

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE AGENCY NARRATIVE

OVERVIEW

The Office of Public Defense (OPD) is an independent agency of the judicial branch.

OPD develops and administers programs under the supervision and direction of the Office of Public Defense Advisory Committee, as provided in Chapter 2.70 RCW. The Advisory Committee includes members appointed by the Chief Justice of the Washington State Supreme Court, the Governor, the Court of Appeals, and the Washington State Bar Association, and City and County representatives, in addition to two Senators and two Representatives selected from each of the two largest caucuses by the President of the Senate and Speaker of the House of Representatives, respectively.

OPD administers state funds appropriated for parents' representation in dependency and termination cases; for appellate indigent defense services; for trial level indigent defense services in criminal cases; and for consulting services for county and city officials regarding public defense contracts and other public defense issues. Since July 1, 2012, pursuant to Chapter 257 Laws of 2012, OPD also administers indigent defense services for all indigent respondents who have a right to counsel in sexually violent predator (SVP) cases filed by the state under Chapter 71.09 RCW. The 2012 Legislature transferred this statewide program to OPD from the Department of Social and Health Services (DSHS).

In 2008, the Legislature adopted ESB 6442 to statutorily reauthorize the Office of Public Defense, following a Sunset Review report by the Joint Legislative Audit and Review Committee (JLARC). The JLARC report found that OPD is substantially:

- *Meeting legislative intent, as expressed in statute and budget provisos;*
- *Operating in an efficient and economical manner, with adequate cost controls in place;*
- *Meeting its performance goals and targets as identified in the (agency's) pre-sunset plan, and is evaluating its performance in areas of responsibility established since 2001; and*
- *Not duplicating services provided by other agencies or the private sector.*

AGENCY MISSION

The Office of Public Defense's mandate is to “implement the constitutional and statutory guarantees of counsel and to ensure the effective and efficient delivery of indigent defense services funded by the state of Washington.” RCW 2.70.005.

STATUTORY AUTHORITY

The Office of Public Defense's enabling statute is Chapter 313, Laws of 2008, RCW 2.70 et. seq., which specifically authorizes OPD's programmatic activities. Additional legislative authority for the Extraordinary Criminal Justice Costs program is RCW 43.330.190; for the Indigent Defense

Program, Chapter 10.101 RCW and RCW 43.08.250; for the Parents Representation Program, RCW 43.08.250; and for the SVP program, Chapter 71.09 RCW.

AGENCY GOALS

Implement the constitutional guarantee of counsel at all court levels.

Ensure the efficient and effective delivery of indigent defense services in appellate courts.

Ensure the constitutional guarantee of counsel and the adequacy of representation for parents in dependency and termination cases.

Enact improvements in adequate criminal defense representation in the trial courts, thus implementing RCW 43.08.250.

Ensure the constitutional and statutory rights to counsel and the efficient administration of indigent defense services to all indigent respondents involved in SVP proceedings.

OBJECTIVES

Implement the constitutional guarantee of counsel by working with the trial and appellate courts and county governments to enhance indigent defense.

Maintain appropriate, high quality appellate attorney and costs payment systems, gather statistics, and issue reports to the Legislature and the Supreme Court in each fiscal year.

Improve parents' representation in dependency and termination cases.

Support the improvement of the state trial court indigent defense system under RCW 10.101.

Maintain the Extraordinary Criminal Justice Costs Act petition and priority process and submit prioritized lists to the Legislature in each fiscal year.

Establish and maintain effective and efficient administration of indigent defense in SVP cases statewide.

STRATEGIES

- Work under the direction of the Office of Public Defense Advisory Committee to develop and administer programs.
- Coordinate with the Supreme Court, the judges of each division of the Court of Appeals, the superior courts, and appellate attorneys to implement appellate indigent defense representation and to enhance the effectiveness of the representation.

- Maintain an appellate attorney appointment system mandated by Supreme Court Rules of Appellate Procedure 15.2.
- Maintain appropriate pay rates for all appointed indigent defense attorneys for appeals and maintain resources to support them.
- Administer the payment of attorney fees and costs for appellate indigent defense cases. Work with courts and attorneys to implement efficiencies in providing OPD services.
- Work with the courts, bar association, attorneys, and other interested parties to improve the quality of trial level indigent defense.
- Implement the processes of Chapter 10.101 RCW for trial level indigent defense as funding is appropriated.
- Implement RCW 10.101's mandate to establish a state-funded program for the improvement of public defense in the counties and cities by developing a petition process, auditing applications, and distributing funds.
- Pursue full state funding to implement adequate representation of parents in dependency and termination cases on a statewide basis.
- Establish, maintain and oversee the Parents Representation Program, thus providing effective assistance of counsel for parents in dependency and termination cases.
- Develop and implement attorney contracts to provide effective assistance of counsel and improve system efficiencies for indigent defense services in SVP cases statewide.
- Maintain statistics on appellate, parent's representation, and SVP cases funded through the state and submit annual reports to the Legislature and the Supreme Court.
- Distribute and process county petitions to claim reimbursement for aggravated murder cases, and prepare a prioritized list and submit it to the Legislature.

FINANCIAL OUTLOOK

In 2013, the U.S. District Court of the Western District of Washington issued a decision in *Joseph Jerome Wilbur, et al., v. City of Mount Vernon, et al.*, holding that the cities of Mount Vernon and Burlington are liable under 42 U.S.C. §1983 for the systemic flaws that deprive indigent criminal defendants of their Sixth Amendment right to the assistance of counsel. Among other requirements, the court ordered the cities to hire a Public Defense Supervisor to oversee, document, and report progress on improvements. Since then, cities and counties throughout the state have begun to review their own public defense programs in light of *Wilbur* as well as the Supreme Court's misdemeanor caseload standards that become effective January 2015. It appears that many are facing significant costs to implement the requirements of *Wilbur* and the pending caseload

standards. An interim Work Group on Misdemeanor Public Defense Costs is due to report on these costs to the House Judiciary Committee in December.

The *Wilbur* case is just one of several lawsuits and news reports in recent years that have highlighted the substandard quality of trial level indigent defense in a large number of Washington jurisdictions. Others include a *Seattle Times* series, “Unequal Justice”; a WSBA Report by the Blue Ribbon Task Force on Indigent Defense; an ACLU report entitled “The Unfulfilled Promise of Gideon”; and two lawsuits against Grant County for failure to provide adequate indigent defense services in adult felony and juvenile offender cases. By all estimates, criminal public defense is grossly underfunded in Washington. Annually since 2007, OPD has published statewide reports on the current status of public defense in the counties and cities receiving state funding, and will publish another such report in 2014. These reports are based on individualized county and city data submitted to OPD through the RCW 10.101 petition process funded by the Legislature.

In 2005, 2006, 2007 and 2013 the Legislature appropriated funds for multi-county expansions of the Parents Representation Program, to provide adequate representation for indigent parents in dependency and termination cases. Additional funds are necessary to expand the program to the remaining eight counties.

In 2012 the Legislature transferred from DSHS to OPD the administration of indigent defense services in SVP cases and appropriated funds to OPD for this purpose.

APPRAISAL OF EXTERNAL ENVIRONMENT/TRENDS IN CUSTOMER CHARACTERISTICS

Indigent Appellate Defense

Part of the Office of Public Defenses budget funds indigent appellate costs, including reimbursement for services of court reporters, court clerks, and appointed counsel. Most of these funds are paid for attorneys’ services.

In 2005, OPD implemented a new appellate attorney appointment system mandated by a Supreme Court amendment to Rules of Appellate Procedure 15.2. The rule establishes that the appellate courts will directly appoint indigent appellate counsel, using attorneys selected by OPD on a case-by-case basis.

OPD contracts with more than 40 attorneys across the state, including several firms and consortiums, to provide appellate representation. The caseload includes criminal cases as well as other cases involving basic rights such as criminal contempt convictions and involuntary civil commitments.

In general, appellate cases take from one to two years from filing to appellate court decision. Court reporter and court clerk costs are generally incurred at the beginning of the appellate case and are paid within its first year. In contrast, timing of attorney billing is more difficult to predict. OPD has a multiple-payment schedule that allows attorneys to bill as work is completed. The last two payments in each case, for filing the written brief and at the conclusion of the case, can occur sometime between six months and two years after the appeal is filed. The levels of indigent

appellate case filings continue to fluctuate from month to month. The new appointment system helps OPD track case filings.

Due to their complex and difficult nature, appellate death penalty cases cost more than any other type of indigent appellate defense. There are several death penalty appellate cases currently under consideration by the Supreme Court and it is likely that more will be filed during the -2015-2017 biennium. In addition, new death penalty charge notices are currently being considered at the trial level. Although Governor Inslee declared a moratorium on executions during his term, this action does not preclude death penalty charges, trials, or appeals.

Parents Representation Program

This program began in Fiscal Year 2001, when the Legislature assigned OPD a pilot program to implement enhanced representation for parents in dependency and termination proceedings. Since that time, OPD has worked to address major problems in this area. OPD's Parents Representation Program sets manageable caseload limits, implements professional standards of practice, and provides access to case support services so program attorneys can better assist their clients. This highly successful program is established in 31 counties throughout the state. The results are beneficial to children and families and all parties involved in these cases.

The Legislature established five program goals to enhance the quality of defense representation in dependency and termination hearings:

1. Reduce the number of continuances requested by attorneys, including those based on their unavailability.
2. Set maximum caseload requirements cases per full-time attorney.
3. Enhance defense attorneys' practice standards, including reasonable time for case preparation and the delivery of adequate client advice.
4. Support the use of investigative and expert services in dependency cases.
5. Ensure implementation of indigency screenings of parents, guardians, and legal custodians.

Several independent evaluations have verified that the Parents Representation Program has succeeded in achieving the goals set forth. The most recent evaluation, published nationally by a prestigious child welfare journal, found that the program significantly accelerates case resolution, benefitting all of the children involved.

Trial Level Indigent Defense

The 2005 Legislature adopted two bills relating to indigent defense representation in the State of Washington - House Bill 1542 and Senate Bill 5454.

House Bill 1542 (codified at Chapter 10.101 RCW) states "The legislature finds that effective representation must provide for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional of fairness, equal protection, and due process in all cases where the right to counsel attaches," and mandates that OPD disburse funds to counties contingent on their implementation of improvements in their public defense services. The 2006 Legislature appropriated \$3 million for the program, and the 2007 Legislature adopted about \$3.5 million in additional annual funds.

Under the bill's requirements, counties may qualify for a percentage of the state funding under a program administered by OPD if they meet the standards for public defense endorsed by the Washington State Bar Association or have made appreciable demonstrable improvements in the delivery of public defense services. Such improvements must include the counties' adoption of standards addressing the factors set forth in RCW 10.101.030; counties also must require that public defense attorneys attend training, require that attorneys who handle the most serious cases meet specified qualifications, provide extra compensation in extraordinary cases, and provide funding exclusive of attorneys' compensation for experts, investigators, and conflict cases. The bill also provides for a competitive grant program to improve public defense in municipal courts.

Senate Bill 5454 states "The legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants and to parents in dependency and termination cases." In accordance with this mandate and concomitant funding, OPD has set up several services to improve public defense in the counties. These include a regional training program for attorneys in rural counties, and a case consultation contract service so contract attorneys may discuss their cases with expert defense attorneys. OPD also provides consulting services for county and city officials on public defense contracts and other public defense issues.

Extraordinary Criminal Justice Costs

RCW 43.330.190 establishes OPD's duty to create, distribute, and process county petitions for reimbursement of aggravated murder case funds. In consultation with the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC), OPD develops a prioritized list and submits it to the Legislature at the beginning of each legislative session.

Sexually Violent Predator Program

The 2012 Legislature added SVP cases to OPD's administration of indigent defense contracts and services. The Legislature previously had directed OPD to conduct an analysis of indigent defense in these cases and to make recommendations for transferring this state obligation from DSHS to OPD. Based on OPD's analysis, the Legislature enacted Chapter 257 Laws of 2012 and appropriated funds to OPD for attorney contracts, expert services and other costs directly associated with providing effective indigent defense in these highly specialized and complex cases.

Based on data gathered during the first year of administering SVP defense services, OPD published a report in November 2013 that included information on the time to trial, continuances, and policy and budget recommendations, as required by Section 2 of the statute. OPD is preparing a second annual report, due to the Legislature in November 2014.

CONCLUSION

OPD administers a number of important programs to implement the constitutional guarantee of counsel and ensure the effective and efficient delivery of the indigent services funded by the state. Pursuant to our state's constitutional obligation to provide adequate representation for indigent criminal defendants, parents involved in dependency and termination cases, and respondents in SVP cases, OPD will require increased funding to effectively deliver these services on a statewide basis.

2013-15 Current Biennium Total

CL AA Carry Forward Level	16.2	67,651	3,648	71,299
Total Carry Forward Level	16.2	67,651	3,648	71,299
Percent Change from Current Biennium				
Carry Forward plus Workload Changes	16.2	67,651	3,648	71,299
Percent Change from Current Biennium				
M2 AB Technical Adjustment Civil Commit		400		400
M2 AC Contract Retention		5,465		5,465
M2 AE Parents Representation Increase		1,529		1,529
M2 AG Permanency Initiative Funding		1,474		1,474
Total Maintenance Level	16.2	76,519	3,648	80,167
Percent Change from Current Biennium				
PL A1 Parents Representation Expansion	1.0	4,980		4,980
Subtotal - Performance Level Changes	1.0	4,980		4,980
2015-17 Total Proposed Budget	17.2	81,499	3,648	85,147
Percent Change from Current Biennium				

M2 AB Technical Adjustment Civil Commit

This request seeks to biennialize the technical adjustment/funding sought in the 2015 Supplemental Budget process.

M2 AC Contract Retention

A compensation increase is requested to retain qualified contractors to ensure constitutional and statutory rights to counsel for indigent persons on appeal and for indigent parents involved in dependency and termination cases. A summer 2014 salary survey shows that, after paying necessary business costs, many professionals who contract with OPD to represent indigent appellants and parents earn significantly less than similarly qualified professionals engaged in an appellate or dependency practice on behalf of county Prosecutors, the state Attorney General, or the Department of Social and Health Services (DSHS).

M2 AE Parents Representation Increase

Dependency case filings have increased significantly over the past year and a half. A Parents Representation Program caseload adjustment is necessary in order to maintain required representation standards.

M2 AG Permanency Initiative Funding

Funding was received in the 2013-2015 biennial budget (2014 supplemental budget process) for legal services in both the Office of Public Defense and the Attorney General's Office to support a child welfare "Permanency Initiative" at the Department of Social and Health Services (DSHS). The funding was based on an anticipated increase in filing of termination of parental rights cases. The filings increase is anticipated to continue through the 2015-17 biennium and OPD will need additional funds to pay for parents' representation in these cases.

PL A1 Parents Representation Expansion

Funds are requested to expand the Parents Representation Program, which provides adequate legal representation for indigent parents involved in dependency and termination cases, to all juvenile courts statewide. The Office of Public Defense (OPD) Advisory Committee at its June meeting strongly encouraged OPD to pursue a final expansion to the eight counties not currently served by the Program.

Washington State Judicial Branch 2015-2017 BIENNIAL BUDGET REQUEST

Decision Package

Agency: Office of Public Defense

Decision Package Title: Technical Adjustment – 2013-2015 CFL Adjustment
Civil Commitment (Chapter 71.09 RCW)

Budget Period: 2015-2017 Biennial Budget Request

Budget Level: Maintenance Level

Recommendation Summary Text

This request seeks to biennialize the technical adjustment/funding sought in the 2015 Supplemental Budget process.

Fiscal Detail

Operating Expenditures		FY 2016		FY 2017		Total
001-1 State General Fund		\$ 200,000		\$ 200,000		\$ 400,000
Staffing		FY 2016		FY 2017		Total
FTEs		0		0		0

Package Description

Funding was received in the 2011-2013 Biennial budget for indigent defense services in the RCW 71.09 Civil Commitment Program (sexually violent predator), which the Legislature transferred from the Department of Social and Health Services (DSHS) to the Office of Public Defense (OPD). Initial funding in the amount of \$6,065,000 was provided in FY13, which included \$200,000 in start-up costs.

In the 2013-2015 carry-forward process, the \$200,000 was reduced from the initial funding, to a new base of \$5,865,000. This amount should have been the new base for both fiscal years; however, an additional \$200,000 was reduced from the correct base of \$5,865,000, resulting in an incorrect biennial reduction of \$400,000.

Narrative Justification and Impact Statement:

This package contributes to the Judicial Branch Principle Policy Objectives as identified below.

Access to Necessary Representation. *Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interests at stake in civil judicial proceedings should have meaningful access to counsel.*

Impact on Clients and Services

With the correction of this technical error, OPD will continue to provide constitutionally required indigent defense services, and timely adjudication of RCW 71.09 cases will be able to continue in the courts.

Impact on other State programs

N/A

Relationship to Capital Budget

N/A

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

N/A

Alternatives explored

N/A

Distinction between one-time and ongoing costs and budget impacts in future biennia

The costs are expected to be ongoing.

Effects of non-funding.

Expenditures would exceed the appropriation.

Expenditure calculations and assumptions and FTE assumptions

\$200,000 needs to be restored in each fiscal year to correct the amount reduced to the base appropriation.

Object Detail	FY 2016	FY 2017	Total
Staff Costs	\$ 0	\$ 0	\$ 0
Non-Staff Costs	\$ 200,000	\$ 200,000	\$ 400,000
Total Cost	\$ 200,000	\$ 200,000	\$ 400,000

Washington State Judicial Branch 2015-2017 BIENNIAL BUDGET REQUEST

Decision Package

Agency: Office of Public Defense

Decision Package Title: Contractor Retention – Appellate & Parents Representation

Budget Period: 2015-2017 Biennial Budget Request

Budget Level: Maintenance Level

Agency Recommendation Summary Text

A compensation increase is requested to retain qualified contractors to ensure constitutional and statutory rights to counsel for indigent persons on appeal and for indigent parents involved in dependency and termination cases. A summer 2014 salary survey shows that, after paying necessary business costs, many professionals who contract with OPD to represent indigent appellants and parents earn significantly less than similarly qualified professionals engaged in an appellate or dependency practice on behalf of county Prosecutors, the state Attorney General, or the Department of Social and Health Services (DSHS).

Fiscal Detail

Operating Expenditures		FY 2016		FY 2017		Total
001-1 State General Fund		\$1,822,000		\$3,643,000		\$5,465,000
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Staffing		FY 2016		FY 2017		Total
FTEs		0		0		0

Package Description:

A compensation increase is requested to retain qualified contractors to ensure constitutional and statutory rights to counsel for indigent persons on appeal and for indigent parents involved in dependency and termination cases. A summer 2014 salary survey shows that, after paying necessary business costs, many professionals who contract with OPD to represent indigent appellants and parents earn significantly less than similarly qualified professionals engaged in an appellate or dependency practice on behalf of county Prosecutors, the state Attorney General, or the Department of Social and Health Services (DSHS).

OPD-contracted appellate attorneys and Parents Representation Program attorneys and social workers are compensated at rates far below other publicly funded attorneys and social workers engaged in appellate or child welfare practices. An adjustment is required to compensate OPD contractors commensurate with the market for attorneys and social workers employed by the state and by county prosecutors.

The increase is needed to address difficulties in recruiting and retaining qualified professionals, and in maintaining mandatory standards of performance in these constitutionally and statutorily required representations of indigent parties.

Appellate Program:

OPD contracts with 38 FTE attorneys statewide to provide appellate representation for indigent persons who have a constitutional or statutory right to counsel on appeal. Compensation has not increased for this specialized mandatory service since 2008, though the contractors have had to pay more for malpractice insurance, technology, office space, support staff, taxes, and other basic business and law office requirements. OPD-contracted appellate attorneys have, on average, 20 years of experience.

Standard One of the Washington State Bar Association Standards for Indigent Defense directs that public defense attorneys should be compensated at parity with prosecutorial attorneys. A summer 2014 survey found that total contract compensation for OPD's indigent appellate attorneys ranged from \$105,000 to \$120,000. Necessary business costs range from \$23,480 to \$57,557 per FTE, depending on business taxes, staff and office costs, with a statewide average of \$42,690.

After subtracting necessary business costs, the full-time OPD appellate contract attorney compensation total is, on average \$70,595 per year. This compensation amount includes not only salary, but funds for all benefits, including health insurance and retirement.

In contrast, experienced deputy prosecuting attorneys handling criminal appeals earn an average annual salary of \$87,606 plus health insurance and retirement benefits worth between \$12,500 and \$28,000, and averaging approximately \$20,000. The average total salary and benefits for similarly experienced county prosecutors is \$107,606. As they are county employees, they pay no overhead costs. The requested compensation increase was determined based on data gathered in an OPD salary survey of deputy prosecuting appellate attorneys in five geographically and economically diverse eastern Washington and medium-sized western Washington counties.

The requested increase would be phased in over the biennium. Half of the increase would be implemented in FY16, and the full increase in FY17, to bring indigent appellate attorneys to the \$107,606 compensation level.

As the economy improves and business costs continue to increase, OPD faces difficulty retaining and recruiting qualified contract appellate attorneys unless it can increase contract

compensation. A professional level of compensation for experienced attorneys who specialize in appellate practice will help OPD retain and recruit qualified contractors.

Parents Representation Program Contract Attorneys:

OPD contracts with 104 FTE attorneys who practice as sole practitioners or in firms or county agencies to provide public defense in 31 counties for indigent parents who have a right to counsel in dependency and termination cases. Contract rates have not been adjusted for maintenance or other purposes since 2007. When rates were adjusted in 2007, they were set at levels that were minimally adequate at that time but no longer cover basic business costs and reasonable take-home pay for highly skilled attorneys.

Consistent with Supreme Court and Washington State Bar Association Standards for Indigent Defense, Parents Representation Program attorneys are mandated to maintain an office and telephone answering services or staff. They also must purchase supplies and pay for malpractice insurance, Bar dues, business taxes, and other professional costs.

Standard One of the Washington State Bar Association Standards for Indigent Defense directs that public defense attorneys should be compensated at parity with prosecutorial attorneys. The vast majority of Parents Representation Program contract attorneys are experienced, a necessity as they are for the most part working independently without direct supervision in the 31 program counties. PRP attorneys are compensated between \$102,000 and \$122,400 per FTE, depending on experience and location. Contract compensation for all costs averages about \$116,000 per FTE. Business costs vary by location, business tax levels, office costs, and staff services costs, among others.

A summer 2014 survey of OPD Parents Representation Program contract attorneys found that among all program counties, after payment of basic business costs, the average annual attorney salary and all benefits including health insurance and retirement was only \$70,137. Most program attorneys have from several to 20 or more years of experience. On average they have 12 years of experience.

In contrast, similar attorneys with 10 years experience practicing on behalf of the state Attorney General received compensation at an approximate average of \$89,546 per attorney to cover salary and benefits. Overhead costs and staff are funded through the Attorney General's Office.

Since 2012, approximately 10 percent of the Parents Representation Program contract attorneys have left the program for the stated reason of inadequate compensation. These include attorneys in Kitsap, Kittitas, Mason, and Pierce counties, as well as multiple attorneys in Snohomish, Spokane, Stevens, and Yakima counties.

Providing a professional level of compensation will ensure that OPD can contract with qualified attorneys who have dependency case experience and are reliably able to practice largely without supervision. Retaining skilled attorneys is critical to the program's ability to provide the

requisite quality of representation for parents, which has been demonstrated to improve family reunification rates and accelerate all types of permanency outcomes.

This maintenance request would phase in pay parity with assistant attorneys' general compensation over the biennium. Half the increase would be added in FY 2016, and the full increase in FY 2017, to bring the attorneys to an average of \$89,545 for all benefits and salary, distributed depending on qualifications, experience and regional cost variances. This professional level of compensation will ensure continued high quality parents representation by attorneys contracting with OPD.

Parents Representation Program Social Workers:

Social work support is a necessary component of the Parents Representation Program. OPD contracts with 27.6 social workers throughout the Program's 31 counties. Consistent with Washington State Bar Association standards, these social workers are critical in supporting parent attorneys' effective representations. Currently, full-time OPD-contracted social workers receive contract payments up to \$55,000 annually. This amount covers salaries and benefits such as health insurance and retirement, as well as business expenses such as insurance, supplies, office expenses, taxes, and so forth.

Almost all OPD-contracted social workers possess qualifications at the DSHS "Social Service Specialist 3" level. The yearly salary and benefits package for DSHS Social Service Specialist 3 employees averages \$48,000 for salary plus about \$15,000 for benefits, totaling about \$63,000 annually.

Parents Representation Program contract social workers' compensation needs to be adjusted to rates commensurate with the DSHS social workers who are involved in dependency and termination cases. The request phases in the compensation adjustment over the biennium, to a compensation level of \$59,000 for all benefits and salary for FY16 and \$63,000 for all benefits and salary for FY17, distributed depending on qualifications, experience and regional cost variances.

Narrative Justification and Impact Statement:

This package contributes to the Judicial Branch Principle Policy Objectives as identified below.

Access to Necessary Representation. *Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interests at stake in civil judicial proceedings should have meaningful access to counsel.*

This increase will ensure that OPD can retain and recruit well-qualified Appellate and Parents Representation Program contractors to serve indigent persons who have a constitutional or statutory right to counsel. Failure to fund this request will result in a lack of qualified professionals willing to accept OPD contracts.

Measure Detail

Impact on Clients and Services

Funding this maintenance increase will ensure that every indigent appellant and indigent parent who has a right to counsel in OPD-served counties is appointed a well-qualified attorney who will provide effective assistance of counsel.

Impact on other State programs

N/A

Relationship to Capital Budget

N/A

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

N/A

Alternatives explored

The right to counsel provided to indigent appellants and parents by OPD contract attorneys is constitutionally and statutorily required. Minimum professional qualifications and maximum per-attorney caseloads are established by the Supreme Court Standards for Indigent Defense; OPD cannot contract with unqualified or "low bid" attorneys as the constitution guarantees effective assistance of counsel.

Distinction between one-time and ongoing costs and budget impacts in future biennia

Funding for Appellate and Parents Representation Program contractor retention would be an ongoing cost.

Effects of non-funding.

Without this rate increase, OPD expects to continue to lose qualified contractors who are unable at current compensation rates to meet OPD's proven performance standards and the Supreme Court Standards for Indigent Defense. Foster care costs can be expected to increase due to derogated defense representation of parents in dependency and termination cases.

Expenditure calculations and assumptions and FTE assumptions

Appellate Attorneys

FY16

Additional \$17,198 to bring salary and benefits per attorney to \$87,793 x 38 FTEs

FY17

Additional \$34,397 to bring salary and benefits per attorney to \$104,991 x 38 FTEs

Parents Representation Program Attorneys

FY16

Additional \$9,704 to bring average contract salary and benefits per attorney to \$79,841 x 109 FTEs

FY17

Additional \$19,409 to bring average contract salary and benefits per attorney to \$89,545 x 109 FTEs

Parents Representation Program Social Workers

FY16

Additional \$4,000 to bring salary and benefits per social worker to \$63,000 x 27.6 FTEs

FY17

Additional \$8,000 to bring salary and benefits per social worker to \$67,000 x 27.6 FTEs

	FY16	FY17	TOTAL
Appellate Attorneys	\$ 653,524	\$1,307,086	\$1,960,610
Parents Rep Attorneys	\$1,057,736	\$2,115,581	\$3,173,317
Parents Rep Social Workers	\$ 110,400	\$ 220,800	\$ 331,200
TOTAL (Rounded for Request)	\$1,821,660	\$3,643,467	\$5,465,127

Object Detail	FY 2016	FY 2017	Total
Staff Costs	\$ 0	\$ 0	\$ 0
Non-Staff Costs	\$1,822,000	\$3,643,000	\$5,465,000
Total Objects	\$1,822,000	\$3,643,000	\$5,465,000

Washington State Judicial Branch 2015-2017 BIENNIAL BUDGET REQUEST

Decision Package

Agency: Office of Public Defense

Decision Package Title: Parents Representation Program Caseload Increase

Budget Period: 2015-2017 Biennial Budget Request

Budget Level: Maintenance Level

Recommendation Summary Text

Dependency case filings have increased significantly over the past year and a half. A Parents Representation Program caseload adjustment is necessary in order to maintain required representation standards.

Fiscal Detail

Operating Expenditures		FY 2016		FY 2017		Total
001-1 State General Fund		\$ 656,000		\$ 873,000		\$ 1,529,000
Staffing		FY 2016		FY 2017		Total
FTEs		0		0		0

Package Description

The OPD Parents Representation Program provides legally mandated representation for indigent parents in dependency and termination cases. Due to its successful record in improving outcomes for children and families and reducing children's time in foster care, since 2005, the Legislature has provided appropriations to expand the Program to about 85 percent of the state. In the 31 counties where the program is implemented, it is the sole source of all dependency and termination representation for indigent parents.

The number of cases handled by the Program is determined by the number of dependency and termination cases filed by the Department of Social and Health Services (DSHS). OPD must contract with attorneys and required support services in order to provide adequate representation to parents in 31 counties: Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Ferry, Franklin, Garfield, Grant, Grays Harbor, Jefferson, King, Klickitat, Kitsap,

Kittitas, Mason, Pacific, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Whatcom, Whitman, and Yakima.

Practice standards for contracted attorneys and support services, along with OPD oversight to the program, are its hallmarks. Under the previous county-funded parent's representation system, high caseloads prevented attorneys from being able to properly represent parents and case outcomes were often unsatisfactory. The OPD caseload per FTE attorney is 80 open cases, consistent with the caseload limit adopted in the Supreme Court Standards for Indigent Defense Standard 3.4 which established the upper limit of 80 open dependency or termination cases for parents' attorneys.

In 2013, DSHS filed 5,156 dependency cases. The filings are projected to increase to 5,436 in 2014. This will cause an increased caseload totaling about 381 Parents Representation Program dependency cases (many case filings generate representations for two or more parents). Assuming this filing rate remains stable in FY16 and FY17, an estimated additional 4.76 FTE contract attorneys will be required to meet the increased caseload for dependencies. In FY17 it is expected that dependency filings will remain the same and about 33 percent of the increased filings from FY16 will result in termination case filings, requiring another 1.56 FTE contract attorneys.

Narrative Justification and Impact Statement:

This package contributes to the Judicial Branch Principle Policy Objectives as identified below.

Access to Necessary Representation. *Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interests at stake in civil judicial proceedings should have meaningful access to counsel.*

The OPD Parents Representation Program provides legally mandated representation for indigent parents in dependency and termination cases. Due to its successful record in improving outcomes for children and families and reducing children's time in foster care, since 2005, the Legislature has provided appropriations to expand the Program to about 85 percent of the state.

Impact on Clients and Services

With the appropriation of these necessary funds, constitutionally and statutorily required effective representation of indigent parents will continue in the counties covered by the OPD Parents Representation Program.

Impact on other State programs

N/A

Relationship to Capital Budget

N/A

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

N/A

Alternatives explored

There are no alternatives to adequate funding for constitutionally and statutorily required parents representation that meets “effective assistance of counsel” standards.

Distinction between one-time and ongoing costs and budget impacts in future biennia

The costs are expected to be ongoing.

Effects of non-funding.

Without additional funds, it can be expected that contract attorneys will refuse to take on excessive numbers of cases, or if they accept the cases, that representation standards cannot be met and families will suffer worse outcomes while children linger in foster care, causing the state foster care budget to escalate.

Expenditure calculations and assumptions and FTE assumptions

FY16

280 additional cases filed in 2014 x 85% of state = 238 cases in Parents Representation Program counties.

238 x 1.6 multiple PRP attorneys (many cases require 2 or more attorney representations) = 381 dependency representations divided by 80 cases per FTE contract attorney = 4.76 attorneys x \$137,900 compensation per attorney (including a .25 social worker and \$2,900 average expert costs) = 656,404. (Rounded for Request)

FY17

381 dependency representations plus 125.7 termination representations (about 33 percent of dependencies from FY16 are expected to result in terminations in FY17) = 508 cases.

508 cases divided by 80 cases per FTE contract attorney = 6.33 attorneys X \$137,900 per attorney (including a .25 social worker and \$2,900 for average expert costs) = \$872,907. (Rounded for Request)

Object Detail	FY 2016	FY 2017	Total
Staff Costs			
Non-Staff Costs	\$ 656,000	\$ 873,000	\$ 1,529,000
Total Cost	\$ 656,000	\$ 873,000	\$ 1,529,000

Washington State Judicial Branch 2015-2017 BIENNIAL BUDGET REQUEST

Decision Package

Agency: Office of Public Defense

Decision Package Title: Parents Representation – Permanency Initiative Funding

Budget Period: 2015-2017 Biennial Budget Request

Budget Level: Maintenance Level

Recommendation Summary Text

Funding was received in the 2013-2015 biennial budget (2014 supplemental budget process) for legal services in both the Office of Public Defense and the Attorney General’s Office to support a child welfare “Permanency Initiative” at the Department of Social and Health Services (DSHS). The funding was based on an anticipated increase in filing of termination of parental rights cases. The filings increase is anticipated to continue through the 2015-17 biennium and OPD will need additional funds to pay for parents’ representation in these cases.

Fiscal Detail

Operating Expenditures		FY 2016		FY 2017		Total
001-1 State General Fund		\$ 983,000		\$ 491,000		\$ 1,474,000
<hr/>						
Staffing		FY 2016		FY 2017		Total
FTEs		0		0		0

Package Description

Funding was received in the 2013-2015 biennial budget (2014 supplemental budget process) for legal services in both the Office of Public Defense and the Attorney General’s Office to support a child welfare “Permanency Initiative” at the Department of Social and Health Services (DSHS). The funding was based on an anticipated increase in filing of termination of parental rights cases. The filings increase is anticipated to continue through the 2015-17 biennium and OPD will need additional funds to pay for parents’ representation in these cases.

OPD received \$225,000 in FY14 and \$1,721,000 in FY15 for Permanency Initiative costs. Because it appears that all the predicted termination cases will not be filed during the 2013-15 biennium, OPD anticipates returning funds to the state.

Narrative Justification and Impact Statement:

This package contributes to the Judicial Branch Principle Policy Objectives as identified below.

Access to Necessary Representation. *Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interests at stake in civil judicial proceedings should have meaningful access to counsel.*

The AGO has prepared a 2015-17 updated Permanency Initiative request as well. OPD's anticipated caseload is based on the AGO's calculations. The AGO expects that as many as 263 additional Permanency Initiative termination case referrals may be made in 2015-17 and that the estimated 18-month period for discovery, trials and appeals will occur during the 2015-17 biennium, with about 66 percent of the costs occurring during FY16 and 33 percent of the costs occurring during FY17.

Impact on Clients and Services

OPD's Parents Representation Program provides dependency and termination case defense representation for indigent parents in about 85 percent of the state. These parents are dependent on OPD contract attorneys to ensure their guaranteed constitutional and statutory rights are protected.

Impact on other State programs

The funding is necessary to address increased parental rights termination filings from the DSHS "Permanency Initiative".

Relationship to Capital Budget

N/A

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

N/A

Alternatives explored

There are no alternatives to adequate funding for constitutionally and statutorily required parents representation that meets "effective assistance of counsel" standards.

Distinction between one-time and ongoing costs and budget impacts in future biennia

If the Permanency Initiative cases are filed as expected, it is anticipated that this will be one-time funding.

Effects of non-funding.

Without adequate funds to pay attorneys to represent indigent parents in termination of parental rights cases, it can be expected that contract attorneys will refuse to take an excessive number of cases, or if they accept the cases, that attorney caseload and quality

standards cannot be met. In either instance, there would be delays in moving children from high-cost foster care to permanency.

Expenditure calculations and assumptions and FTE assumptions

The AGO expects up to 263 new cases, totaling 420 termination representations the first year and 210 representations the second year. Like the AGO, OPD expects that 2/3 of the necessary funds will be expended in FY16 and 1/3 will be expended in FY17.

FY16

The average yearly termination case cost of \$2,340 x 420 cases = \$982,800 (Rounded for Request)

FY17

The average yearly termination case cost of \$2,340 x 210 = \$491,400 (Rounded for Request)

Object Detail	FY 2016	FY 2017	Total
Staff Costs	\$ 0	\$ 0	\$ 0
Non-Staff Costs	\$ 983,000	\$ 491,000	\$ 1,474,000
Total Cost	\$ 983,000	\$ 491,000	\$ 1,474,000

Washington State Judicial Branch
2015-2017 BIENNIAL BUDGET REQUEST

Decision Package

Agency: Office of Public Defense
Decision Package Title: Parents Representation Program
Statewide Expansion
Budget Period: 2015-2017 Biennial Budget
Budget Level: Policy Level

Agency Recommendation Summary Text

Funds are requested to expand the Parents Representation Program, which provides adequate legal representation for indigent parents involved in dependency and termination cases, to all juvenile courts statewide. The Office of Public Defense (OPD) Advisory Committee at its June meeting strongly encouraged OPD to pursue a final expansion to the eight counties not currently served by the Program.

Fiscal Detail

Operating Expenditures	FY 2016	FY 2017	Total
011-1 General Fund State	\$ 2,490,000	\$2,490,000	\$ 4,980,000
Staffing	FY 2016	FY 2017	Total
FTEs (number of staff requested)	1	1	1

Package Description

Program Background:

In 1999, the Legislature directed the Washington State Office of Public Defense (OPD) to report on inequalities in attorney funding in dependency and termination cases. OPD conducted an investigation of Washington's juvenile courts, finding severe disparities between state funding for the Attorney General's Office (AGO) for the initiation and processing of these cases compared to the funds provided by counties for legal representation of the indigent parents involved.

In 2000, the Legislature appropriated funds to OPD to create an enhanced parent representation pilot program in the Benton-Franklin and Pierce County juvenile courts.

Due to its success, the pilot program was continued until 2005. During the pilot, four independent evaluations verified the program's success in improving parents' representation. In addition, the evaluations showed that the outcomes for children and their families greatly improved, as parents were better able to address their parenting deficiencies. Based on these results, the Legislature has periodically expanded the program into additional counties.

This innovative program has been praised in national publications, including the *Juvenile and Family Court Journal*, the American Bar Association's *Children and the Law* newsletter *Courtworks*, and the National Council on Juvenile and Family Court Judges website, which publishes their evaluation of the program as a Technical Assistance Brief model for other states. The program's outstanding results shown by evaluations as promoting earlier permanency for children was published in the *Children and Youth Services Review* in 2012. Washington is a founding member of the American Bar Association's new parents' representation section.

The Need:

Funds are requested to implement the Parents Representation Program (PRP) in the eight counties currently lacking the Program. The Program would be expanded to counties in which indigent parents in dependency and termination cases are in emergent need of adequate attorney representation. About 15 percent of Washington state children and their indigent parents who are involved in dependencies and terminations still suffer emergent need for this Program. These cases not infrequently result in the permanent severance of their relationship to each other for all purposes.

Indigent parents in the 15 percent of the state without the Program are represented by county-funded attorneys, who practice under widely disparate contract terms and conditions, depending on the county. These attorneys often are burdened with excessive caseloads and practice without the benefit of professional oversight, independent social worker or investigator resources, or specialized dependency/termination training.

The Solution:

Indigent parents in dependency and termination cases are guaranteed the right to counsel, and the U.S. Supreme Court has declared that legal representation provided by government must be of adequate quality. In 2005, the Legislature declared "the legislature recognizes the state's obligation to provide adequate representation...to parents in dependency and termination cases." SB 5454. Since then, the Legislature has authorized the expansion of the Parents Representation Program in stages, several counties at a time. The Program is now implemented in 85 percent of the state. Several independent evaluations of the Parents Representation Program have shown that parents who are afforded the Program are substantially more likely to succeed in their cases, thus restoring their families, meeting the intent of our child welfare laws, and avoiding state-funded foster care and adoption subsidy costs totaling millions of dollars each year. This request would expand the Program to the remainder of the counties and would provide indigent parents in Adams, Douglas, Island, Lewis, Lincoln, Okanogan, San Juan, and Walla Walla counties, and the currently unserved half of indigent parents in Pierce County, with access to representation by OPD-contracted Parents Representation Program attorneys, just like similarly situated indigent parents in the other 31 counties.

Comparison to Existing Funding and Performance

Without the requested funding and statewide expansion of the Parents Representation Program, the state would spend less on representing indigent parents but, based on Program evaluations that show improved family reunification and earlier permanency, the state likely would spend significantly more on foster care and adoption subsidies. Without funding to expand the state Program, local attorneys in these eight counties likely will continue to lack caseload controls, professional oversight, readily available social worker and investigator services, and crucial training.

Narrative Justification and Impact Statement

This package contributes to the Judicial Branch Principle Policy Objectives as identified below.

Fair and Effective Administration of Justice in All Civil and Criminal Cases. *Washington courts will openly, fairly, efficiently and effectively administer justice in all criminal and civil cases, consistent with constitutional mandates and the judiciary's duty to maintain the highest level of public trust and confidence in the courts.*

In 2005, the Legislature declared "the legislature recognizes the state's obligation to provide adequate representation...to parents in dependency and termination cases." SB 5454. Since then, the Legislature has authorized the expansion of the Parents Representation Program in stages, several counties at a time. The program is now implemented in 85 percent of the state. This request seeks funding for the remainder of the counties. At present, indigent parents in Adams, Douglas, Island, Lewis, Lincoln, Okanogan, San Juan, and Walla Walla counties, and half the indigent parents in Pierce County, do not have access to representation by OPD-contracted Parents Representation Program attorneys while all similarly situated indigent parents in the other 31 counties receive OPD services.

OPD's enabling statute, RCW 2.70, establishes that the agency shall "administer all state-funded services ... (for) representation of indigent parents qualified for appointed counsel in dependency and termination cases, as provided in RCW 13.34.090 and 13.34.092

Expanding the Parents Representation Program will ensure program oversight and quality controls to provide a consistent level of service to indigent parents involved in dependency/termination cases statewide.

Access to Necessary Representation. *Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interest at stake in civil judicial proceedings should have meaningful access to counsel.*

Funding this request will ensure that indigent parents in all Washington counties can receive appointment of well-qualified Parents Representation Program attorneys, all of whom receive specialized training, access to social worker and investigator

resources, professional oversight, reasonable caseloads, and adequate compensation.

Appropriate Staffing and Support. *Washington courts will be appropriately staffed and effectively managed, and court personnel, court managers and court systems will be effectively supported.*

This request includes 1 FTE for a Parents Representation Program Managing Attorney at the OPD office in Olympia.

Measure Detail

Impact on clients and service

Implementation of the Parents Representation Program to all Washington counties will help meet the state's legal mandates, both constitutional and statutory, to ensure that effective counsel is appointed for indigent parents in dependency and termination cases. Program attorneys will have reasonable caseloads, enabling them to meet regularly and communicate with clients, ensure that parents have access to services designed to correct parental deficiencies, prevent court delays due to scheduling conflicts, and conduct high-quality case preparation, including access to experts and evaluators, timely discovery and case investigation, and participation in settlement negotiations when appropriate. The courts will be able to more effectively hold parents accountable for participating actively in services and the cases because their attorneys can ensure that they have timely and clear opportunities to do so. Program attorneys will hold all parties accountable for providing services that have been ordered by the court for parents.

Impact on other state services

Independent evaluations of the Parents Representation Program show that court efficiency is increased as continuances due to overscheduled attorneys are reduced. This increases the efficient use of judicial resources and leads to more high-quality, timely decisions regarding children's permanency.

Judicial officers in Parents Representation Program counties rate program services favorably. In a 2007 survey, judicial officers rated the Program's quality of representation at 4.2 on a 5 point scale.

A number of evaluations have found the Program increases family reunification rates. As a result, for each year the Program operates in a county, the cumulative alternate care savings increase. As the Program has expanded into additional counties over the years, foster care and caseload reductions generated by the Program continue to be substantial.

On a case-by-case basis, social workers and services providers will consistently be made more accountable because individual Program attorneys work with them to ensure that they provide services that have been ordered by the court and, if necessary, enforce services orders in court. This improves Washington's ability to fulfill mandatory federal review requirements.

Relationship to Capital Budget

N/A

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

N/A

Alternatives explored

The right to counsel for indigent parents is constitutionally or statutorily required. The alternative to providing these mandatory services by expanding the Parents Representation Program to the remaining eight counties is to maintain the status quo and allow for inconsistent (and in many cases inadequate) quality of representation from one county to the next.

Distinction between one-time and ongoing costs and budget impacts in future biennia

Funding for Parents Representation Program expansion would be an ongoing cost.

Effects of non-funding

Without funding to expand the Parents Representation Program, indigent parents in 15 percent of the counties will continue to receive an inconsistent and often inadequate quality of representation in dependency and termination proceedings, in violation of legal mandates. Dependent children in these areas will spend greater periods of time in foster care at substantial cost to the state. The court system in these counties will continue to struggle with delays and continuances caused by attorneys with high caseloads. The system's failure to provide for checks and balances in the counties without the Program will continue to harm families, negatively impacting children's well-being.

Expenditure calculations and assumptions and FTE assumptions

The budget request seeks funding for about 1,408 parents' representations in the targeted counties. About 18 contract attorneys will be compensated at a rate of \$107,100- \$122,400 depending on experience level and the local cost of doing business, for full-time caseloads of 80 open cases. Compensation includes the attorney's salary, office rent, secretarial staff, Professional dues and licensing, and overhead. 4.12 social workers at \$55,000 annually are also included, as well as expert costs at \$2,500 per attorney annually. OPD would add another program manager at \$110,000 for salary and benefits.

Object Detail	FY 2016	FY 2017	Total
Staff Costs	\$ 110,000	\$ 110,000	\$ 220,000
Non-Staff Costs	\$ 2,380,000	\$ 2,380,000	\$4,760,000
Total Objects	\$ 2,490,000	\$ 2,490,000	\$4,980,000