

Washington State Judicial Branch 2023-25 Biennial Budget *State v. Blake* Public Defense Response

Agency: Office of Public Defense

Decision Package Code/Title: AE – Blake Response - Continuation

Agency Recommendation Summary Text:

OPD requests a continuation of \$11.9 million and 6 FTEs for statewide defense services in response to the *State v. Blake* decision. This request would maintain funding appropriated to OPD in the 2021-2023 biennium. Continued funding would ensure that counties are sufficiently resourced for ongoing *Blake* defense, eligible individuals’ right to counsel is upheld, and coordination with statewide partners is sustained. The *Blake* decision made all previous convictions of simple drug possession void. As a result, up to 250,000 individuals are eligible to vacate convictions and seek reimbursement of LFOs, and several thousand incarcerated individuals must be resentenced in light of *Blake*’s impact on criminal history scoring. (Judicial Stabilization Trust Account-State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	6.00	6.00	6.00	0.00	0.00	0.00
Operating Expenditures						
Fund 16A-1	\$5,972,600	\$5,972,600	\$11,945,200	\$0	\$0	\$0
Object of Expenditure						
A/B Salaries & Benefits	\$652,600	\$652,600	\$1,305,200	\$0	\$0	\$0
C Contracts	\$200,000	\$200,000	\$400,000	\$0	\$0	\$0
E/G Supplies & Travel	\$20,000	\$20,000	\$40,000	\$0	\$0	\$0
N Grants	\$5,100,000	\$5,100,000	\$10,200,000	\$0	\$0	\$0
Total Expenditures						
	\$5,972,600	\$5,972,600	\$11,945,200	\$0	\$0	\$0

Package Description:

Background:

In February 2021 the Washington Supreme Court issued a landmark decision, *State v. Blake*, 197 Wn.2d.170 (2021), which held that Washington’s simple drug possession law violated due process. As a result, all convictions under the statute were void, which has a retroactive impact dating back to the law’s inception in 1971. The number of impacted convictions is estimated to be 150,000 to 250,000. In addition to convictions being voided, *Blake* also means that individuals can recoup any legal financial obligations (LFOs) paid on their convictions.

Correcting voided convictions does not occur in an automatic or self-executing manner. Every individual eligible to have a conviction voided is required to bring a motion to vacate the conviction and receive LFO reimbursement in the Superior Court where they were convicted. Washington comprises 39 counties whose legal systems operate independently of one another. The process by which courts, clerks, prosecutors, and public defenders have managed *Blake* cases differs jurisdiction by jurisdiction.

For Fiscal Year 2022 and Fiscal Year 2023 the Legislature appropriated \$5.5 million annually to OPD to assist counties with public defense costs related to representing people eligible for *Blake* relief. Of that amount, \$5.1 million was designated for distribution to counties (either in the form of grants, or attorney contracts issued by OPD). The

Legislature appropriated additional funding to OPD (\$286,000 in FY '22 and \$1,008,000 in FY '23) to implement a public defense Triage Team to provide statewide support to the management and flow of re-sentencing hearings for individuals impacted by *Blake*.

Current Situation:

Significant work is ongoing statewide to represent individuals impacted by *Blake*. See [Blake Team Descriptive Chart](#).

OPD has distributed funds to 31 counties to cover their public defense costs for *Blake* cases, and, at county request, OPD has directly contracted with attorneys to provide *Blake* defense in eight other counties. OPD has also worked collaboratively with the Department of Corrections, Administrative Office of the Courts, Washington Association of Prosecuting Attorneys, Washington State Patrol, Superior Court Judges Association, County Clerks, the Office of the Governor, and local public defense providers to find state and local solutions as new *Blake*-related issues evolve.

OPD's recently funded Triage Team is a collaboration of agency staff and contractors who review and coordinate *Blake*-related data from multiple, nonaligned data sources to help local government public defense providers prioritize cases needing defense counsel. The OPD Triage Team identifies the *Blake* work that has been completed, work that remains to be done, barriers to progress, and the resources needed to help local jurisdictions complete the many remaining cases. The priority continues to be ensuring defense representation for people who are incarcerated at the Department of Corrections (DOC) and may be eligible for early release. Substantial work remains to assist individuals under DOC community custody, as well as those who have served their sentence but need to vacate a conviction to remove it from their record.

Problem:

OPD's *Blake*-related funding ends June 30, 2023. But many people are still incarcerated in DOC awaiting representation on *Blake* resentencing matters. Thousands are still serving community custody under DOC for simple drug possession or a combination of that offense and others. Hundreds of thousands (no longer under DOC custody) still have not had their convictions vacated or LFOs reimbursed.

Proposed Solution:

OPD requests continued funding to sustain current scope of work through Fiscal Year 2025. Counties continue to need funding to cover the costs of defense attorneys to represent individuals in *Blake*-related court proceedings. Many county public defense providers require OPD's ongoing assistance to collect, sort, organize, and review data to identify and prioritize cases awaiting representation. Other state partners rely on OPD to bring the statewide defense perspective to discussions on policy and practice.

Fully describe and quantify expected impacts on state residents and specific populations served:

As many as 250,000 people were denied due process and convicted of simple drug possession under a statute that was voided by the *Blake* decision, and they are all entitled to relief. A disproportionate number of individuals convicted of simple drug possession are people of color. *Blake*-related relief is not self-executing, which means impacted individuals must engage in court proceedings. To do so, they need defense attorney assistance to analyze their options and preserve their constitutional and statutory rights. It is unknown how many of these individuals are alive, continue to reside in Washington, or are even aware of the *Blake* decision.

Blake has significant impacts in all communities statewide. However, not all counties are sufficiently resourced to provide public defense representation for eligible individuals. Continued funding of OPD's *Blake* efforts will ensure continuity of the work that has already begun in each of the state's 39 counties.

Explain what alternatives were explored by the agency and why they were rejected as solutions:

OPD considered the following alternative:

- Leaving other impacted state agencies and the decentralized public defense providers in 39 individual counties to fend for themselves, among themselves. OPD rejected this alternative because other state agencies, the courts, the counties, and the Legislature asked OPD to take on a coordinating role to facilitate communication and services for *Blake*-related public defense. OPD also rejected this alternative because it would perpetuate “justice by geography,” which could delay or deny the right to counsel for some clients who are owed relief under *Blake*.

What are the consequences of not funding this request?

- Counties lack the funding and resources to fully support necessary *Blake* defense work. Without state-level funding and coordination of data and resources, *Blake* cases would take longer to process. Justice would be further delayed or denied for people already harmed by 50 years of unconstitutional convictions.
- Counties are still struggling with funding and staffing public defense because of the backlog caused by COVID. In many jurisdictions, cases weren’t filed during COVID lockdowns, and/or courts stopped holding hearings for non-urgent matters. Statewide, courts had a moratorium on jury trials. Without state funding and coordination, *Blake* cases would be further delayed by these ongoing COVID backlogs.
- Not funding this request would exacerbate the local inequities that contribute to “justice by geography.” OPD has been able to assist small and rural counties that lack sufficient resources to proactively review DOC data and identify people in need of representation for time-sensitive resentencing hearings.

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

This Decision package maintains the current level of funding and service through the 2023-2025 biennium.

Decision Package expenditure, FTE and revenue assumptions:

All expenditures would be one-time costs for FY ‘24 and FY ‘25 would continue services currently funded in the 2021-2023 biennium.

OPD Staffing Assumptions: 6.0 FTEs. All positions would be continued from the 2021-2023 biennium.

Job Title/Classification	# of FTEs	Workload Assumptions
Managing Attorney	2.0 FTE	Oversee OPD’s <i>Blake</i> efforts. One manages entitlement grants and attorney contracts for county-level <i>Blake</i> defense services. The other manages our triage efforts, analyzing DOC data and sentencing information to ensure representation for all eligible individuals.
Paralegal	2.0 FTE	Support the <i>Blake</i> efforts of the Managing Attorneys.
Data Analyst	0.5 FTE	Merges, sorts, and organizes <i>Blake</i> related data from different state resources to most efficiently manage <i>Blake</i> triaging statewide.
Community Outreach Specialist	1.0 FTE	Develop and implement a communication plan to inform impacted community members of available services for <i>Blake</i> relief. Much of the public is still unaware of their eligibility to vacate convictions and receive reimbursement of paid LFOs.
Administrative Assistant	0.5 FTE	Administrative support for the above-mentioned positions.

Contracting Assumptions: \$200,000

- \$140,000 for Complex Blake Work. OPD currently contracts with a provider to deliver case-level technical assistance on complex *Blake* cases. Some *Blake* resentencing hearings include a mixture of legal issues – most notably, individuals eligible for resentencing per *Blake* as well as recent changes in law for youth and young offenders. Consequently, these *Blake* hearings are uncharacteristically complex. OPD contracts with a specialist to provide technical assistance to *Blake* defenders representing such individuals in courts throughout the state.
- \$60,000 for data analysis. It is anticipated that in FY '23 OPD will receive new, additional sets of data for evaluating *Blake* work. Cleaning, coding, sorting, and organizing this data will require additional resources beyond the availability of OPD's 0.5 FTE Data Analyst.

Goods and Services: \$10,000

- Specialized software expenses for the Data Analyst's work
- Costs related to trainings for public defense providers on *Blake* issues, which continue to evolve
- Training and resources for OPD staff

Travel: \$10,000

OPD staff are involved with *Blake* work in all 39 counties. Funding is needed to travel to counties to oversee the appropriate use of grant funds, assess local services, and assist with complex *Blake* matters.

Grants or Pass-Through Funding: \$5,100,000

OPD would continue to provide pass-through funding and resources to counties for *Blake* defense services. Continuing the model previously adopted by the Legislature, counties could opt to either receive funds through entitlement grants, or they may instead delegate OPD to directly contract with attorneys to perform *Blake* work in their counties. This model has been successfully implemented in FY '22 and FY '23. Maintenance of the funding and this model is necessary to ensure continuity and efficiency of defense services as the *Blake* work extends into the 2023-2025 biennium.

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

- *Fair and Effective Administration of Justice:* *Blake* cases are not self-executing and require the work of courts, prosecutors, and defense to ensure outcomes are fair and effective.
- *Accessibility:* Current law requires impacted individuals to petition the court to request relief for *Blake*. Without active outreach efforts and assistance of defense counsel, people with communication disabilities and limited English proficiency will be significantly disadvantaged.
- *Access to Necessary Representation:* People need representation to seek *Blake* relief. The process of filing motions, seeking resentencing hearings, vacating prior convictions, and receiving reimbursement of LFOs are not simple procedures. Undoing convictions is technical work requiring experienced legal review and analysis, and impacted individuals need appropriate representation to ensure their legal rights are protected.
- *Sufficient Staffing and Support:* OPD requires experienced attorney and support staff to administer a coordinated statewide approach to public defense services for *Blake* cases. Without State funding, counties will have insufficient resources to provide staffing and support for *Blake* work. The backlog of cases and jury trials from COVID continues to have a lasting impact, draining local resources.

Are there impacts to other governmental entities?

Yes. Since the *Blake* decision, other state partners have come to rely on OPD to be a centralized conduit of communications for public defense statewide. In Washington's decentralized approach to public defense, it is crucial for a state-level public defense partner to join discussions with DOC, AOC, WSP, the Washington Clerks Association, the

Superior Court Judges Association, and other impacted state agencies. We anticipate all of these agencies will support OPD’s continued role in *Blake* efforts.

Stakeholder response:

As many as 250,000 individuals are eligible for relief under the *Blake* decision. A disproportionate number of individuals convicted of simple drug possession are people of color. It is anticipated that community groups advocating for justice and equity will support OPD’s continued role in bringing representation to all individuals impacted by the *Blake* decision.

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

State v. Blake, 197 Wn.2d.170 (2021), held that Washington’s simple drug possession law violated due process. This holding meant that any convictions under this statute were void, which has a retroactive impact dating back to the law’s inception in 1971. To remedy this injustice, impacted persons require public defense services for resentencing and vacating convictions.

Does current law need to be changed to successfully implement this package?

No

Are there impacts to state facilities?

No

Are there other supporting materials that strengthen the case for this request?

- [Blake Team Descriptive Chart](#), illustrates OPD’s public defense *Blake* response.
- [New Data Analysis Shows the Astonishing Breadth of the Racial Disparity in Washington's Drug Possession Convictions](#), Rich Smith, The Stranger, March 17, 2021.

Are there information technology impacts?

No

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OPD Blake Team

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