

Washington State Office of Public Defense

Annual Report 2013

Joanne I. Moore, Director
Sophia Byrd McSherry, Deputy Director

711 Capitol Way South
Suite 106
Olympia, WA 98501

Phone: (360) 586-3164

Fax: (360) 586-8165

Email: opd@opd.wa.gov

Website: www.opd.wa.gov

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Mission Statement

The Washington State Office of Public Defense's mission is "to implement the constitutional and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent defense services funded by the State of Washington."



Executive Summary

Since its creation in 1996, the Washington State Office of Public Defense (OPD) has produced a very basic annual report giving a dry summary of the year's activities, not sparing the legalese. This year, we decided to try something different. In this annual report, I hope you will find a concise and informative account of how our agency spent fiscal year 2013, whether you're a lawyer not.

First, some background. Our agency has 15 employees: A Director (myself), a Deputy Director, seven full time Managing Attorneys, one half time Managing Attorney, a Social Services Manager, and four administrative staffers. OPD is overseen by an advisory committee made up of appointees from a range of organizations, which conducts business at quarterly meetings.

OPD's duty, broadly speaking, is to implement the right to counsel guaranteed by the United States Constitution, the Washington Constitution, and the Laws of Washington State. "Implementing the right to counsel" means ensuring that people who are indigent—lacking the funds to afford a lawyer—are provided with lawyers when charged with crimes or when subject to certain other proceedings that place their constitutional rights at risk. These appointed lawyers are called public defense attorneys.

OPD isn't in charge of public defense for all courts in the State, however—a common assumption given the agency's title. Most public defense is handled at the county and city level. The Legislature has given OPD specific defined responsibilities with respect to public defense in the State. Those responsibilities are, primarily:

- Administering funds for court-appointed counsel for indigent parties to appeals before the Washington State Court of Appeals and the Washington Supreme Court;
- Administering grants to counties and eligible cities for the improvement of trial-level public defense;
- Administering funds for court-appointed counsel for indigent parents who are at risk of losing their children in dependency and termination cases; and
- Administering funds for court-appointed counsel for indigent detainees who are subject to civil commitment as sexually violent predators.



OPD is organized into four programs based around these primary responsibilities. They are, respectively, the Appellate Program, the Trial Level Public Defense Consulting Program, the Parents Representation Program, and the RCW 71.09 program (named for the chapter of the Revised Code of Washington dealing with the civil commitment of alleged sexually violent predators).

Fiscal Year 2013 saw exciting developments in each of these programs. The Appellate Program welcomed a new Managing Attorney, the Trial Level Public Defense Consulting Program reported on the implementation of the Supreme Court's new indigent defense standards, the Parents Representation Program won legislative approval to expand to six additional counties, and the RCW 71.09 Program cleared an enormous backlog of trials while saving the State over \$1 million.

The core principle behind public defense is that the rights of all are not safe unless they extend to those that society disfavors. There can be no justice for anyone unless there is justice for alleged criminals, allegedly unfit parents, and even offenders accused of being sexually violent predators. As Justice Hugo Black wrote in the watershed case of *Gideon v. Wainwright*, "The right to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." OPD strives to realize this ideal of fundamental fairness for all by striving daily to improve public defense in Washington. I hope this report will provide an understanding of how OPD upholds justice and protects individual rights by implementing the right to counsel across each of its program areas.

Joanne I. Moore
Director, Washington State Office of Public Defense



Appellate Program

Reviews to Ensure Justice

2013 was a year of changes for OPD's Appellate Program. The Appellate Program is OPD's oldest program, established at the agency's founding in 1996. At that time, OPD assumed responsibility for administering public defense services statewide for indigent clients appealing to the Court of Appeals and the Supreme Court.

Appeals are a critical stage of the court process. When a person loses their case in Superior Court, they have the right to appeal to the Court of Appeals where a panel of three judges will decide whether the lower court's decision was valid. A case lost before the Court of Appeals can be appealed to the Washington Supreme Court.

If a client is indigent and convicted of a crime, or subject to another type of case where the right to counsel at public expense applies, the client has the right to an appointed public defense lawyer for their first appeal, as well as their appeal to the Supreme Court if the Court accepts review. That's where OPD's Appellate Program attorneys come in, arguing appeals for more than 1,000 clients every year.

New Contracts, Stronger Practices

Fiscal Year 2013 saw the introduction of a new contracting system for Appellate Program contract attorneys, moving from a system where they were paid per case event (i.e. per case assigned, per brief filed, and per case argued in court) to one where they are paid a set monthly fee for agreeing to accept a certain annual caseload. The new system has stabilized contractor fees, reducing the uncertainty that used to flow from fluctuating caseloads throughout the year. This has in turn allowed con-

tractors to focus more on delivering high quality legal services to their indigent clients.

Electronic Outreach

Also in Fiscal Year 2013, OPD launched a new agency website. The website includes many enhancements to the Appellate Program's page, which now provides a more comprehensive explanation of the appellate process, with links to official court forms. Also included is public access to OPD's brief bank, containing more than 14,000 appellate briefs.

In With the New

Fiscal Year 2013 further saw the departure of incumbent Appellate Program Managing Attorney Sean Flynn and the hiring of Gideon Newmark after a substantial candidate search. As with any turnover in staff, this meant much of the year was occupied by Gideon's learning the ropes and getting to know the program's policies, procedures, and stakeholders.

Coming from a clerkship at the Court of Appeals with a diverse background that includes collegiate statistics training, Gideon brings a focus on data analysis and evidence-based law practice to the position; early on, he began running statistics to measure the program's performance. Gideon plans to continue to leverage the Appellate Program's data to evaluate contractor work, examine the efficiency of court procedures, and improve indigent appellate defense practice. He plans to assist OPD's other programs with similar data-driven initiatives as well.



Trial Level Public Defense Consulting Program

Supporting Fair Trials Statewide

The Public Defense Consulting Program has the broadest and most ambitious mandate of OPD's four major programs: to improve trial level public defense in courtrooms across Washington State. Comprised of Managing Attorneys Katrin Johnson, Kathy Kuriyama, and George Yeannakis, the program's staff bring energy and creativity to this critical mission.

Like many aspects of Washington's government, Washington's judicial system places great emphasis on local control. Thus, all of the counties, and many cities, run their own court systems, including their own local public defense systems. This has led to a patchwork of locally governed public defender agencies and independent non-profits, along with law firms and sole practitioners with contracts to provide public defense services. It can be a challenge to work with this cross section of different organizations answering to so many local authorities, but the Trial Level Public Defense Consulting Program's expert Managing Attorneys have years of experience with Washington's decentralized public defense system. They

leverage this experience to establish relationships and coordinate public defense efforts all across the State.

Focus on the Standards for Indigent Defense

The Trial Level Public Defense Consulting Program spent much of 2013 helping to implement the Supreme Court's newly adopted Standards on Indigent Defense. These standards, virtually unprecedented in the United States, set mandatory qualifications and caseload limits for public defense attorneys, and require defense attorneys to use investigators where appropriate. OPD's Trial Level Public Defense Consulting Program held eight trainings across the State in fiscal year 2013 to help educate public defenders ahead of the Standards' effective date.

One aspect of the Standards has proven more controversial than most: the caseload limits for misdemeanor cases. In response to local concerns that the misdemeanor caseload limits were too strict, the Supreme Court delayed their effective date in order to allow closer analysis. The

Funding Independent Public Defense Resources

In addition to OPD's direct work on improving trial level public defense, OPD contracts with two important clearinghouses for public defense assistance: the Washington Defender Association (WDA) and the Death Penalty Assistance Center (DPAC).

- WDA provides high quality training, publications, and consultation to public defense attorneys throughout the State. WDA's resource attorneys provide services including general technical assistance, case consultation, research, assistance on immigration consequences impacting criminal cases, education and training programs, a brief bank, case law updates, and an expert bank.
- DPAC provides unique expertise in handling death penalty cases and assists public defense attorneys with death penalty cases. DPAC's technical services include case assistance in aggravated murder cases where the death penalty could be imposed, information on the practicalities of capital case defense, briefing on legal issues, mitigation investigation, expert consultants and witnesses, and the development and presentation of education and training programs.



Supreme Court asked OPD to produce a report on the issue, which the Trial Level Consulting Program completed in 2013. The program determined that more data was needed to address local concerns about the misdemeanor caseloads in a report available at OPD's website. In April 2013, the Supreme Court ordered OPD to conduct a time study to gather such data. The Trial Level Consulting Program began the early stages of the study in fiscal year 2013. The study is expected to be released in 2014.

Grants to Strengthen Local Public Defense

The Trial Level Consulting Program also continued to carry out one of its core functions in

fiscal year 2013, distributing grants to counties and cities for the improvement of trial level public defense. Mandated by chapter 10.101 RCW, the program distributed grants to 38 counties, as well as to 12 cities out of the 27 city applicants. Not only do the public defense improvement grants allow counties and cities to make vital improvements to their public defense systems, they give those jurisdictions access to resources through the dedicated Trial Level Consulting Program Managing Attorneys.

The program's Managing Attorneys provided grant recipients with numerous in-person and phone consultations, executing visits to many of the recipient jurisdictions. The

program's Managing Attorneys further collected data from grant applicants, which they used to compile the seventh annual Status Report on Public Defense in Washington State (available at http://www.opd.wa.gov/documents/0095-2012_Status_Report.pdf). This highly detailed report both examines current issues in public defense and provides detailed information about public defense in the grant applicant jurisdictions, including information on population, poverty rate, caseload, and public defense spending.

Federal Funds for Training Death Penalty Practitioners

OPD applied for and received in 2013 a federal grant for training attorneys to handle death penalty cases. Because the grant's terms required training for both prosecutors and defense attorneys, the Trial Level Consulting Program coordinated with the Washington Association of Prosecuting Attorneys to handle the prosecutor side. The program worked with DPAC to design the training for public defense attorneys. The trainings were planned as two multi-day seminars each for public defenders and prosecutors, the first occurring in Spokane in 2014, and the second scheduled for Vancouver in 2015. Attendance was decided through a competitive process aimed at selecting both highly qualified and geographically diverse participants.



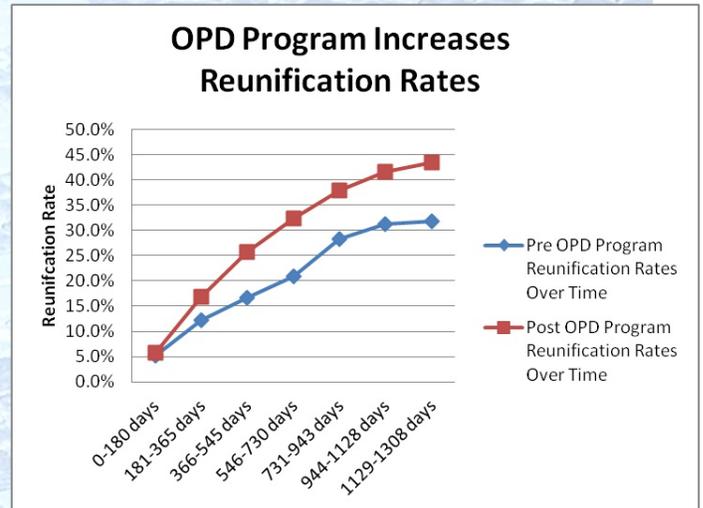
Parents Representation Program

Keeping Families Together

OPD's Parents Representation Program provides legal representation for parents in dependency, termination, and related cases. These are cases where the State alleges that a parent has abused or neglected their children. Children are often removed from their parents' custody and placed with relatives or in foster care. The parents have both a constitutional and statutory right to counsel in these cases to protect their fundamental right to raise their children. OPD created the Parents Representation Program more than a decade ago, following an investigative report showing that indigent parents throughout the State typically received poor legal representation in dependency and termination cases.

In 2013, The Parents Representation Program contracted with attorneys in 25 counties to represent parents subject to dependency cases. These attorneys followed OPD's enhanced practice standards requiring regular client communication throughout each case, efforts to ensure that parents have access to the services they need to promote reunification with their children, adequate case preparation, negotiation in the parent's best interests during the pendency of the case, and competent litigation if no agreement can be reached.

OPD supports these enhanced practice standards through its team of three Parents Representation Managing Attorneys: Amelia Watson, Brett Ballew, and Jacob D'Annunzio. The managing attorneys provide legal resources to contract attorneys during litigation, monitor attorney caseloads to ensure compliance with the Supreme Court Standards for Indigent Defense, conduct in-person contract at-



Above: studies from previous fiscal years have shown that the Parents Representation Program leads to more parent-child reunifications, more quickly.

torney evaluations, and provide numerous trainings.

Contract attorneys are further supported by a team of social workers on contract with OPD, managed by Social Services Manager Michael Heard. Michael provides both formal and informal training for OPD's contract social workers, who give OPD's contract attorneys access to social work theory and resources in the community.

The Parents Representation Program has been favorably evaluated six times, and has been shown to increase the number of reunifications between parents and children, as well as the speed at which children's cases are resolved. In recognition of this proven record of success, the 2013 Legislature authorized the Parents Representation Program's expansion to six additional counties in Fiscal Year 2015, at which point it will cover 90 percent of the state.



RCW 71.09 Program

Getting Civil Commitment Cases Unstuck

The RCW 71.09 Program is OPD’s newest practice area. The Legislature unanimously authorized the program in 2012, voting to transfer responsibility to OPD for public defense in cases seeking the civil commitment of sexually violent predators. OPD contracted with 23 highly qualified attorneys throughout the State to provide public defense services for those who have been civilly committed and those who are detained pending civil commitment trials. OPD’s new contract attorneys

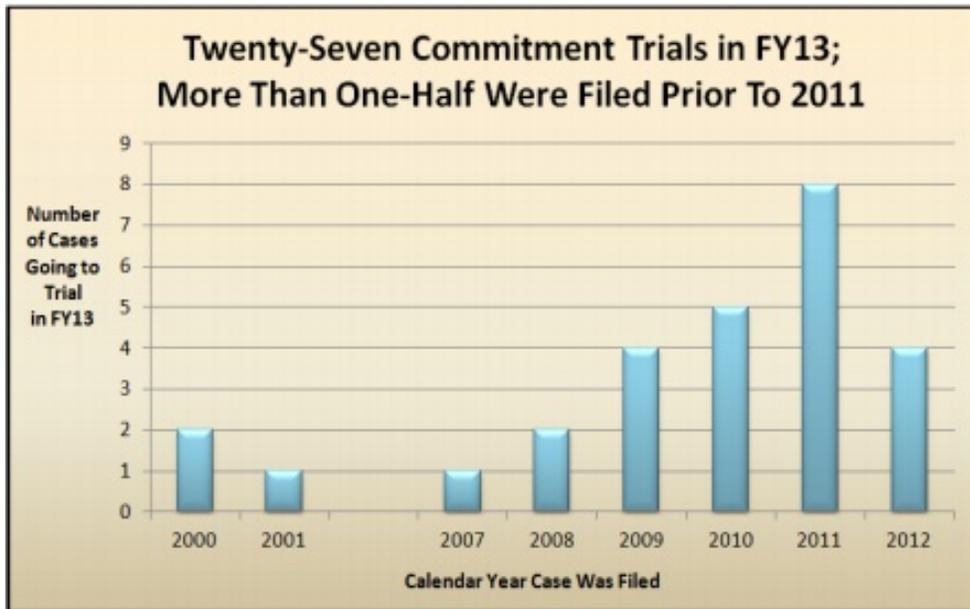
were on the job on July 1, the first day of fiscal year 2013.

The RCW 71.09 program is overseen by a highly experienced full-time managing attorney, Shoshana Kehoe-Ehlers. Shoshana maintains the program’s quality of representation by carefully monitoring attorney caseloads and meeting individually with attorneys to discuss their performance. She also consults on issues that arise

during cases and conducts training on handling RCW 71.09 cases for judges, judicial staff, and attorneys.

Getting the Process Restarted

The RCW 71.09 program made great strides in improving civil commitment defense in fiscal year 2013. In previous years, civil commitment cases had been marked by repeated continuances leading to long pre-trial delays, in a few cases lasting more than a decade. Although the court system may seem slow to many, these delays were untenable. Under OPD’s management, contract attorneys brought 27 civil commitment cases to trial in fiscal year 2013, more than half of which had been filed prior to 2011 (and two of which were more than 10 years old).





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