

Washington State Judicial Branch

2025-2027 Biennial Budget

Appellate Backlog Response

Agency: Office of Public Defense

Decision Package Code/Title: 1A – Appellate Backlog Response

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests ongoing funding to retain contract attorney positions added in Fiscal Year 2025 to cover a backlog of case assignments and increased workload in the Appellate Program, as well as to backfill FMLA leave at a large contractor. In Fiscal Year 2025, OPD is adding 11 FTE contract attorneys to respond to these issues, and OPD expects that these contracts will be needed going forward to stay abreast of appellate workload. OPD requests 1 FTE attorney trainer to develop and implement appellate training for contractors.

Fiscal Summary: Funding is requested for 1 FTE OPD attorney trainer and 11 FTE appellate contract attorneys.

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	1.00	1.00	1.00	1.00	1.00	1.00
Operating Expenditures						
Fund 001-1	\$2,632,000	\$2,812,000	\$5,444,000	\$2,812,000	\$2,812,000	\$5,624,000
Total Expenditures						
	\$2,632,000	\$2,812,000	\$5,444,000	\$2,812,000	\$2,812,000	\$5,624,000

Package Description:

Response to increased workload and backlog of case assignments – 11 FTE contract attorneys and 1 FTE Trainer

The Office of Public Defense (OPD) Appellate Program provides contracted attorneys to represent indigent clients before the Washington Court of Appeals and Supreme Court in criminal, juvenile dependency and termination, juvenile offender, and civil commitment cases. A full-time contract attorney handles the equivalent of 36 cases per year at an average 350 transcript pages, as mandated by Supreme Court Standard for Indigent Defense 3.4. Appellate attorneys are credited for one case assignment for each case assigned, as well as for every 800 pages of trial transcript, based on data showing that counting an additional credit every 800 pages maintains an average of 350 pages or less per case credit.

Factors Contributing to Workload Increase

While the number of filings in the Court of Appeals and Supreme Court has not increased, other factors contribute to significant growth in workload for OPD's contracted appellate attorneys.

- The workload increase is due in large part to more cases presenting very long trial transcripts. Transcript lengths averaged approximately 800 pages between Fiscal Year 2020 and Fiscal Year 2023, but rose to an average 929 pages in Fiscal Year 2024. Ninety-nine more case credits were assigned for long transcripts in Fiscal Year 2024 than in Fiscal Year 2023.
- The workload increase is also partly due to more appointments of appellate counsel for children in dependency and termination cases on appeal. RCW 13.34.212(3) provides a phased-in right to counsel for children in dependency and termination cases. As this right to counsel expands to cover more counties, more children receive counsel at trial in dependency and termination cases, and the number of children requiring appellate counsel increases as well. The number of children receiving appellate counsel in dependency and termination cases rose from eight in Fiscal Year 2023 to 24 in Fiscal Year 2024.

- In addition, appellate counsel increasingly is needed for indigent clients in minor guardianship cases under RCW 11.130.200(5). Counsel was appointed on three such cases in Fiscal Year 2023, and nine cases in Fiscal Year 2024.

Software Error Creates Backlog of Case Assignments

Compounding the workload issue, a latent error in the Appellate Program’s case management software concealed much of the workload increase until June 2024 – the end of the fiscal year. At that time, OPD discovered that more than 100 cases were not counted by the defenderData software. Ultimately, Fiscal Year 2024 closed with a backlog of 117 case credits. The software bug did not cause the backlog, but it prevented OPD from implementing a more timely response to the growing workload.

OPD has made policy changes to address the software problem and prevent future case management errors. Going forward OPD is reconciling its primary case management reports with contractor records on a quarterly basis to ensure no cases are omitted from the case credit count. OPD has consistently performed quarterly caseload audits in the past, but the audits reconciled case assignments only, they did not verify that assigned cases were correctly counted in case credit tracking reports.

OPD Response

To address both the workload growth as well as the case assignment backlog, OPD added contract attorneys for Fiscal Year 2025. Of these, 3.25 FTE contract attorneys are covering the workload growth and 5.75 FTE contract attorneys are tackling the backlog of case assignments, in order to eliminate the backlog as quickly as practical and avoid delays in the courts. OPD estimates that this approach will resolve the backlog within Fiscal Year 2025. However, based on recent workload trends as described above, OPD expects that the contract attorney positions added in Fiscal Year 2025 are needed going forward to keep abreast of growth in appellate workload as well as anticipated updates to appellate caseload standards.

Most of the newly contracted appellate attorneys do not have significant appellate experience. To ensure that they can comply with the Supreme Court’s Standards for Indigent Defense and provide competent representation to their clients, OPD requests 1 FTE attorney trainer. Washington State Bar Association (WSBA) appellate guidelines require attorneys to be supervised on their first five appellate briefs, and an OPD attorney trainer can provide oversight to facilitate contractor compliance. The OPD attorney trainer also will be responsible for training, issue spotting, reviewing briefs, helping contractors prepare for oral arguments, staffing cases, researching novel legal issues, and providing technical assistance to contractors. The position will manage the recruitment and selection process for new appellate contractors, develop and implement program policies, perform long-range planning around program implementation, and participate in workgroups and organizations designed to improve appellate defense delivery.

Additional Resources to Support Large Contract Firms

The Appellate Program software error most severely impacted OPD contractor Nielsen, Koch & Grannis (NKG). NKG is one of OPD’s two Seattle-based law firms with appellate contracts. The software bug resulted in 100 more case credits being assigned to NKG than their contract authorized. NKG agreed to keep the excess cases in exchange for an increased contract fee to allow them to add 1 FTE contract attorney to their appellate practice. This additional attorney will permit NKG to manage the excess case credits with less administrative waste and negative impact on clients than would follow if 100 cases needed to be reassigned across multiple contractors.

Separately, OPD funded an additional 1 FTE contract attorney position at its other Seattle-based appellate contractor, Washington Appellate Project (WAP). WAP is OPD’s largest Appellate Program contractor, employing 14.58 attorney FTEs. Due to its size, WAP faces persistent Family and Medical Leave Act (FMLA) absences that it is unable to cover without an additional attorney position. It is impractical to hire temporary coverage for individual FMLA leave periods;

by the time a temporary attorney is trained and performing efficiently, the original attorney is back from leave and the temp must be let go. The only viable solution is for OPD to authorize WAP for an additional full-time attorney position so that there is sufficient staffing to effectively cover cases when WAP attorneys take FMLA.

Based on workload trends and anticipated use of FMLA, OPD expects that these two FTE contract positions added in Fiscal Year 2025 will be needed going forward.

Fully describe and quantify expected impacts on state residents.

Funding this decision package ensures that, to the extent practical, indigent clients have counsel timely appointed and their rights effectuated even as appellate workload increases. Providing oversight and training through an experienced in-house appellate attorney trainer will improve the quality of work performed by contractors and help them comply with the WSBA Indigent Defense Standards.

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

OPD considered waiting until the biennial budget to add contract attorneys, instead of hiring in Fiscal Year 2025 and seeking ongoing funding. That delay would have doubled the existing backlog, assuming Fiscal Year 2025 workload neither increases nor decreases compared to Fiscal Year 2024. It would have required OPD to request substantially more contract positions to tackle a much larger backlog, increasing costs to the state and further delaying cases. Waiting to add FMLA backfill also would have exacerbated delays in casework.

Adding 1 FTE appellate attorney trainer at OPD is the most cost-efficient way to ensure new appellate contractors can meet caseload standards and comply with performance guidelines. This position will provide the oversight necessary for OPD to contract with attorneys who do not meet the minimum requirements for filing appellate briefs without supervision, greatly expanding the pool of potential contract applicants.

What are the consequences of not funding this request?

Not funding this decision package could delay appointment of counsel, and clients with short criminal sentences might serve their entire sentences before appellate relief can be provided. And, although OPD is prioritizing appointment of counsel for dependency and termination clients, there may be a wait list for these cases as well if filings exceed OPD's capacity. In that event, parents wrongfully separated from their children might find reunification impossible. When delays occur in dependency and termination cases parents can lose hope and suffer relapses or recurrences of mental health issues, making reunification impossible even if their dependency or termination cases are ultimately reversed on appeal.

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

This decision package retains contract attorney positions added in Fiscal Year 2025.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 26	FY 27	FY 28	FY 29	
Attorney trainer	1.0	1.0	1.0	1.0	OPD staff attorney to provide ongoing training for all appellate contract attorneys, as well as intensive training for new appellate contract attorneys

Use Standard Costs?

No.

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 26	FY 27	FY 28	FY 29	
Contracts	\$2,405,578	\$2,585,000	\$2,585,000	\$2,585,000	Appellate contract attorneys. Base rate \$218,598 (FY26) and \$235,000 (FY27 – FY29)
Goods and Services	\$20,000	\$20,000	\$20,000	\$20,000	Statewide training events
Travel	\$30,000	\$30,000	\$30,000	\$30,000	Statewide training events and monitoring

FTE Base rate = \$218,598						
Appellate Caseload Response & Appellate Attorney Trainer						
Range 77M	FY26	FY27	25-27	FY28	FY29	27-29
Attorney Trainer Salary	\$138,540	\$138,540	\$277,080	\$138,540	\$138,540	\$277,080
Benefits	\$38,781	\$38,781	\$77,562	\$38,781	\$38,781	\$77,562
Total	\$177,321	\$177,321	\$354,642	\$177,321	\$177,321	\$354,642
Start up Funded in FY25 jump start	\$0	\$0	\$0	\$0	\$0	\$0
Attorney Contracts (11 FTE)	\$2,404,578	\$2,585,000	\$4,989,578	\$2,585,000	\$2,585,000	\$5,170,000
Training	\$20,000	\$20,000	\$40,000	\$20,000	\$20,000	\$40,000
Travel	\$30,000	\$30,000	\$60,000	\$30,000	\$30,000	\$60,000
Total NERCs	\$2,454,578	\$2,635,000	\$5,089,578	\$2,635,000	\$2,635,000	\$5,270,000
TOTAL	\$2,631,899	\$2,812,321	\$5,444,220	\$2,812,321	\$2,812,321	\$5,624,642
Round to nearest \$1,000	\$2,632,000	\$2,812,000	\$5,444,000	\$2,812,000	\$2,812,000	\$5,624,000

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

Fair and Effective Administration of Justice

This decision package reduces wait times experienced by indigent clients with a constitutional or statutory right to counsel, ensuring that the right to appeal and the availability of appellate relief are protected.

Accessibility

This decision package maintains timely access to appellate counsel for indigent clients with disabilities who would have great difficulty accessing the courts without the assistance of counsel.

Access to Necessary Representation

This decision package maintains access to counsel for indigent clients with a constitutional or statutory right to appeal.

Commitment to Effective Court Management

This decision package avoids severe delays in appointment of counsel which could lead to a waste of judicial and court resources. Appellate courts are unable to process cases unless defense counsel is available to complete critical case stages such as filing the opening brief.

Sufficient Staffing and Support

This decision package ensures that OPD's Appellate Program has adequate in-house training and oversight as well as sufficient contractors to address a backlog of cases and cover continuing appellate workload levels.

How does the package impact equity in the state?

Address any target populations or communities that will benefit from this proposal.

Indigent clients who face a loss of liberty or family due to state action will benefit from appellate counsel being assigned in a timely manner to effectuate their rights.

Describe the how the agency conducted community outreach and engagement.

The agency consulted with existing contractors and appellate courts about their respective needs.

Consider which target populations or communities would be disproportionately impacted by this proposal.

Explain why and how these equity impacts will be mitigated.

The justice system already disproportionately impacts communities of color, indigenous communities, and communities with low socioeconomic opportunity, all of which are more likely to utilize public defense when summoned to court. This proposal ensures continued availability of high quality appellate public defense representation for these communities.

Are there impacts to other governmental entities?

This decision package assists efficient operations of the appellate courts and prosecuting agencies. Delays in assignment of counsel will be reduced and courts will experience fewer disruptions to case processing schedules. Prosecuting attorney's offices and the Attorney General's Office will be able to proceed with work on cases that are on appeal.

Stakeholder response:

The OPD Advisory Committee voted at its September 12, 2024 meeting to approve this decision package. OPD anticipates that existing appellate contractors support this request for resources for OPD appellate contracts.

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

The appellate cases at issue all involve clients with a constitutional or statutory right to counsel and right to appeal. Funding this decision package avoids major delays in clients accessing legal help to which they have a constitutional or statutory right.

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

No

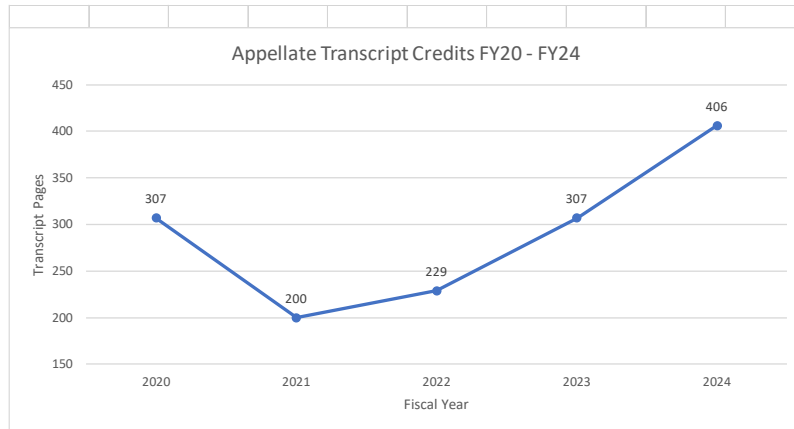
Are there impacts to state facilities?

No

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

Supporting charts showing appellate workload increase:

Office of Public Defense
Policy Level – 1A – Appellate Backlog Response



Children's Rep Appeals	
FY	Credits
2020	5
2021	9
2022	8
2023	7
2024	26

Guardianship Appeals	
FY	Credits
2021	1
2022	1
2023	3
2024	9

Are there information technology impacts?

No

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