely and payments will be unacceptably delayed to OPD contractors as well as defense experts, investigators, interpreters, etc.

State employees can count on being paid on the 10th and 25th of each month. Other businesses outside of state government also typically have designated pay dates. That is not the case with contract attorneys for the Appellate, Parents Representation or 71.09 programs, or the experts, court reporters, county clerks, etc. associated with these programs.

OPD is inundated with invoices on a daily basis and particularly the first three weeks of each month. The types of invoices OPD processes require significant time and attention to reconcile, check payment caps, apply coding, etc. This, along with other fiscal/budget jobs that have to be done simultaneously, has caused significant delays in the payment process.

OPD's contracted providers have personal financial obligations and automatic payments, such as home mortgage payments, car payments and other payments set up to be deducted from their accounts. But, increasingly, they can't reliably know when OPD will pay them.

OPD does not have adequate staff to process complex invoices and all of the other required budget and accounting work in a timely manner.

Other supporting materials:

The beginning salary for a Fiscal Analyst 5 is \$59,688 and the top of the salary schedule is \$80,292 (13 years to arrive at Step M). One-time costs of \$5,000 would be needed for computer purchase, software licenses and other office start-up costs.

Fiscal Analyst		FY23	FY24	FY25
Range 59		\$59,688	\$61,224	\$62,748
Benefits		\$13,728	\$14,694	\$15,059
One-time start-up		\$5,000		
Total		\$78,416	\$75,918	\$77,807

Benefits are calculated at 23%/24% for FY23 and FY24 (actual) and projected at 25% for FY25.

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Program Assistant and Paralegal Placement on State Salary Schedule / Salary Adjustment

Budget Period: 2022 Supplemental Budget

Budget Level: Policy

Agency Recommendation Summary Text:

OPD seeks a one-time salary adjustment for its paralegal and program assistants and placement on the Washington State General Service Salary Schedule. The salary adjustment and salary schedule placement would be effective July 1, 2023.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$0	\$34,504	\$11,215	\$11,647
Total Cost	\$0	\$34,504	\$11,215	11,647
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	0	0	0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object A	\$0	\$29,241	\$9,504	\$9,870
Object B	\$0	\$5,263	\$1,711	\$,1777
TOTAL	\$0	\$34,504	\$11,215	\$11,647

Package Description

OPD requests funds to place support staff on the Washington State General Service Salary Schedule and to implement a salary adjustment for one paralegal and seven program assistants. The purpose of the request is to align compensation for OPD support staff with similar state employee positions in the executive and judicial branches of government and reduce excessive staff turnover. Executive agencies and the Administrative Office of the Courts have adopted the Washington State General Service Salary Schedule for non-represented employees with comparable job descriptions.

OPD paralegals and program assistants provide clerical and law office administrative support to the director, deputy director, and managing attorneys in their duties to implement OPD's Appellate, Parent Representation, RCW 71.09, and Public Defense Improvement programs.

Unlike their peers in other agencies, the OPD paralegal and program assistants have never been placed on a salary schedule. OPD support staff salaries lag behind comparable positions, resulting in many staff leaving for better paying positions after only 12-18 months at OPD.

This request places seven program assistants on the Washington State General Service Salary Schedule (five program assistants to Range 50, two program assistants at Range 51). Additionally, this request places one paralegal at Range 58 (Paralegal 3) who has been working out of class (Paralegal 1) for the past four years.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

OPD currently compensates these positions as follows:

	FY22 Program Assistant
#1	\$45,642
#2	\$48,007
#3	(.5 FTE) \$21,500
#4	\$42,464
#5	\$42,464
#6	\$42,464
#7	\$42,464
	\$285,005
	Paralegal FY '22
#8	\$70,000
FY '22 TOTAL	\$355,005

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

OPD has compared similar positions at the Administrative Office of the Courts and executive branch and determined that its program assistant salaries should be

consistent with Range 50 – 51 and its paralegal salary should be consistent with Range 58 of the Washington State General Service Salary Schedule for non-represented employees.

	Program Asst FY '22	Range	FY23	FY24	FY25	FY26	FY27
#1	\$45,642	51	48,996	50,256	51,432	52,776	54,108
#2	\$48,007	51	48,996	50,256	51,432	52,776	54,108
#3	(.5 FTE) \$21,500	50	23,922	24,498	25,128	25,671	26,388
#4	\$42,464	50	47,844	48,996	50,256	51,342	52,776
#5	\$42,464	50	47,844	48,996	50,256	51,342	52,776
#6	\$42,464	50	47,844	48,996	50,256	51,342	52,776
#7	\$42,464	50	47,844	48,996	50,256	51,342	52,776
	\$285,005		313,290	320,994	329,016	336,591	345,708
	Increase		28,285	7,704	8,022	7,575	9,117
	Paralegal FY '22	Range	FY23	FY24	FY25	FY26	FY27
#8	\$70,000	58	70,956	72,756	74,604	76,416	78,408
	\$70,000		70,956	72,756	74,604	76,416	78,408
	Increase		956	1,800	1,848	1,812	1,992
	PA & Para Increase		29,241	9,504	9,870	9,387	11,109
	Mandatory Benefits (excludes Health)	0.18	5,263	1,711	1,777	1,690	2,000
	Total Increase		34,504	11,215	11,647	11,077	13,109

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principle Policy Objectives identified below?

Accessibility

N/A

Access to Necessary Representation

N/A

Commitment to Effective Court Management

N/A

Appropriate Staffing and Support

OPD is unable to retain program support staff due to pay differential with other similar jobs in the executive and judicial branches of state government.

For example, assistants in OPD's Parent Representation Program typically have left the agency within 12-18 months of being hired. From 2012 through 2021, nine Parents Rep program assistants were hired and seven left. Every year for the past decade OPD has invested substantial time and resources in training a new assistant, only to have the person find a better paying job within a year and half of being hired. Placing OPD support staff on the Washington State General Service Salary Schedule for non-represented employees incentivizes newly hired staff to continue working at OPD.

Poor staff retention is inefficient and demoralizing. OPD invests tremendous time to train a program assistant. The time spend in training and recruiting annually is significant and leaves OPD managing attorneys doing clerical work while the support staff positions are vacant.

OPD seeks a competitive and fair salary placement for its program assistants and paralegal to compensate them at the standard state employee rate in order to reduce inefficient turnover.

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

This option was chosen to retain OPD support staff by providing them with salaries comparable to their peers in other state agencies.

What are the consequences of not funding this request?

OPD will have to continue to recruit and train new support staff only to have them leave for better opportunities.

Other supporting materials: Please attach or reference any other supporting materials or information that will further help explain this request.

[Click here to enter text.](#)

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Contract Attorney Vendor Rate Increase

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

OPD requests funding for a 3% contract attorney vendor rate increase for the Appellate, Parents Representation, and RCW 71.09 programs.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$0	\$962,738	\$962,738	\$962,738
Total Cost	\$0	\$962,738	\$962,738	\$962,738
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	0	0	0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object N	\$0	\$962,738	\$962,738	\$962,738
Total	\$0	\$962,738	\$962,738	\$962,738

Package Description:

OPD requests funds to compensate state-contracted public defense attorneys comparable to their opposing counsel, who are other government-funded attorneys.

Standard One of the Washington State Bar Association Standards for Indigent Defense and Principle Eight of The American Bar Association Ten Principles of a Public Defense Delivery System direct that public defense attorneys should be compensated at a rate reflecting their training and experience and commensurate with other government attorneys.

Contracts

OPD contracts with attorneys statewide to provide indigent appellate representation, parent representation in dependency and termination cases, and civil commitment representation for respondents under RCW 71.09. Many attorneys devote their practice full-time to the OPD contract; others contract for a part-time caseload, especially in rural counties.

Representation in each of these types of cases is specialized and involves highly consequential issues for the clients served. Significant experience is a necessity as these attorneys are for the most part contracting independently without direct supervision. All attorneys doing public defense work must not exceed the Washington Supreme Court's [Caseload Standards](#).

Compensation Gap

In 2018 OPD Appellate and Parent Representation contract attorneys received total annual compensation about \$30,000 less than the average salary of other publicly funded experienced attorneys in Washington, according to a 2018 cost of business survey conducted by Arthur J. Gallagher & Co. In addition, the independent contractors must cover all business costs, including rent, business taxes, office costs, malpractice insurance, professional license dues, and support staff, as well as health insurance and retirement, among other expenses.

The 2019 budget closed about half the compensation gap between most OPD contractors and other government attorneys. However, in the intervening years, other government attorneys have received cost-of-living increases, including two 3% salary increases for assistant attorneys general. OPD contractors have reported increased business costs but have not received higher compensation. The effect has been to further increase the compensation gap between other government attorneys and OPD contractors.

This decision package would provide a 3% vendor rate increase for all OPD contracted attorneys.

Appellate Program Contract Attorneys

A vendor rate increase for appellate public defense contract attorneys is necessary for retention and recruitment of these specialized legal professionals. Although the OPD Appellate Program continues to maintain a slate of very experienced attorneys, the agency is continually challenged to recruit and retain qualified attorneys. The program increasingly consists of a stable group of attorneys with 15 to 20+ years of experience, and a rotating group of entry-level attorneys who practice for one to three years before seeking other employment due to inadequate pay. Regular vendor rate increases are necessary to permit newer attorneys to remain in appellate practice and gain critical experience, as well as to permit more experienced attorneys to keep pace with inflation and the cost of living.

Parent Representation Program Contract Attorneys

A vendor rate increase for OPD's Parent Representation Program (PRP) contractors is necessary to ensure retention of contractors as they navigate the shift into a post-COVID juvenile court world.

Over the past 18 months, OPD contractors have experienced high levels of stress and serious health impacts. Regular vendor rate increases are necessary to recruit a newer inclusive attorney contract base into the practice, as well as to allow more experienced attorneys to keep pace with inflation and the cost of living. Assistant attorneys general – the opposing counsel to OPD Parent Representation Program attorneys – have received two cost-of-living increases since the last OPD vendor rate increase in 2019.

RCW 71.09 Program Contract Attorneys

The right to counsel requires effective assistance of counsel, based on the needs of the client and the complexity of the case type. All RCW 71.09 cases are highly complex and involve clients facing indefinite lifetime civil commitment. Many of these individuals have medical, intellectual and developmental disabilities, including traumatic brain injury, dementia, and serious mental illness. Attorneys must bring exceptional advocacy, communication, and trial skills, as well as expertise in the RCW 71.09 hybrid procedural scheme that utilizes civil court rules in a criminal court atmosphere.

As part of their contract, most 71.09 attorneys must accept cases in all 39 counties. The attorneys must leave their families and law practice for anywhere between three to six weeks at a time to conduct jury trials. All contract attorneys, regardless of their office location, are required to regularly visit their clients at the Special Commitment Center (SCC) on McNeil Island in Pierce County.

A vendor rate increase is necessary to retain and recruit qualified contract attorneys to this unique and small statewide practice. Losing a 71.09 attorney is highly disruptive to the entire Program. RCW 71.09 contract attorneys were *not* included in the 2019 vendor rate increase. Assistant attorneys general – the opposing counsel to OPD RCW 71.09 Program attorneys – have received two cost-of-living increases since 2019.

Federal IV-E Reimbursement.

The requested vendor rate increase in two program areas will generate an estimated 18% federal rebate to the state.

Since 2019, state expenditures for OPD Parent Representation Program contract attorneys and Appellate Program contract attorneys who represent dependency appeals qualify for partial federal reimbursement under Title IV-E of the Social Security Act. OPD has an interagency agreement with the Department of Children, Youth and Families pursuant to which OPD receives the federal IV-E reimbursement. The current federal reimbursement rate is about 18.5% of total expenditures. OPD anticipates that the federal reimbursement rate will continue at or near 18%.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

For FY22 OPD's total contract attorney costs are \$32,091,280 with a total of 200 full-time-equivalent attorneys in all its program areas: Appellate, Parents Representation and 71.09 Civil Commitment.

The table below presents the current cost of FY22 by OPD program and the amount of the vendor rate increase for each program.

3% Increase					
Contract Attorneys	FY22 Base Contract Amount		FY22	FY23 Increase	23-25 Biennium
Appellate	\$6,365,076		\$0	\$190,952	
Parents Representation	\$21,996,672		\$0	\$659,900	
71.09	\$3,729,532		\$0	\$111,886	
FY22 Total Base Contracts	\$32,091,280			\$962,738	\$1,925,477

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

The calculations for the contract attorney vendor rate increase:
Total of FY 2022 Base contracts (\$32,091,280) X .03% = \$962,738 for FY23 and \$1,925,477 for the ensuing biennium.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

Justice requires that indigent people receive effective, quality public defense services.

Accessibility.

N/A

Access to Necessary Representation.

The U.S. and Washington constitutions and state statutes guarantee the right to counsel on appeal, in dependency and termination cases, and in RCW 71.09 civil commitment cases. The Legislature has directed OPD to provide counsel to all indigent clients in these cases throughout Washington State. Indigent clients can have access to necessary representation in these cases only when OPD can contract with qualified attorneys. OPD must be able to provide reasonable contract compensation to recruit and retain qualified attorneys.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

N/A

What is the impact on other state agencies?

N/A

What is the impact to the Capital Budget?

N/A

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

OPD chose this option because the agency must be able to offer reasonable compensation in order to recruit and retain qualified contract attorneys.

What are the consequences of not funding this request?

Failing to fund this request will result in increasing turnover among OPD contract attorneys and will jeopardize OPD's statutory obligation to ensure effective public defense services for indigent clients on appeal, in dependency and termination cases, and in RCW 71.09 cases.

Other supporting materials:

[Click here to enter text.](#)

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Contract Social Worker Vendor Rate Increase

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

OPD requests funding for a vendor rate increase for contracted social workers who assist attorneys and clients in the Parent Representation Program and RCW 71.09 Program. (Note the separate narrative sections below for 1. Parent Representation Program and 2. RCW 71.09 Program.)

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1 Parent Rep Social Workers	\$0	\$754,320	\$754,320	\$754,320
SGF 001-1 71.09 Social Workers	\$0	\$67,200	\$67,200	\$67,200
Total Cost	\$0	\$821,520	821,520	821,520
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	0	0	0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object N	\$0	\$821,520	\$821,520	\$821,520
Total	\$0	\$821,520	\$821,520	\$821,520

Package Description:

1. Parent Representation Program Contract Social Workers

The Washington State Office of Public Defense (OPD) contracts with independent social workers statewide to assist Parent Representation Program attorneys in representing indigent clients in dependency and termination cases.

Contracted social workers work under the direction of OPD contracted attorneys to provide advanced professional level and specialized case management to families involved in child welfare proceedings. In dependency cases, OPD contracted social workers are responsible for assessment of necessary services, client engagement, and support in the goal of safely reunifying families.

Parent Representation Program social workers are independent contractors who do not receive employer-paid benefits. Their contract fees must cover all business costs, including business taxes, office costs, malpractice insurance, professional license dues, as well as health insurance and retirement, among other expenses.

Compensation for Parent Representation Program social workers lags behind comparable social service specialist salaries at the Department of Children, Youth, and Families. This has resulted in a damaging level of turnover among OPD contractors due to inadequate compensation. Since July 2019, OPD has experienced 37% turnover among contract social workers and 24% reported that their departure was due to inadequate compensation. OPD also is experiencing significant difficulties recruiting qualified contractors to replace those who are leaving.

OPD requests funding for a vendor rate increase for Parent Representation Program social workers to better align compensation with their peers employed at DCYF.

Federal IV-E Reimbursement.

The requested vendor rate increase will generate an estimated 18% federal rebate to the state.

State expenditures for OPD Parent Representation Program contractors -- including contract social workers -- qualify for partial federal reimbursement under Title IV-E of the Social Security Act. OPD has an interagency agreement with the Department of Children, Youth and Families pursuant to which OPD receives the federal IV-E reimbursement. The current federal reimbursement rate is about 18.5% of total expenditures. OPD anticipates that the federal reimbursement rate will continue at or near 18%.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

OPD contracts for Parent Representation Program social workers as follows:

44.9 FTE contractors; \$3,313,462 total contract cost in FY'22

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

OPD requests a vendor rate increase for OPD contracted social workers that will better align them with total compensation (salary and benefits) for DCYF Social Service

Specialist 3 positions, which require comparable educational and professional qualifications.

A DCYF Social Service Specialist 3 receives a salary ranging from \$55,524 to \$72,756 (2020 rates). In addition, the position also receives full state employee benefits, which are valued at an additional 25%.

The current annual contract base pay for OPD social workers is \$70,800. OPD contract positions do not include any benefits.

OPD requests a vendor rate increase of \$16,800 per full-time social work contract to better align with the total value of salary and benefits for DCYF Social Service Specialists 3.

Social Workers	FY22 Base	FTE	\$ Increase	FY23 Increase	23-25 Biennium
Parents Representation	\$3,313,462	44.9	\$16,800	\$754,320	\$1,508,640

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

Justice requires that indigent clients have the right to due process and effective assistance of counsel. Effective assistance of counsel includes adequate resources to present a meaningful legal representation. Clients with an OPD social worker have enhanced engagement, meaningful and timely communication, access to support services, enhanced support navigating their court-ordered services and a clearer understanding of legal rights and procedures, giving them a more level playing field to participate effectively in legal proceedings. OPD contracted social workers support attorneys to better represent clients' interests and to be better prepared for court proceedings. When OPD social workers are involved in cases, judges, court staff, and attorneys spend less time clarifying misunderstandings, which allows for more effective focus on managing the legal process.

Accessibility.

N/A

Access to Necessary Representation.

The U.S. and Washington constitutions and state statutes guarantee the right to counsel in dependency and termination cases. Indigent clients can have access to necessary representation in these cases only when OPD can contract with qualified attorneys with meaningful resources, such as social work resources. OPD social workers provide clients with access to enhanced engagement, meaningful and timely communication, support services, enhanced support navigating their court ordered services and a

clearer understanding of legal rights and procedures, giving them a more level playing field to participate effectively in legal proceedings.

OPD must be able to provide reasonable contract compensation to recruit and retain qualified social workers.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

N/A

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

There is no alternative to paying reasonable compensation to retain qualified Parent Representation Program social workers. Many OPD-contracted social workers develop experience and knowledge that lead them to be recruited by other government and nonprofit employers who provide benefits and/or better compensation. Since the implementation of OPD Parent Representation Program social workers in 2006, the Legislature has funded only one compensation increase.

What are the consequences of not funding this request?

Failing to fund this request will result in continued and increased turnover among OPD's contract social workers and will severely limit OPD's ability to recruit qualified defense social workers. Insufficient social work services will jeopardize OPD's statutory obligation to ensure effective public defense services for indigent clients in dependency and termination cases.

Other supporting materials:

DCYF salary schedule is attached below.

State of Washington Class Salary Range

SOCIAL SERVICE SPECIALIST 3

<< Classified Job Listing

Range: 55

351Q

SOCIAL SERVICE SPECIALIST 3

Non-Represented State Employees

Effective: 2020-07-01 - SOCIAL SERVICE SPECIALIST 3 - Non-Represented State Employees

STEP	A	B	C	D	E	F	G	H	I	J	K	L	M
Annual	54,108	55,524	56,856	58,260	59,688	61,224	62,748	64,332	65,928	67,560	69,264	70,956	72,756
Monthly	4,509	4,627	4,738	4,855	4,974	5,102	5,229	5,361	5,494	5,630	5,772	5,913	6,063
Hourly	25.91	26.59	27.23	27.90	28.59	29.32	30.05	30.81	31.57	32.36	33.17	33.98	34.84
Standby	1.81	1.86	1.91	1.95	2.00	2.05	2.10	2.16	2.21	2.26	2.32	2.38	2.44

DCYF Social Services Specialist 3 Qualifications

Twelve months as a Social Service Specialist 1; Completion of the agency's Social Service Specialist training program.

Or,

A Master's degree in social services, human services, behavioral sciences, criminal law/justice or an allied field, and one year as a Social Service Specialist 1 or equivalent paid social service experience.

Or,

A Bachelor's degree in social services, human services, behavioral sciences, criminal law/justice or an allied field, and two years of paid social service experience performing functions equivalent to a Social Service Specialist 1.

Note: A two-year Master's degree in one of the above fields that included a practicum will be substituted for one year of paid social service experience.

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

Package Description:

2. RCW 71.09 Program Contract Social Workers

OPD contracts with four social workers to support 21 contract attorneys who represent approximately 225 indigent respondents civilly committed at the Department of Social and Health Services Special Commitment Center (DSHS-SCC) on McNeil Island and in less restrictive alternative facilities in the community.

In the past, SCC has not provided social worker support to its residents. Upon passage of Senate Bill 5163 during the 2021 legislative session, the SCC must now provide social work services that include treatment and discharge planning, and transition and reentry support to its residents. The SCC is hiring 15 psychiatric social workers for this purpose and has advertised the new positions at an annual salary ranging from \$70,308 to \$92,208, plus full state employee benefits worth an additional 25%.

OPD's RCW 71.09 defense social workers are independent contractors whose total compensation is now substantially less than the value of salary and benefits for new DSHS hires, placing OPD's RCW 71.09 Program at a distinct disadvantage in recruiting and retaining qualified defense social work contractors.

OPD requests a vendor rate increase to bring contract compensation for its RCW 71.09 Program social workers in line with similarly qualified SCC social workers.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

OPD contracts for RCW 71.09 Program social workers as follows:
4 FTE social workers; \$407,808 total contract cost in FY '22

- Since 2013, the RCW 71.09 contract social workers have received one 3% vendor rate increase.

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

OPD requests funding to increase the RCW 71.09 Program defense social work annual contract amounts to reflect the 23% of compensation that is necessary for contractors to purchase health insurance and retirement benefits comparable to benefits received by their peer state employees. If the request is funded, OPD would provide total annual compensation ranging from \$88,800 to \$102,096:

FY22 71.09 Contract Attorney Base	Increase/Request	FY23 New Base
\$407,808 (4 FTE)	\$67,200	\$475,088

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

Justice requires that indigent clients have the right to due process and effective assistance of counsel. Effective assistance of counsel includes adequate resources to present a meaningful legal representation. Clients with a defense social worker have enhanced engagement, meaningful and timely communication, and a clearer understanding of legal rights and procedures, giving them a more level playing field to participate effectively in legal proceedings. OPD contracted social workers support attorneys to better represent clients' interests and to be better prepared for court proceedings. Parity with DSHS-SCC social workers is necessary for OPD to retain contracted social workers serving the OPD RCW 71.09 Program.

Accessibility.

N/A

Access to Necessary Representation.

Persons facing civil commitment under Chapter 71.09 RCW have constitutional and statutory guarantees of counsel, which must be implemented in an effective manner. The RCW 71.09 Program contract attorneys require the assistance of these specialized social workers in order to provide effective representation.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

N/A

What is the impact on other state agencies?

None

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

This is the only option that will place the OPD RCW 71.09 Program contracted social workers at reasonable parity with the new social workers being hired by the Special Commitment Center. The complexity of the work has continually increased over the

years, but compensation has not, making it difficult to retain and recruit defense social workers who are qualified for the RCW 71.09 Program. Without defense social work services, attorneys will be unable to provide effective assistance of counsel to their clients.

What are the consequences of not funding this request?

The RCW 71.09 Program will likely lose one or more contract social workers during the next year – up to 50% turnover. RCW 71.09 social work is a highly specialized area that requires a unique skill set. This client population is one of the most challenging groups to serve. They include individuals with intellectual, developmental, medical and physical disabilities, including high acuity mental health, traumatic brain injuries, and dementia. Without sufficient high-quality social work support, OPD attorneys will not be able to provide all necessary services to ensure the effective assistance of counsel in RCW 71.09 Program cases.

Other supporting materials:

On July 1, 2021, DSHS-SCC posted a hiring announcement (Job No. 2021-05857) seeking 15 Psychiatric Social Workers 3's (PSW3) to join its team. Three PSW3 position types are available, The SCC Psychiatric Social Worker 3 within the Total Confinement Facility, and the other two positions that are in the SCC Community Program are the LRA Placement Coordinator and Community Care Coordinator.

DSHS-SCC Social Worker Salary Range: \$70,308.00 – \$92,208.00

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Parent Representation Program - Managing Attorney & Program Assistant

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

OPD requests funding to hire 1 FTE managing attorney and 1 FTE program assistant for the Parent Representation Program to provide technical assistance to contractors, monitor and enforce contract performance, and administer the program in assigned counties.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$0	\$206,608	\$203,355	\$210,320
Total Cost	\$0	\$206,608	\$203,355	\$210,320
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	2	2	2
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object A	\$0	\$ 159,844	\$163,996	\$168,256
Object B	\$0	\$36,764	\$39,359	\$42,064
Object E/J	\$0	\$10,000	\$0	\$0
Total	\$0	\$206,608	\$203,355	\$210,320

Package Description:

OPD requests funding to add 1 FTE managing attorney and 1 FTE program assistant support staff for the Parent Representation Program in order to sustain OPD's contract oversight and technical assistance duties under RCW 2.70.020.

OPD currently employs five FTE Parent Representation Program managing attorneys and two FTE program assistant support staff who are responsible for providing quality oversight and technical assistance to approximately 230 individual contract attorneys throughout the state, which equals approximately 46 contract attorneys assigned to each managing attorney. (Note that a number of the contract positions are less than full time, thus the number of individual attorneys requiring the time and attention of OPD managers is greater than the number of actual contracted FTEs.)

Parent Representation Program managing attorneys are responsible for ensuring that each contractor provides effective assistance of counsel and for supporting each contractor with technical assistance, training, and case resources. Managing attorneys perform individual contract performance reviews, engage in court observations of each contractor, provide on-call technical assistance and training, participate in statewide child welfare work groups, and investigate client complaints.

OPD Parent Representation managing attorneys also are responsible for recruiting and training contractors, including newly licensed attorneys. New contract attorneys perform best when they receive substantial orientation and a “nuts and bolts” training of at least one full day, preferably as their own cohort. Due to limited managing attorney resources at OPD, most new contractors currently receive only a half-day orientation as part of a larger, whole group training.

Contractor recruitment is increasingly difficult, particularly to serve rural and remote areas of the state. National models exist for successful recruitment initiatives, including initiatives that would assist in a more inclusive contractor pool, but OPD managing attorneys currently are stretched too thin to implement new recruitment initiatives.

As dependency cases have become more complex, the workload for each Parent Representation Program managing attorney has intensified to a point where effective contract oversight and technical assistance are in jeopardy. For example, one measure of a manager’s technical assistance workload is the number of expert services requests received from contract attorneys. Even as dependency filings have decreased during the recent pandemic, those cases being filed are highly complex, and requests for OPD expert services are steadily increasing year over year:

	FY2018	FY2019	FY2020	FY2021
Expert Services Requests	514	519	631	638
Dependency Filings by FY	4699	4481	3605	3152

OPD anticipates an increase in case filings as COVID-19 restrictions lift, because children will be exposed to mandated reporters. It is likely that this will generate even more defense requests for experts and more workload for OPD managing attorneys.

Current Parent Representation Program support staff are also similarly stressed. Two program assistants currently support five managing attorneys and two managing social workers. They assist in processing the requests for expert services, which have increased as mentioned above. They assist managers in their oversight duties including scheduling meetings with all contractors statewide for contract performance reviews.

They arrange travel for managers, contractors, and experts. They are the first point of contact for clients who have concerns about their representation.

The program assistants also coordinate with parents, attorneys, and labs to schedule paternity testing. Cases requiring paternity tests have tripled since 2017.

Federal IV-E Reimbursement.

Funding this request will generate an estimated 18% federal rebate to the state.

Since 2019, state expenditures for OPD Parent Representation Program managers and program assistants qualify for partial federal reimbursement under Title IV-E of the Social Security Act. OPD has an interagency agreement with the Department of Children, Youth and Families pursuant to which OPD receives the federal IV-E reimbursement. The current federal reimbursement rate is about 18.5% of total expenditures. OPD anticipates that the federal reimbursement rate will continue at or near 18%.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

Current Parent Representation Program staffing level:

5 FTE Managing Attorneys, with salaries ranging from \$110,000 to \$131,000

2 FTE Program Assistants, with salaries ranging from \$45,642 and \$48,007

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

Parents Rep

Managing Attorney	FY23	FY24	FY25
Salary	\$112,000	\$115,000	\$118,000
Benefits	\$25,760	\$27,600	\$29,500
TOTAL	\$137,760	\$142,600	\$147,500
Program Assistant	Range 50 - State Salary Schedule		
Salary	\$47,844	\$48,996	\$50,256
Benefits	\$11,004	\$11,759	\$12,564
TOTAL	\$58,848	\$60,755	\$62,820
Computer, License &	\$10,000	\$0	\$0
Start-up costs			
TOTAL	\$206,608	\$203,355	\$210,320

Benefits are calculated at 23%/24% for FY23 and FY24 (actual) and projected at 25% for FY25.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

Constitutional and statutory guarantees of counsel must be implemented in an effective manner. It is critically important that the Parent Representation Program is able to provide necessary contract oversight and technical assistance for contracted attorneys in order to facilitate effective assistance of counsel for indigent clients throughout Washington State.

Accessibility.

N/A

Access to Necessary Representation.

To ensure that indigent clients have meaningful access to the right to counsel, the Parent Representation Program must be able to exercise robust contract oversight and timely technical assistance for contracted attorneys.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

This decision package would provide sufficient management and support staff to maintain critical functions of the OPD Parent Representation Program.

What is the impact on other state agencies?

An additional managing attorney and support staff at OPD would help ensure meaningful defense participation in statewide child welfare improvement groups that typically include other state agencies such as the Department of Children, Youth, and Families (DCYF), the Attorney General (AG), the Department of Corrections (DCO), and the Administrative Office of the Courts (AOC).

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

No

What alternatives were explored by the agency and why was this option chosen?

Over the years, as the Legislature expanded the Parent Representation Program to more counties and added more attorney contracts, OPD's existing managing attorneys

absorbed the increased workload. As the Program has matured in the expanded statewide role, it has become increasingly clear that the current staffing level can no longer provide appropriate levels of service. In order to properly serve contractors and indigent clients, OPD must hire 1 FTE managing attorney and 1 FTE support staff.

What are the consequences of not funding this request?

OPD Parent Representation Program managing attorneys may not be able to provide all service necessary to facilitate effective assistance of counsel for parents in child welfare cases.

Other supporting materials:

N/A

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

Washington State Judicial Branch 2022 Supplemental Budget Decision Package

Agency: Office of Public Defense

Decision Package Title: Blake Triage Team

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

Funding is requested to implement a *Triage Team* to provide statewide support to the management and flow of hearings for more than 4,000 incarcerated individuals impacted by *State v. Blake*. The *Triage Team* will review individuals' sentencing information and criminal histories and recommend tier level designations to the *Scheduling Referee* (*Decision Package for this function will be submitted by the Superior Court Judges Association.*) Tier levels will prioritize those who are eligible for most immediate sentencing relief, and the initial research conducted by the *Triage Team* will be passed along to county-level courts, defenders, and prosecutors to better economize their time spent on *Blake* cases.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$286,288	\$1,008,200	\$0	\$0
Total Cost	\$286,288	\$1,008,200	\$Click here to enter text.	\$Click here to enter text.
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	3	3	0	0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Object A & B	\$93,788	\$378,200	\$0	\$0
Object E/ N Four Contractors, one-time start-up costs and ongoing *NERCs	\$192,500	\$630,000	\$0	\$0
Total	\$286,288	\$1008,200	\$0	\$0

*NERCs = non-employee-related-costs

Package Description:

As of May 31, 2021, there were 17,400 individuals under custody of the Washington Department of Corrections (DOC) whose sentences are potentially impacted by the *Blake* decision, 4,751 of whom were incarcerated in a state prison. *Blake* relief will have immediate impact on many individual's sentences, while others will face little or no change to their sentence length. Court stakeholders agree that a tiered approach will be crucial for effectively managing the volume of *Blake* cases and ensuring that limited legal resources are prioritized for individuals potentially facing immediate release. Amid the immense backlog of felony cases due to COVID court closures, most counties lack the resources to strategically identify which incarcerated individuals should be prioritized for appointment of counsel and court hearings under *Blake*.

There currently exists no easy, mechanized way to assign priority tiers for resentencing *Blake*-impacted incarcerated individuals. Felony sentencing rules include many complex factors, and there is no quick and easy data program to calculate the *Blake* impact on peoples' sentences. Each case requires individualized legal analysis by lawyers experienced working with the Sentencing Reform Act and the Washington State Adult Sentencing Guidelines.

The Washington State Office of Public Defense (OPD), in collaboration with the Superior Court Judges Association (SCJA), proposes the establishment of a *Blake Triage Team* to address this statewide need. The *Blake Triage Team* will include three full-time OPD employees and four full-time equivalent attorney contractors who will fill the following roles:

- **Four FTE contract attorneys**, contracted by OPD to review incarcerated individuals' sentencing and criminal histories, calculate potential new sentencing ranges, contact incarcerated individuals to explain options, make preliminary tier assignments, and prepare materials for county-level representation.
- **One FTE OPD managing attorney and one FTE OPD paralegal** to administer and monitor triage attorney contracts, coordinate all communication and exchange of information with county stakeholders and the Scheduling Referee, and perform sentencing history and document research in case management systems for triage attorneys.
- **One FTE OPD data analyst** to coordinate, share, and report on *Blake* data being interchanged between DOC, the Scheduling Referee, county courts, prosecutors, and county public defense providers.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

N/A

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

Three OPD FTEs and four contract positions are to be considered “project positions” for 15 months and not ongoing.

Project Plan

FY '22—3-month start-up (April 2022 through June 2022)

FY '23 – 12-month implementation (July 2022 through June 2023)

Blake Triage Calculations – 1-year project with 3-month start-up

Detail by Fiscal Year	FY22 3-month Project Position			FY23 12-month project position		
	FY22	23%	TOTAL	FY23	24%	Total
Lead Managing Attorney	\$110,000	\$25,300	\$135,300	\$110,000	\$26,400	\$136,400
3-month	\$27,500	\$6,325	\$33,825			
**Data Analyst	\$125,000	\$28,750	\$153,750	\$125,000	\$30,000	\$155,000
3-month	\$31,250	\$7,188	\$38,438			
Paralegal	\$70,000	\$16,100	\$86,100	\$70,000	\$16,800	\$86,800
3-month	\$17,500	\$4,025	\$21,525			
Total Salary & Benefits	\$76,250	\$17,538	\$93,788	\$305,000	\$73,200	\$378,200
Total - 4 contractors @ \$150,000	\$150,000	\$0	\$150,000	\$600,000	\$0	\$600,000
One-time start-up costs (computers/licenses, etc.)	\$35,000	\$0	\$35,000	\$0	\$0	\$0
Ongoing NERCs	\$7,500	\$0	\$7,500	\$30,000	\$0	\$30,000
Non-employee-related-costs						
Travel, Training, Etc.						
Total NERCs	\$42,500	\$0	\$42,500	\$30,000	\$0	\$30,000
TOTAL	\$268,750	\$17,538	\$286,288	\$935,000	\$73,200	\$1,008,200

**Salary range for Data Analyst = \$121,328 - \$135,539

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

The *Blake Triage Team*'s work will help counties identify which cases should receive immediate attention for purposes of seeking *Blake* relief. The product of the *Triage Team*'s work will be shared with county courts, defenders, and prosecutors, thereby reducing the need for multiple entities to retrieve historical documents and duplicate calculations of new sentences.

Accessibility.

In most counties, *Blake* relief is currently being prioritized for those individuals who file their own *pro se* motions for relief, or are represented by privately retained counsel. This approach significantly disadvantages people who are indigent, and those with limited English proficiency and physical or cognitive disabilities.

Access to Necessary Representation.

The *Blake Triage Team*'s work will help counties to prioritize assignment of counsel to those who qualify for most immediate relief under *Blake*. Additionally, the data management component and tracking of *Blake* court orders will serve as a check to ensure that all counties are providing court access and counsel to those eligible for relief.

Commitment to Effective Court Management.

Courts, defenders, and prosecutors are currently facing record-high open caseloads due to the COVID-19 pandemic, jury trial suspensions, and court closures. Yet more than 120,000 individuals have been convicted of simple possession under RCW 69.50.4013 since 1999, and are eligible for *Blake* relief. The ranking and prioritization by the *Blake Triage Team* in collaboration with the AOC *Scheduling Referee* will help Superior Courts effectively manage their limited resources for *Blake* hearings.

Sufficient Staffing and Support.

The *Blake Triage Team* will support Judicial Branch partners. The centralized approach to reviewing and designating tiers to *Blake* cases will reduce county-level judicial branch stakeholders' time on *Blake* cases, and ensure case processing for those in most immediate need of court relief. The idea has been well-vetted with the Superior Court Judges Association.

What is the impact on other state agencies?

Implementation of a *Blake Triage Team* will have a significantly positive impact on the Superior Courts, county public defenders, county prosecutors, county clerks, DOC and AOC. County-level partners will not need to conduct initial review of cases, and will be

provided summary analyses and documentation to support further steps in planning for and conducting *Blake* resentencing hearings. The *Blake Triage Team* will work with court history information and documentation, relieving County Clerks from fielding such requests from countless attorneys statewide. DOC and the AOC *Scheduling Referee* will have a single point of contact for prioritization and data tracking.

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

Yes. The Washington Supreme Court's *State v. Blake* decision impacts thousands of individuals incarcerated by DOC, and this effort will identify those whose cases should be prioritized for resentencing due to eligibility for immediate relief.

What alternatives were explored by the agency and why was this option chosen?

In the absence of a state-level centralized process, each county is managing *Blake* cases in their own way. While some counties have been pro-active, others have not and people continue to be incarcerated despite eligibility for immediate relief. Many counties are addressing only the cases of incarcerated individuals who proactively file *pro se* motions with the court. This significantly disadvantages people with limited English proficiency and physical or cognitive disabilities.

What are the consequences of not funding this request?

Continuation of the above.

Other supporting materials:

[Click here to enter text.](#)

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Public Defense Improvement Program Attorney

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

OPD requests funding for 1 FTE attorney position for the Public Defense Improvement Program that implements services under Chapter 10.101 RCW. Within the past year critical new duties have been assigned to the unit, including defense services to implement the *State v. Blake* decision and the agency's new obligation to manage a statewide attorney consultation program for juveniles pursuant to [HB 1140](#). Previously all staff in this unit directly reported to the OPD Director, but to effectively manage the current number of staff and their expanded responsibilities, the unit requires a supervisor.

OPD promoted a staff attorney to the supervisor role to meet the immediate need. But because of the time required for this additional management workload, other tasks and responsibilities are falling behind. OPD requests funds to backfill the supervisor's previous position so the unit may continue to meet ongoing obligations while providing quality oversight to new and existing functions.

Since 2012 OPD has not added attorney or staff support to the Public Defense Improvement Program.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
SGF 001-1	\$40,690	\$142,760	\$147,600	\$152,500
Total Cost	\$40,690	\$142,760	\$147,600	\$152,500
	FY22	FY23	FY24	FY25
FTEs	.24	1	1	1
Object of Expenditure	FY22	FY23	FY24	FY25
Object A	\$28,000	\$112,000	\$115,000	\$118,000
Object B	\$6,440	\$25,760	\$27,600	\$29,500

Object G	\$1,250	\$5,000	\$,5000	\$5,000
Object J One-time costs equipment, license, etc.	\$5,000	\$0	\$0	\$0
Total	\$40,690	\$142,760	\$147,600	\$152,500

Package Description:

The Public Defense Improvement Program at OPD provides crucial services statewide to city and county governments and local public defense providers, consistent with statutory directives in Chapter 2.70 RCW and Chapter 10.101 RCW. Since 2012, a small group of 2.3 FTE attorneys and 0.5 administrative staff has provided the following statewide services:

- Management of the county and city public defense improvement annual grant programs pursuant to RCW 10.101.070 - .080. Responsibilities include administering annual applications, collecting data, conducting site visits, and compiling reports. The state Auditor requires OPD to actively monitor grant usage.
- Provision of resources, information, and technical assistance to courts on indigency screening. (OPD is due to update its periodic Indigence Report but currently does not have staff time to do so.)
- Training for local public defense attorneys and support staff. Annual programs include the multi-day Juvenile Defense Training Academy and the Criminal Defense Training Academy, and multiple webinars and in-person trainings in rural and remote locations. No other organization provides this level of public defense training in Washington.
- Application for and management of federal grants to funnel more resources to local public defense services. Currently OPD receives funds from the Office of Juvenile Justice and Delinquency Prevention to improve juvenile representation in Benton and Franklin counties.
- Technical assistance to county and city governments on public defense administration matters such as contracting, compensation rates, administrative structures, and attorney oversight in conformity with state and national standards and guidelines.

In addition, the Legislature directed OPD to add two new, distinct services starting in FY 2022:

- Coordination of the public defense response to the *State v. Blake* decision, as authorized in legislative budget proviso. Responsibilities include distributing state funds to county public defense providers, contracting with attorneys, training attorneys, and coordinating efforts with other state agencies such as the Administrative Office of the Courts (AOC), the Department of Corrections (DOC), the Office of the Governor, and the Washington Association of Prosecuting Attorneys (WAPA).

- Implementation of HB 1140, which requires on-demand attorney consultation for all youth subject to custodial interrogations, searches, and arrest.

The Legislature funded OPD at its requested level for these two new functions. However, as implementation began, it became clear that OPD requires one additional attorney FTE to be able to sustain prior critical services while taking on the substantial new duties.

Public Defense Improvement Program Staffing

	Prior to FY22	As of FY22
Attorney FTE	2.3 (3 individuals)	4.3 (5 individuals)
Support Staff FTE	0.5 (1 individual)	3.0 (4 individuals)
Total FTE	2.8 (4 individuals)	7.3 (9 individuals)

Due to the unit's previous small size and limited scope of duties, it had no supervisor and all staff reported to the OPD Director. However, due to the increase in staff and expansion of program responsibilities, one staff attorney now supervises and manages the full unit in addition to being responsible for all previously assigned functions. Consequently, OPD's Public Defense Improvement Program now provides fewer support services such as:

- Fewer site visits. Visiting jurisdictions is an excellent way to strategically assist local governments with their public defense improvements and monitor grant usage. The state Auditor requires OPD to monitor grant usage. However, this activity is very time-intensive and no site visits are currently scheduled.
- Decreased trainings. OPD staff have less time to plan for and conduct trainings statewide, whether in-person or online.
- Less data collection and collection of resources. Public defense administration constantly evolves including changes to compensation rates, modifications to policies and practices, and fluctuations to caseloads and assignments. OPD staff is less able to track and report on these changes.

OPD requests funding for one additional attorney FTE in the Public Defense Improvement Program so that it may resume offering its full array of services while providing effective supervision for all individuals in this expanding unit.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service.

Currently OPD's Public Defense Improvement Program includes 7.3 FTEs (9 individual staff) to accommodate its wide variety of programs and services, including two new assignments to implement the *Blake* decision and to implement HB 1140. The purpose

of this Decision Package is to request 1 attorney FTE for this unit so that it can carry out all responsibilities and provide effective supervision of unit staff.

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

Managing Attorney	FY22	FY23	FY24	FY25
Salary	\$28,000	\$112,000	\$115,000	\$118,000
Benefits	\$6,440	\$25,760	\$27,600	\$29,500
TOTAL	\$34,440	\$137,760	\$142,600	\$147,500
G	\$1,250	\$5,000	\$5,000	\$5,000
Computer, License &	\$5,000	\$0	\$0	\$0
Start-up costs				
Total NERC's	\$6,250	\$5,000	\$5,000	\$5,000
TOTAL	\$40,690	\$142,760	\$147,600	\$152,500

Benefits are calculated at 23%/24% for FY23 and FY24 (actual) and projected at 25% for FY25.

Funding is requested for a three-month start up in FY 2022 with ongoing costs thereafter. FY22 one-time start-up costs include computer, software licenses, and office set-up

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

The Public Defense Improvement Program provides resources to city and county courts and local governments to provide fair and effective public defense services in criminal and juvenile offender cases. Using best practices, data-driven policies, and industry standards, OPD staff assist local governments in delivering constitutionally effective representation to all indigent defendants and youth.

Accessibility.

A significant portion of public defense clients include people with mental illness, cognitive impairments, substance addiction, and/or limited English proficiency. OPD's Public Defense Improvement Program delivers training and resources to public defense attorneys to achieve strong representation of clients who face these barriers.

Access to Necessary Representation.

Appointment of counsel for indigent people facing criminal charges and other loss of liberty is a constitutionally and statutorily guaranteed right. City and county courts and local governments are charged with carrying out this function, yet often lack expertise in the many industry-specific complexities such as caseload calculations, case-level qualifications, and attorney ethics requirements unique to the field. OPD's Public Defense Improvement Program supports local governments in fulfilling their constitutional and statutory obligation to provide effective public defense services.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

OPD's Public Defense Improvement Program currently has insufficient staffing and support to meet statewide program obligations and supervision needs. Other OPD programs lack excess staff to cover this need.

What is the impact on other state agencies?

OPD works collaboratively with other state agencies in the judicial and executive branches, as well as city and county governments statewide. This staffing request will allow OPD to effectively sustain those collaborations, and be more immediately responsive to the needs of those agencies.

What is the impact to the Capital Budget?

None

Is change required to existing statutes, Court rules or contracts?

No

Is the request related to or a result of litigation?

While not directly related to litigation, funding this position would sustain and bolster services that are important to current settlement discussions related to *Davison v. OPD and Washington State*.

What alternatives were explored by the agency and why was this option chosen?

The alternative is to reduce OPD services to counties, cities, local courts, and local public defense providers. OPD believes this alternative would be inconsistent with the Legislature's intent and current statutory obligations. Thus, it is necessary to add staff to be able to meet the agency's obligations.

What are the consequences of not funding this request?

OPD will not sustain its level of services to support counties and cities in making improvements to public defense services. Examples include:

- **Fewer site visits.** Site visits are a crucial way to effectively counsel cities or counties on identifying weaknesses in their public defense administration structure, and developing cost-effective solutions.
- **Fewer training programs.** OPD provides no-cost training programs to public defense attorneys in rural and remote areas.
- **Fewer federally funded grant programs.** OPD has successfully applied for and implemented federal grants for making improvements to county juvenile defense services. These time-intensive projects will not be possible without sufficient OPD staffing.
- **Less technical assistance.** City and county administrators receive no-cost professional consultation from OPD on public defense contracts, compensation rates, case-weighting policies, attorney oversight, and other administrative components. OPD will be less available to provide this assistance.

Other supporting materials:

[Click here to enter text.](#)

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes

**Washington State Judicial Branch
2022 Supplemental Budget
Decision Package**

Agency: Office of Public Defense

Decision Package Title: Odyssey Access Fees

Budget Period: 2022 Supplemental Budget

Budget Level: Policy Level

Agency Recommendation Summary Text:

Funding is requested to cover fees that county clerks charge OPD staff and OPD-contracted public defense attorneys for electronic access to court documents.

Summary:

Operating Expenditures	FY 2022	FY 2023	FY 2024	FY 2025
Fund SGF - 001	\$0	\$153,233	127,100	127,100
Fund	\$Click here to enter text.	\$153,233	\$127,100	\$127,100
Total Cost	\$0	\$153,233	\$127,100	\$127,100
Staffing	FY 2022	FY 2023	FY 2024	FY 2025
FTEs	0	0	0	0
Object of Expenditure	FY 2022	FY 2023	FY 2024	FY 2025
Obj. NB	\$0	\$153,233	127,100	127,100
Total	\$0	\$153,233	127,100	127,100

Package Description:

With implementation of the Odyssey court records system and other document management programs, County Clerks are charging substantial new fees for OPD staff and OPD contractors to electronically access court records. OPD's contract attorneys and OPD staff managing attorneys who monitor contract compliance must be able to access court records in order for OPD to ensure the right to counsel in programs funded by the state, as required in RCW 2.70.005. OPD requests funds to be able to pay these access fees.

Background

All but two Washington counties have implemented a new Superior Court case management system, known as Odyssey. A smaller subset of counties currently utilizes the Odyssey Portal, a web-based application to view court records and individual documents. Other counties utilize other online document management platforms.

As the independently elected record-keeping officers of the courts, County Clerks maintain and control official court records. Clerks are authorized to charge fees to access the records, including fees to view and access records electronically via Odyssey or other online platforms. There is not a consistent statewide fee protocol, and each Clerk's Office develops its own fee schedules, ranging from single-service charges to monthly and annual subscriptions.

Impact of Fees

County agencies typically are categorically exempt from Clerk's fees to access Odyssey and other electronic sources of court documents. State agencies and their contractors, such as OPD and its contract attorneys, are *not exempt* from these fees. The state already pays these fees to ensure access for assistant attorneys general.

OPD's programs are statewide and OPD contractors comprise numerous separate law firms, some of which work across multiple counties, with each county charging its own access fees. A single attorney or firm contracting with OPD could face burdensome fees up to thousands of dollars per year just to access the court records and documents necessary for them to provide constitutionally required representation to indigent clients. In addition, OPD staff managing attorneys must have access in every county in order to properly monitor performance of the contract attorneys, including investigating client complaints.

Alternatives

As Odyssey and other electronic platforms became available over the years, OPD managers and many OPD contract attorneys initially sought fee exemptions from individual counties on the basis that the clients are indigent. The requests typically have been denied because the requesting attorneys are not employed by the county or a nonprofit organization. Most counties do not waive fees for nonprofit public defense organizations or for attorneys with public defense contracts.

As a work-around, some OPD contract attorneys attempted to avoid burdensome user fees by viewing court documents at the courthouse, which typically is free. However, since March 2020, in-person free access has become unpredictable and often impossible due to COVID-related closure of County Clerk's Offices. Many Clerk's Offices that have reopened severely limit public access and require appointments to visit in-person. For OPD's Appellate and RCW 71.09 contractors, whose practices span numerous counties (all counties for many Appellate contractors), in-person access is not and has never been a feasible alternative.

Prior to seeking this funding, OPD has attempted since 2018 to engage the Association of County Clerks to seek a statewide fee exemption for all public defense cases. These efforts have stalled.

Current Level of Effort: If the proposal is an expansion or alteration of a current program or service, provide information on the current level of resources devoted to the program or service. Please include current expenditure authority level and FTEs.

N/A

Decision Package expenditure, FTE and revenue assumptions, calculations and details:

Funding would be used to pay County Clerk's fees for electronic access to court records and documents, as follows:

20 OPD staff with access for multiple counties

342 OPD contract attorneys, many requiring access for multiple counties

The requested funding would cover total annual fees of: \$153,233 in FY23. This includes initial sign-up fees charged by one county. Ongoing costs are projected at \$127,100 in subsequent years.

Decision Package Justification and Impacts

How does this package contribute to the Judicial Branch Principal Policy Objectives identified below?

Fair and Effective Administration of Justice.

Fair and effective administration of justice requires that relevant court records and documents be made available in a timely way to indigent clients and their state-contracted public defense attorneys with the same ease of access available to county-employed public defenders and prosecutors.

Accessibility.

OPD managers and contract attorneys must have timely access to court records and documents for their assigned cases. Contract attorneys experiencing disabilities, for whom it is a burden to visit a courthouse in person, must have the same ease of access available to county-employed attorneys.

Access to Necessary Representation.

Clients have a right to effective assistance of counsel. A necessary element for attorney effectiveness is timely access to court records and documents.

Commitment to Effective Court Management.

N/A

Sufficient Staffing and Support.

N/A

What is the impact on other state agencies?

N/A

What is the impact to the Capital Budget?

N/A

Is change required to existing statutes, Court rules or contracts?

No.

Is the request related to or a result of litigation?

No.

What alternatives were explored by the agency and why was this option chosen?

Over the years, OPD and its contract attorneys have sought individual fee exemptions on a county-by-county basis as well as statewide through the Association of County Clerks. These requests typically were denied or not acted on.

As a work-around, many OPD contract attorneys attempted to avoid burdensome user fees by viewing court documents at the courthouse, but this is simply no longer a viable option with COVID-related closures and occupancy restrictions at Clerk's offices.

Funding to pay the fees seems to be the only alternative to ensure that OPD and its contracted attorneys can have timely access to court records and documents.

What are the consequences of not funding this request?

Failure to fund this request will jeopardize OPD's ability to implement its statutory duty to ensure effective and efficient indigent defense services funded by the state. OPD staff managing attorneys will not be able to routinely monitor the performance of contract attorneys by checking court records. Some OPD contract attorneys will not be able to timely access court records and documents that they must have in order to effectively represent clients.

Other supporting materials:

Attached spreadsheet shows calculations. Calculations are based on each county's calendar year 2021 fee schedule and OPD's Fiscal Year 2022 contracts.



GSN Odyssey
Calcs.xlsx

Information technology: Does this Decision Package include funding for any IT-related costs, including hardware, software, services (including cloud-based services), contracts or IT staff?

☒ No

☐ Yes