

Washington State Judicial Branch

2024 Supplemental Budget

State v. Blake Public Defense Response

Agency: Office of Public Defense

Decision Package Code/Title: BA – *St. v. Blake* Public Defense Response

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests \$2,863,000 and continuation of 6.0 FTEs for Fiscal Year 2025 for ongoing statewide public defense services and statewide coordination in response to the *State v. Blake* decision. Continued funding will sustain OPD coordination with statewide partners, and will ensure that counties are sufficiently resourced for ongoing *Blake* resentencing defense, eligible individuals' right to counsel is upheld, and community members are notified of potential *Blake* relief. The *Blake* decision made all previous convictions of simple drug possession void. Individuals who are incarcerated or are serving DOC community custody 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	0.00	6.00	6.00	0.00	0.00	0.00
Operating Expenditures						
Fund 16A-1 (Administrative) (Expend Auth. 050)	\$0	\$963,000	\$963,000	\$0	\$0	\$0
Fund 16A-1 (County Assistance) * (Expend Auth. 070)	\$0	\$1,900,000	\$1,900,000	\$0	\$0	\$0
Total Expenditures						
	\$0	\$2,863,000	\$2,863,000	\$0	\$0	\$0

*OPD received FY 2024 *Blake* funding in the JSTA, which is a biennial appropriation. FY 2024 projections indicate \$1.6M in County Assistance will be remaining at the end of FY 2024. OPD estimates a total need of \$3.5M in County Assistance for FY 2025, and will roll over the remaining \$1.6M to partially cover the estimated annual need. Consequently, OPD is requesting an additional \$1.9M in County Assistance for FY 2025.

NOTE: OPD receives JSTA funding under three different expenditure authority codes assigned by the Office of Financial Management. The Administrative portion of this request should be appropriated in Expenditure Authority 050 and the County Assistance portion should be appropriated in expenditure authority 070 as noted above.

Package Description:

Background:

In February 2021 the Washington Supreme Court issued *State v. Blake*, 197 Wn.2d.170 (2021), which found Washington's simple drug possession law violated due process. As a result, all convictions under the statute were void,

with a retroactive impact dating back to 1971. The number of impacted convictions was originally estimated to be 150,000 to 250,000.

Correcting void convictions and sentencing orders does not occur in an automatic or self-executing manner. Washington's 39 county legal systems operate independently of one another. The process by which courts, clerks, prosecutors, and public defenders manage *Blake* cases differs by jurisdiction. In many locations, individuals eligible for *Blake* relief are still required to file legal motions to initiate the legal process – a process which is complicated without the assistance of counsel.

Consistent with legislative appropriations for Fiscal Year 2022 and Fiscal Year 2023, OPD requested a continuation of \$11 million for the 2023-2025 biennium for public defense-related *Blake* response work. Citing uncertainties about the remaining *Blake* work, the Legislature appropriated only \$5.5 million to OPD for the biennium. With the benefit of additional data and fiscal analysis from ongoing experience, OPD can now offer a more informed prediction on the funds necessary to complete *Blake* public defense work through Fiscal Year 2025.

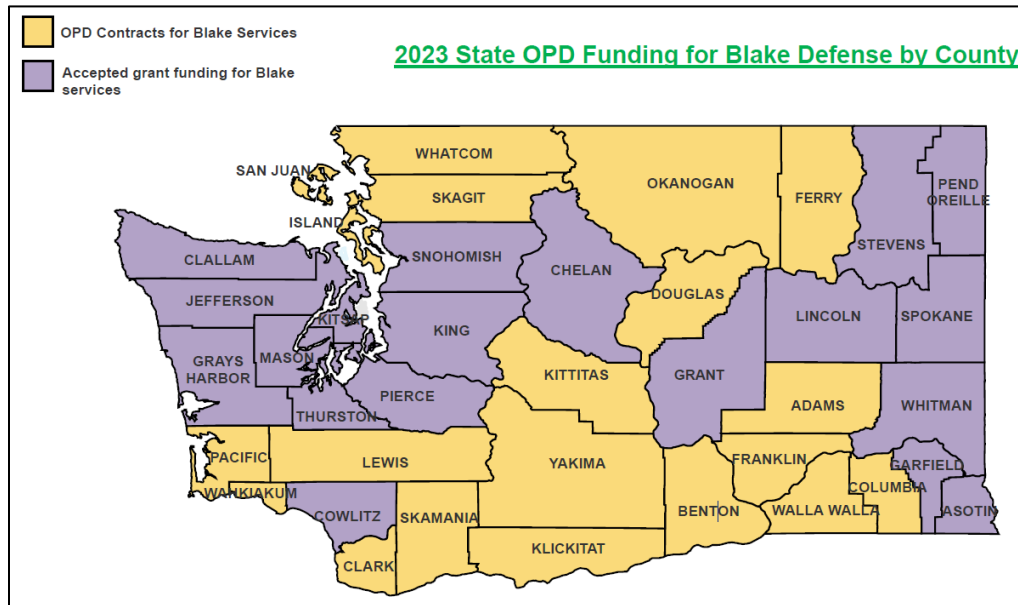
Current Situation:

In Fiscal Year 2023 OPD provided *Blake* services to nearly 10,000 persons, including individuals who required multiple legal representations to vacate one or more convictions and litigate new criminal sentences.

Priority is focused on currently incarcerated people whose prison sentences are potentially reduced because of vacated drug possession convictions. Some counties have completed representation for this group, while many are still working through the list of eligible individuals. In many jurisdictions, the remaining cases are quite complicated – defendants with longer sentences for more serious crimes, and unique legal situations requiring significant litigation. The second priority tier is providing services for eligible individuals serving community custody sentences. The third priority is representing individuals who are no longer under Department of Corrections (DOC) jurisdiction, but are eligible to have past convictions removed from their records.

For Fiscal Year 2024 and Fiscal Year 2025 OPD projects a sustained level of work to address ongoing resentencing cases and a significant increase in vacature work due to the state's newly opened LFO Refund Bureau. Some cases that were previously addressed need to be re-litigated consistent with the evolution of case law clarifying due process rights under the *Blake* decision.

As authorized by OPD budget provisos, counties have two options for accessing state funds for *Blake* public defense. Counties may either (1) receive grant funds from OPD to locally manage *Blake* public defense efforts, or (2) designate OPD to directly contract with attorneys to represent individuals in their jurisdictions. Nineteen counties elected to receive grant funding in Fiscal Year 2023 (previously 31 counties in FY 2022), and 20 counties designated OPD to manage their local *Blake* public defense efforts. (See map below.) OPD staffs 2.5 FTEs to manage these two county funding options – one managing attorney, one paralegal, and one part-time administrative assistant.



For Fiscal Year 2023 the legislature funded OPD to add a *Blake* Triage Team to its efforts. The Triage Team comprises 3.5 FTEs – one managing attorney, one paralegal, one part-time data analyst, and one community outreach specialist.

The Triage Team provides enhanced state assistance for public defense attorneys, courts, and the general public. Team members 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* response work that has been completed, work that remains to be done, barriers to progress, and the resources needed to help local jurisdictions complete the remaining *Blake* resentencing and vacature cases. During FY 2023, OPD’s *Blake* Triage Team triaged approximately 1,500 cases from 26 counties.

The Triage Team also manages a “*Blake* Line,” fielding telephone and email inquiries from the public seeking clarification and information about how to pursue *Blake* relief. Starting in Fiscal Year 2024, the “*Blake* Line” is receiving public inquiries about the recently launched statewide Refund Bureau to refund *Blake*-related legal financial obligations. In the week between July 27 and August 4, 2023 (first week of Refund Bureau operations), OPD logged 417 telephone calls to the *Blake* Line. Call duration ranged from 1 to 20 minutes, with many calls requiring additional follow-up to help the caller assess the status of their *Blake* vacature and access their LFO refund. This does not include numerous additional inquiries made directly to OPD’s outreach specialist. OPD anticipates that the general public will continue to require significant assistance from the *Blake* Triage Team.

OPD also continues to collaborate with other state and county level agencies engaged in *Blake* work, such as the Department of Corrections (DOC), Administrative Office of the Courts (AOC), Washington Association of Prosecuting Attorneys (WAPA), Washington State Patrol (WSP), Superior Court Judges Association (SCJA), county clerks, the Office of the Governor, and local public defense providers.

Problem:

OPD, other state agencies, and county superior courts continue to work diligently to resolve all *Blake*-related cases. OPD received \$5.5 million for the 2023-2025 biennium. However, based on expenditure and case analysis data, OPD projects requiring an additional \$2.8 million to continue its work and meet the ongoing need for *Blake* defense response in FY 2025.

Proposed Solution:

OPD requests \$2,863,000 to sustain the 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 triage assistance to collect, sort, organize, and review data to identify and prioritize cases awaiting representation. The number of community members contacting OPD's *Blake* Line has steadily increased and is expected to increase further with implementation of the Blake Refund Bureau. Other institutional partners rely on OPD to bring the public defense perspective to statewide discussions on policy and practice.

Fully describe and quantify expected impacts on state residents.

It is estimated that 150,000 - 250,000 people were convicted of simple drug possession in Washington, and are all entitled to relief by having their convictions vacated, and receiving reimbursement of paid legal financial obligations. *Blake*-related relief is not self-executing, which means impacted individuals must actively initiate court proceedings. Defense attorneys help impacted persons 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* response 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 this was the best option chosen.

OPD considered leaving other impacted state agencies and the decentralized public defense providers in 39 individual counties to fend for 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 fend-for-themselves alternative because it perpetuates "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 coordinated resources to fully support necessary *Blake* defense work. Without state-level funding and coordination of data and resources, *Blake* cases will take longer to process. Some counties might de-prioritize or overlook potential *Blake* cases.
- Counties are still recovering from the backlog of trials caused by COVID, and most recently, counties have struggled to recruit and retain a sufficient number of public defense attorneys. Counties are in crisis with public defense, and state *Blake*-related assistance through funding, contracts, and triaging helps ease their burden.
- Not funding this request would exacerbate the local inequities that contribute to "justice by geography." With the requested funding, OPD will continue to be 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?

No

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

All expenditures will be one-time costs for FY 2025, and will continue services currently funded in FY 2024.

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 24	FY 25	FY 26	FY 27	
Managing Attorney		2.0	0	0	Oversee distribution and use of state funds by counties, manage contract attorneys, coordinate case-level triage efforts, analyze DOC data and sentencing information, coordinate efforts with other key stakeholders, conduct training for public defenders statewide.
Paralegal		2.0	0	0	Support the <i>Blake</i> efforts of the OPD Managing Attorneys.
Data Analyst		0.5	0	0	Merge, sort, and organize <i>Blake</i> related data from different state resources to most efficiently manage <i>Blake</i> triaging statewide.
Community Outreach Specialist		1.0	0	0	Conduct formal and on-demand communication with incarcerated persons and community groups to provide information and direction on available processes for <i>Blake</i> relief.
Administrative Assistant		0.5	0	0	Administrative support for the above-mentioned positions.

Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 24	FY 25	FY 26	FY 27	
Contracts		\$200,000	0	0	Contract with firm to provide technical assistance to public defenders on complex <i>Blake</i> cases involving unique legal issues. Contract with provider for additional data analysis.
Goods and Services		\$10,000	0	0	Specialized software for data analysis. Costs related to conducting trainings for public defense attorneys. Training and resources for OPD staff.
Travel		\$10,000	0	0	OPD staff oversee funds distribution and/or attorney contract management in all 39 counties. Staff conduct site visits to monitor contracted work.
Grants or Pass-Thru Funding		\$1,900,000	0	0	OPD will continue to allocate funds to counties and where so designated by counties, will contract directly with attorneys to provide <i>Blake</i> representation.

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

Accessibility

Current law requires *Blake*-impacted individuals to petition the court to request the relief due to them. 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 legal representation to seek *Blake* relief. Filing motions, seeking resentencing hearings, vacating prior convictions, and receiving reimbursement of LFOs are not simple or readily accessible procedures. Undoing convictions is complex 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 6.0 FTEs of 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 local 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. With Washington’s non-unified courts and decentralized approach to public defense, it is crucial to have a state-level public defense partner join discussions and coordinate with DOC, AOC, WSP, county clerks, the Superior Court Judges Association, and other impacted organizations and state agencies.

Stakeholder response:

As many as 250,000 individuals could be 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. In addition, courts, local governments, and other state agencies likely will support this Decision Package.

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

State v. Blake, 197 Wn.2d.170 (2021), holds that Washington’s simple drug possession law violated due process. This holding means that any convictions under this statute are 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. However, transfers from the General Fund-State into the Judicial Stabilization Trust Account will be needed to fund this request in the budget bill under Special Appropriations, Part VII.

FOR THE OFFICE OF FINANCIAL MANAGEMENT— JUDICIAL STABILIZATION TRUST ACCOUNT

General Fund—State Appropriation (FY 2024).	\$0
General Fund—State Appropriation (FY 2025).	\$2,863,000
TOTAL APPROPRIATION.	\$2,863,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations are provided solely for expenditure into the judicial stabilization trust account created in RCW 43.79.505

Are there impacts to state facilities?

No

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

- See OPD Blake Team Descriptive Chart, attached.
- See Blake Defense Clients Served spreadsheet, attached.
- [*New Portal to Reimburse Fines of Overturned WA Drug Cases*](#), MyNorthwest, June 15, 2023.
- [*In Wake of 'Blake,' Washington Courts Clear Drug Convictions and Refund Fines*](#), KUOW, May 26, 2022.
- [*Clear Your Record of Simple Possession? Not That Easy but You Should Try*](#), Northwest Public Broadcasting, December 21, 2021.
- [*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

Agency Contacts:

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Total

Clients Served	FY23 Total
Adams	62
Asotin	22
Benton	1,049
Chelan	66
Clallam	-
Clark	85
Columbia	-
Cowlitz	101
Douglas	31
Ferry	5
Franklin	421
Garfield	1
Grant	12
Grays Harbor	295
Island	1
Jefferson	37
King	976
Kitsap	7
Kittitas	19
Klickitat	37
Lewis	78
Lincoln	18
Mason	76
Okanogan	30
Pacific	12
Pend Oreille	3
Pierce	2,621
San Juan	1
Skagit	65
Skamania	19
Snohomish	1,130
Spokane	528
Stevens	105
Thurston	1,690
Wahkiakum	-
Walla Walla	62
Whatcom	40
Whitman	6
Yakima	149
Total	9,860

Grants

County	Jul-Sep 22	Oct-Dec 22	Jan-Mar 23	Apr-Jun 23	FY23 Total
Asotin	5	10	-	7	22
Benton	364	18	-	-	382
Chelan	24	24	18		66
Clallam	-	-	-		-
Clark	-	-	-		-
Cowlitz	30	38	12	21	101
Garfield	-	-	-	1	1
Grant	-	-	-	12	12
Grays Harbor	15	34	1	245	295
Island	-	-	-		-
Jefferson	3	23	11		37
King	242	360	196	178	976
Kitsap	3	4	-		7
Kittitas	5	6	-	-	11
Klickitat	21	10	-	-	31
Lewis	6	-	-	-	6
Lincoln	-	18	-	-	18
Mason	61	15	-		76
Pacific	-	-	-	1	1
Pend Oreille	-	-	3	-	3
Pierce	619	256	555	1,191	2,621
San Juan	-	-	-	-	-
Skagit	41	23	-	-	64
Skamania	6	10	-		16
Snohomish	228	302	262	338	1,130
Spokane	181	56	174	117	528
Stevens	17	17	24	47	105
Thurston	179	409	684	417	1,689
Wahkiakum	-	-	-		-
Walla Walla	1	61	-	-	62
Whitman	5	1	-	-	6
Yakima	67	63	-	-	130
Total	2,123	1,758	1,940	2,575	8,396

Contracts

County	Clients Served
Adams	62
Benton	667
Clark	85
Columbia	-
Douglas	31
Ferry	5
Franklin	421
Island	1
Kittitas	8
Klickitat	6
Lewis	72
Okanogan	30
Pacific	11
San Juan	1
Skagit	1
Skamania	3
Thurston	1
Whatcom	40
Yakima	19
Total	1,464

OPD Blake Team

Coordinating the Public Defense Blake Response

Blake Defense

Blake Triage

