

Washington State Judicial Branch

2024 Supplemental Budget

Statewide Evaluation of Public Defense Services

Agency: Office of Public Defense

Decision Package Code/Title: BD – Evaluation of Public Defense Svcs.

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests one-time funding to contract with an independent subject-matter expert organization to conduct a statewide evaluation of county and city public defense services to help inform OPD and the Legislature on the most effective methods to support, monitor, and resource local public defense services and ensure constitutionally sufficient representation of indigent individuals in all jurisdictions. (General Fund-State)

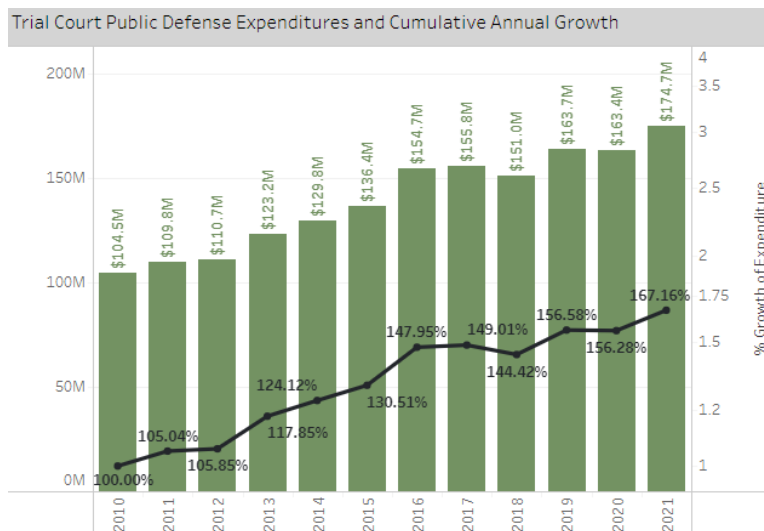
Fiscal Summary:

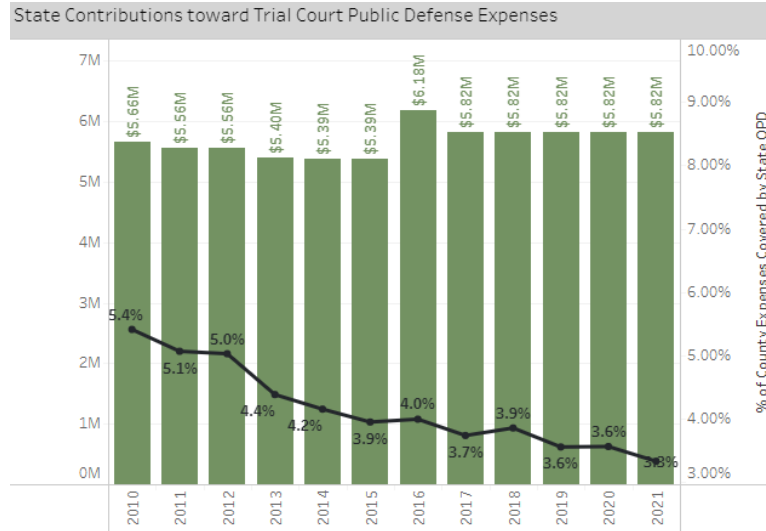
	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
Staffing						
FTEs	0.0	0.0	0.0	0.0	0.0	0.0
Operating Expenditures						
Fund 001-1	\$160,000	\$160,000	\$320,000	\$0	\$0	\$0
Total Expenditures						
Net Cost	\$160,000	\$160,000	\$320,000	\$0	\$0	\$0

Package Description:

Background and Current Situation:

Washington law requires county and city governments to fund and deliver indigent criminal defense within the scope of their local government functions. ([RCW 10.101.030](#)) Meanwhile, the Washington State Office of Public Defense (OPD) provides state-funded representation in other unique case types. ([RCW 2.70.020](#)) OPD also disburses some state grant funds to cities and counties to support improvements to local public defense services. ([RCW 10.101.050 - .080](#)) However, as shown in the following two charts published by the [Washington State Association of Counties](#), county public defense expenditures have increased, while state grant funds have remained largely stagnant:





In recent years there have been proposals to increase state funding for local governments' public defense services:

- [Senate Bill 5773, 2023-2024 Legislative Session](#)
- [House Bill 2687, 2017–2018 Legislative Session](#)
- [Counties Suffer from Inadequate State Funding for Trial Court Public Defense Services](#), Washington State Association of Cities, January 14, 2020.
- [Frustrated and Broke, Washington Counties Consider Suing the State](#), NW News Network, April 5, 2018.

Additionally, in recent years litigation has raised concerns about some local governments' capacity to deliver constitutionally sound public defense representation:

- [Davison v. State](#), 196 W2d. 285 (2020)
- [Wilbur v City of Mount Vernon et. al.](#), 989 F.Supp 2d 1122, W.D. Wash (2013)

Washington is not unique in facing questions and challenges to the funding and delivery of public defense services. Neighboring state legislatures have recently taken significant steps to address the funding sources and structural models needed to improve public defense representation. For example:

- In 2023 Idaho House Bill 236 transitioned public defense services from counties to a new, state-administered system. ([House Bill 236 and Next Steps](#), Idaho Association of Counties, April 24, 2023)
- In 2023 Oregon Senate Bill 337 increased funding for the state-run public defense system, and initiated a transition from a contract model to state employee staff attorneys to combat the current shortage of attorneys. ([Oregon Lawmakers Put \\$98 Million Toward Public Defender Crisis](#), Oregon Capital Chronical, June 22, 2023)

Problem:

Washington lacks a comprehensive evaluation of current local public defense services, and lacks a plan for how the state can most effectively channel resources to support constitutionally effective representation in trial courts statewide. Counties and cities administer public defense differently jurisdiction by jurisdiction, which makes it more difficult for the state to strategically identify needed resources or measure the effectiveness of state support. The absence of a strategy is particularly acute as some jurisdictions are currently experiencing extreme shortages in new applicants for public defense positions, and an increase of attorney attrition. In some instances, incarcerated indigent individuals are without

counsel and denied constitutional protections. (See, for example, [Defendants Have a Right to Counsel, but Tri-Cities Struggles to Hire Enough Lawyers](#), Tri-Cities Area Journal of Business, January 2022.)

Proposed Solution:

OPD requests one-time funding to contract with an independent subject-matter expert organization to conduct a statewide evaluation of county and city public defense services. Using an objective perspective founded in state and national public defense standards and an understanding of public defense systems in other states, the selected organization will take a “deep-dive” look into a sample of representative jurisdictions in Washington. The sample cities and counties will be selected to reflect diversity in population, geographic characteristics, and public defense delivery models. The contracted organization will also engage with “Project Advisors” comprising public defense representatives, city and county government representatives, state representatives from the three branches of government, and community representatives experienced with and/or impacted by city and county public defense services. At the conclusion of the evaluation the organization will submit a report to the Legislature identifying current barriers to effective representation, and will recommend local government and state government solutions for effective strategies to ensure constitutionally sufficient services.

Fully describe and quantify expected impacts on state residents.

State residents who engage with or who are represented by public defense counsel currently experience different levels of service jurisdiction-by-jurisdiction. A statewide evaluation will help residents understand the expectations of constitutionally sufficient public defense representation provided by their government.

Explain what alternatives were explored by the agency and why this was the best option chosen.

OPD currently lacks both the staffing capacity and subject-matter expertise to engage in such an evaluation on its own. OPD employees work intimately with local city and county governments, and collect data and information that can be helpful components for an evaluation. However, such an evaluation could have long-term implications and must be conducted by an organization that already has an established methodology that has been successfully employed to evaluate other public defense systems around the nation.

What are the consequences of not funding this request?

Not funding this Decision Package will leave Washington without expert guidance on whether and how to better support city and county governments for improved public defense services.

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

No.

Decision Package expenditure, FTE and revenue assumptions:

Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 24	FY 25	FY 26	FY 27	
Contract with Expert Organization	\$150,000	\$150,000	\$0	\$0	Expert organization to conduct statewide evaluation of city and county public defense services and write report for the Legislature with findings and recommendations. Work would begin in FY 2024 and conclude in FY 2025.
Travel	\$10,000	\$10,000	\$0	\$0	Travel expenses for Project Advisors to inform the expert evaluation process.

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

Access to Necessary Representation

Cities and counties take individualized approaches to structuring and funding public defense services, which can have direct impacts on the quality of representation received by clients. For example, some jurisdictions provide monitoring and oversight of contracted defense counsel, while others do not. Some incorporate case investigation and social work services into their scope of public defense services, while others do not. Some fund legal assistants and paralegals, others do not. The administrative structure and resourcing of local public defense can directly impact an indigent individual's ability to effectively exercise their constitutional rights to challenge the state's evidence.

Sufficient Staffing and Support

The staffing and support of public defense services varies by jurisdiction. While the WSBA has published recommendations on appropriate staffing and support of public defense delivery systems ([Washington State Bar Association Standards for Indigent Defense Services, 2021](#)), no comprehensive evaluation has reviewed whether jurisdictions meet these standards, or determined the consequences of falling short of these recommendations.

OPD does not have sufficient agency staff to conduct the proposed comprehensive statewide evaluation, thus proposes a contract with an independent subject-matter expert.

Are there impacts to other governmental entities?

No.

Stakeholder response:

Throughout the summer OPD met with a variety of stakeholders who are in favor of engaging a subject-matter expert organization to conduct a statewide evaluation of public defense. Stakeholders at these meetings included legislators, staff from the Office of the Governor, members of the Washington State Association of Counties and the Association of Washington Cities, a County Manager, an elected County Prosecuting Attorney, and representatives of the Washington Defender Association and the Washington State Bar Association's Council on Public Defense.

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?

- [Nine Ways that States can Provide Better Public Defense, Prison Policy Initiative, July 27, 2021.](#)
- [Reframing the Indigent Defense Crisis, John Gross, Harvard Law Review, March 18, 2023.](#)
- [State Evaluations, The Sixth Amendment Center](#)

Are there information technology impacts?

No.

Agency Contacts:

Sophia Byrd McSherry, Deputy Director
360-586-3164, ext. 107
Sophia.ByrdMcSherry@opd.wa.gov