

Washington State Judicial Branch

2025-2027 Biennial Budget

Statewide Evaluation of Public Defense Services

Agency: Office of Public Defense

Decision Package Code/Title: 1H – 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 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 to ensure constitutionally sufficient representation in all jurisdictions. The contracted organization will engage with “Project Advisors” comprising public defense providers, city and county government representatives, state officials from the three branches of government, and community representatives experienced with and/or impacted by city and county public defense.

Fiscal Summary: Funding is requested for an independent evaluation of county and city public defense.

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	0.00	0.00	0.00	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1	\$210,000	\$210,000	\$420,000	\$0	\$0	\$0
Total Expenditures						
	\$210,000	\$210,000	\$420,000	\$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 limited state grant funds to cities and counties to support improvements to local public defense services. ([RCW 10.101.050 - .080](#))

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 administration 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 Chronicle, 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 state strategy is particularly acute as some jurisdictions currently face an extreme shortage of applicants for public defense positions as well as increased attorney attrition. Local governments also are challenged in planning for a potentially significant decrease in per-attorney caseloads based on the recently adopted Washington State Bar Association (WSBA) Standards for Indigent Defense Services. (See [WSBA Standards for Indigent Defense Services](#), Revised March 8, 2024, and [RCW 10.101.030](#) which directs cities and counties to use the WSBA Standards as guidance for local public defense standards.)

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 grounded 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 representative sample of 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 providers, city and county government representatives, state officials 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 and state government solutions to ensure constitutionally sufficient services.

Fully describe and quantify expected impacts on state residents.

State residents who engage with or who are represented by county or city 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.

OPD currently lacks the staffing capacity and experience to engage in such an evaluation on its own. OPD employees work closely with city and county governments, and collect data and information that can be helpful components for an evaluation. However, the evaluation should be conducted by a neutral organization with 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 appropriately support city and county governments to ensure quality public defense services.

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

No.

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	
No FTEs.					

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	\$200,000	\$200,000	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 '25 and conclude in FY '26.
Travel	\$10,000	\$10,000	0	0	Travel expenses for Project Advisors who will help 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 in the criminal trial courts, which can directly impact the quality of representation received by clients. For example, some jurisdictions employ attorneys and staff at public defense agencies, or provide monitoring and oversight of contracted defense counsel, while others exercise no quality oversight. 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, and 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 varies by jurisdiction. While the WSBA has published recommendations on appropriate staffing and support of public defense delivery systems such as legal assistants, social workers, investigators, and experts ([WSBA Standards for Indigent Defense Services, 2024](#)), no comprehensive evaluation has reviewed whether local jurisdictions meet these standards, or determined the consequences of falling short.

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

How does the package impact equity in the state?

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

The people most impacted are indigent individuals represented by court-appointed public defense counsel. Inconsistent approaches to funding and administering public defense leads to justice by geography. Similarly situated indigent defendants in various Washington counties and cities may easily experience different levels of professional competency, legal advocacy, and staff support resources.

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

Explain why and how these equity impacts will be mitigated.

While much focus on racial disparities in the criminal legal system has been on police, prosecution, and judicial decision-making, public defense attorneys also play a role. Race and attitudes toward race can impact the effectiveness of attorney-client relationships, and attorneys are not uniform in their competence and willingness to challenge racial issues within their litigation strategies. ([Public Defense Attorneys' Perception of Race and Bias, Sruthi Naraharisetti, Center for Justice Innovation, July, 2024](#))

Are there impacts to other governmental entities?

No.

Stakeholder response:

The OPD Advisory Committee voted at its September 12, 2024 meeting to approve this decision package. In recent years a variety of stakeholders have expressed support for engaging a subject-matter expert organization to conduct a statewide evaluation of public defense. These stakeholders include 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?

- [The Great Human-Processing Contraption: A Day in the Life of a Benton County Public Defender, NW Sidebar, June 11, 2024.](#)
- [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.

Office of Public Defense
Policy Level – 1H – Evaluation of Public Defense Svcs.

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