

Washington State Judicial Branch

2024 Supplemental Budget

Not Guilty by Reason of Insanity Attorney Vendor Rate

Agency: Office of Public Defense

Decision Package Code/Title: BB – NGRI Attorney Vendor Rate

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding that will allow the agency to include newly authorized not guilty by reason of insanity (NGRI) attorney contracts in the Fiscal Year 2025 attorney vendor rate adjustment that the Legislature previously approved for OPD’s other client services contracts. (General Fund-State)

Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.00	0.00	0.00	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1 NGRI Vendor Rate+	\$0	\$366,160	\$366,160	\$366,160	\$366,160	\$732,320
Total Expenditures						
	\$0	\$366,160	\$366,160	\$366,1600	\$366,160	\$732,320

Package Description:

Background and Current Situation:

The 2023 Legislature passed SB 5415, directing OPD to implement new client services contracts with up to 20 qualified attorneys to provide representation for persons acquitted as not guilty by reason of insanity (NGRI) and civilly committed under Chapter 10.77 RCW. NGRI patients have a right to counsel throughout all proceedings under Chapter 10.77 RCW. The Legislature appropriated funding to implement SB 5415 based on the attorney vendor rate that was in place at that time for similar OPD client services contracts.

In a separate action during the 2023 session, the Legislature approved a biennial operating budget that implements a general vendor rate adjustment for contract attorneys in all other OPD client services programs. The rate adjustment was adopted to equalize contract compensation rates across different OPD programs and to move OPD contract attorneys closer to compensation parity with their counterparts in the Attorney General’s office. As independent contractors, OPD-contracted attorneys cover all business costs including retirement savings and health care benefits with the annual contract fee. The vendor rate adjustment became effective for OPD’s Appellate and Parent Representation programs in FY 2024, and will be implemented for the RCW 71.09 program in FY 2025.

Passage of SB 5415 did not include the new NGRI contract attorneys in the general vendor rate adjustment.

Problem:

The 2023-2025 biennial operating budget appropriates funding to OPD to provide a vendor rate adjustment for OPD client services contracts with attorneys in all OPD programs except the new NGRI Program. The vendor rate adjustment

became effective for OPD's Appellate and Parent Representation programs in FY 2024, and will be implemented for the RCW 71.09 program in FY 2025.

The NGRI contract attorneys authorized by SB 5415 were funded at the same level as attorneys in the RCW 71.09 program but were not included in the 10 percent vendor rate adjustment for Fiscal Year 2025. This creates inequity among OPD's contract attorneys, which over time could discourage attorneys from accepting OPD contracts to represent NGRI clients.

Proposed Solution:

This Decision Package solves the problem of inequitable OPD contract fees by extending the FY '25 attorney vendor rate adjustment to include the newly authorized NGRI contract attorneys. Funding this decision package will provide NGRI contract attorneys a 10 percent vendor rate increase in Fiscal Year 2025 (the same as RCW 71.09 contractors), valuing a full-time contract at approximately \$205,700, consistent with attorney contracts in other OPD client services programs.

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

Funding this request will help OPD attract qualified attorneys to accept NGRI client services contracts. These attorneys will represent indigent Washington residents who are found not guilty by reason of insanity (NGRI) and civilly committed at a state hospital, and who have a right to counsel throughout their term of commitment. Funding this request will indirectly benefit families of committed individuals, as well as the State of Washington which is obligated to provide the right to counsel to NGRI clients.

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

Implementing NGRI attorney contracts at a compensation level less than other OPD contracts is not an acceptable alternative because qualified attorneys will choose other, higher-paid opportunities. Skilled public defense attorneys are in short supply in all practice areas throughout Washington State and the nation. Fair and equitable compensation across OPD's programs is a critical recruitment tool.

What are the consequences of not funding this request?

Not funding this request will cause NGRI attorneys to receive less compensation than other OPD-contracted attorneys providing similar client services. Lower pay will discourage qualified attorneys from accepting an NGRI contract, which potentially could delay or deny the right to counsel for NGRI patients.

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

No.

Decision Package expenditure, FTE and revenue assumptions:

All expenditures would be ongoing costs for client service contracts. This includes up to 20 NGRI attorney contracts in the 2025 vendor rate adjustment previously adopted for other OPD contract attorneys.

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

Fair and Effective Administration of Justice

Fair and effective administration of justice for indigent NGRI patients requires a sufficient number of qualified public defense attorneys to provide representation as guaranteed by Chapter 10.77 RCW.

Access to Necessary Representation

Chapter 10.77 RCW provides NGRI patients a right to counsel throughout the term of their commitment. Competitive compensation is necessary to recruit and retain qualified attorneys to ensure that patients can access their right to counsel.

Commitment to Effective Court Management

Equitable compensation for OPD's NGRI contract attorneys will help ensure an adequate supply of knowledgeable, qualified practitioners to promote procedural fairness in the courts and avoid unnecessary delays.

Sufficient Staffing and Support

As the designated statewide provider of counsel for NGRI patients, OPD requires contracted attorneys to have significant professional experience. Without competitive compensation, OPD will have insufficient resources to recruit and retain qualified NGRI counsel.

Are there impacts to other governmental entities?

No.

Stakeholder response:

Attorneys who are accepting OPD's new NGRI contracts know that their colleagues in a similar OPD program will receive a vendor rate adjustment in FY 2025. New NGRI contractors believe they deserve equitable compensation.

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

No.

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?

No.

Are there information technology impacts?

No.

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