

WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE



Annual Report
Fiscal Year 2000

FISCAL YEAR 2000

ANNUAL REPORT OF THE

WASHINGTON STATE

OFFICE OF PUBLIC DEFENSE

ADVISORY COMMITTEE MEMBERS

Judge Harold D. Clarke, Chair
Mr. Russell M. Aoki
Senator Mary Margaret Haugen
Mr. Mel Jackson
Senator Jeanine Long
Representative Kathy Lambert
Ms. Mary McQueen
Representative Edward B. Murray
Mr. Andy Pascua
Ms. Catherine Smith
Judge Philip J. Thompson

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OVERVIEW

- **All appellate indigent defense services are administered by OPD**
- **OPD works to implement the constitutional right to counsel for indigent parties**

The Washington State Office of Public Defense (OPD) is an independent judicial branch agency. OPD administers all constitutionally and statutorily required appellate indigent defense services in Washington State. In addition to carrying out these fiscal responsibilities, OPD works to implement and improve constitutionally required representation for indigent defendants.

The Washington State Office of Public Defense administers state funds appropriated for appellate indigent defense, develops administrative procedures, standards, and guidelines for appellate indigent defense services, recommends criteria and standards for determining and verifying indigency, coordinates with the Supreme Court and the three Courts of Appeal to determine how attorney services should be provided, furnishes data, reports, and recommendations to the Legislature regarding defense issues, and implements new indigent defense funding methods.

MISSION STATEMENT

- **OPD's mission is to provide efficient and effective indigent representation services**

The mission of the Washington State Office of Public Defense, established by Laws of 1996, is to “implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of indigent appellate services funded by the state of Washington...”

ADVISORY COMMITTEE

- **The Office of Public Defense Advisory Committee oversees the agency**
- **The Advisory Committee consists of judges, legislators, attorneys, and lay persons**

The Office of Public Defense Advisory Committee is made up of representatives of a broad variety of entities affected by public defense issues. The Committee is chaired by the Honorable Harold D. Clarke, retired Spokane County Superior Court Judge (appointed by the Chief Justice). In Fiscal Year 2000, members of the Committee were Honorable Philip J. Thompson, retired Court of Appeals Judge, Division III (appointed by the Court of Appeals); Honorable Mary Margaret Haugen, State Senator from the 10th District (appointed by the Senate); Honorable Stephen Johnson, State Senator from the 47th District; (through December 31, 1999, appointed by the Senate); Honorable Jeanine Long, State Senator from the 44th District (appointed by the Senate in June 2000); Honorable Kathy Lambert, State Representative from the 45th District (appointed by the House of Representatives); Honorable Edward B. Murray, State Representative from the 43rd District (appointed by the House of Representatives); Mary

McQueen, Washington State Court Administrator (appointed by the Chief Justice); Russell M. Aoki, Attorney at Law, Aoki and Sakamoto (appointed by the Chief Justice); Catherine Smith, Attorney at Law, Edwards, Seth, Hathaway, Smith and Goodfriend (appointed by the Washington State Bar Association); Mel Jackson, Millionair Club Charity (appointed by the Governor); and Andy Pascua, Yakima County Department of Community Services (appointed by the Governor).

During Fiscal Year 2000, the Advisory Committee met on a quarterly basis to consider issues and requests for OPD actions, set policies, approve legislative and rule requests, review budgetary matters, oversee new OPD programs, and consider fiscal appeals pursuant to RAP 15.5.

AGENCY STRUCTURE

- **OPD's staff totals five employees**
- **OPD's overhead is low, equaling less than 8% of the budget**

All administrative services are provided by a five-person staff, consisting of a director, a deputy director, an executive assistant, a fiscal analyst, and an accountant. The financial staff processes attorney, court reporter, and clerk's claims for indigent appellate defense services. The executive assistant manages the office and prepares documents, as well as assisting in all statewide budget matters. The director and deputy director prepare and oversee the agency budget, develop, implement, and administer policies and procedures, analyze proposed legislation and draft suggested court rules, investigate and prepare reports on indigent defense issues, implement new payment methods, and respond to requests for technical assistance.

The Office of Public Defense's administrative overhead costs total less than 8% of its budget. Consistent with the Legislature's mandate, efficient procedures have been developed by OPD staff, enabling the agency to handle about 11,316 invoiced claims in Fiscal Year 2000. In addition, OPD has created and implemented several efficient payment methods to enhance the effectiveness of indigent defense representation.

PROCESS FOR PAYMENT OF INDIGENT APPELLATE COSTS

- **Appellate services include court reporter, county clerk, and attorney services**
- **OPD reviews all claims and pays per rates set by the OPD Advisory Committee**

The state pays for indigent appeals of criminal convictions, criminal sentences, determinations of dependency, challenges to parental terminations, appeals of criminal contempt, decisions involving civil involuntary commitment, and death penalty appellate cases at the state level. State funding is restricted to appeals as a matter of right, responses to state appeals, motions for discretionary review and petitions for review that have been accepted by an appellate court, personal restraint petitions in death penalty cases, and non-death penalty personal restraint

petitions which the court has determined are not frivolous. When an indigent defendant appeals as a matter of right, the trial court screens the defendant to determine indigency and appoints an attorney. Because there is both a federal and a state constitutional right to appeal, the state pays for the defendant's attorney if the defendant cannot afford to pay. The appointed attorney prepares and files a brief in the appellate court that has jurisdiction over the case. A transcript is also made of the trial. Appellate attorneys, court reporters, county clerks, the Courts of Appeal, which copy briefs for indigent cases, and others who have worked on the case file invoices with OPD. OPD reviews the invoices and pays the providers for the services they have rendered. Payment is made based on rates adopted by the Office of Public Defense Advisory Committee. Payment is denied if reimbursement is not authorized.

ACCOMPLISHMENTS OF THE AGENCY IN FY 2000

1. **Efficiently Handled and Paid all Appellate Indigent Defense Costs, Saving Well Over \$100,000 During FY 2000**

In Fiscal Year 2000, OPD paid appellate indigent defense costs totaling \$5,489,713. These included attorney expenses for appellate and death penalty defense cases, court reporter costs, clerk's papers expenses, and brief and pro se transcript copying costs. Most of OPD's budget is spent on fixed, ongoing payments for these expenses, over which OPD has no discretion. However, whenever possible, OPD strives to resist cost increases and promote efficiency.

It is OPD's policy to handle new projects with existing staff resources if possible, utilizing limited consulting services to add substantive expertise only if necessary. **During Fiscal Year 2000, OPD's small staff personally carried out all of its ongoing and newly assigned projects, spending only a few thousand dollars on additional consulting services and saving thousands through cost-effective project management.**

Careful scrutiny of invoices submitted by attorneys, court reporters, and court clerks has resulted in the rejection of over 239 invoices of the 11,316 submitted during Fiscal Year 2000, representing thousands of dollars of refused claims. These included unauthorized charges and billing errors. **Savings to the state for these rejected claims in Fiscal Year 2000 totaled \$96,231.**

During Fiscal Year 2000, OPD explored ways to reduce costs of the technical services it funds, such as copying transcripts. By negotiating a new copy contract to substantially reduce the fee for Division I cases, OPD was able to cut the cost of pro se transcript copying mandated by RAP 10.5(a) for those cases by about one-third, or over \$6,000. During the upcoming biennium, OPD plans to work with the courts and attorneys to maximize opportunities for technologically-based efficiencies.

OPD saves and protects state funds whenever possible. In total, OPD handled its budget to save well over \$100,000 from invoice and copying expenses alone in Fiscal Year 2000.

Death penalty funding of appellate defense representation continued during FY 2000. During 2000, no new state appellate death penalty cases were filed. OPD paid \$266,882 for ongoing representation in existing death penalty cases. During the latter part of the fiscal year, OPD worked with the Supreme Court and death penalty attorneys appointed to the Washington State Supreme Court Capital Counsel Panel to streamline defense appointment and compensation procedures for future cases.

2. Firmly Established High-Quality Indigent Appellate Defense Practices Throughout the State Via Contracts

- **OPD contracts requiring high-quality appellate defense work have been established in almost all parts of the state**
- **In Fiscal Year 2000, new contracts were implemented in 12 additional counties**

In 1999, the Legislature appropriated new funds to provide pay increases to indigent defense attorneys during the 1999-01 biennium. In order to tie pay increases to enhanced performance, OPD implemented a new contract process in which indigent appellate attorneys compete for contracts awarded on the basis of their qualifications and the quality of their work products. This selection process was developed to address the huge quality disparity in appellate work filed by appointed attorneys, which ranged from very poor to excellent.

At the end of Fiscal Year 1999, OPD conducted a Request for Proposal (RFP) process in which some 70 solo practitioners and firms competed for indigent appellate contracts in Divisions II and III. Contracts were awarded to Division II attorneys in Clark, Cowlitz, Lewis, Thurston, Mason, and Pierce Counties, and Division III attorneys in Spokane, Yakima, Kittitas, Walla Walla, and Whitman Counties. These attorneys joined existing Division I contract attorneys for King, Snohomish, Skagit, and Whatcom Counties. The new Division II and III attorneys' fee contracts, which impose the quality requirements and implement a pay increase, became effective on July 1, 1999.

Under Washington court rules, trial court judges are responsible for appointing indigent appellate counsel. Many trial judges who appoint indigent appellate counsel prefer to appoint local counsel, and some courts declined to participate in the first Divisions II and III contract solicitation process. During the spring of 2000, OPD worked with the trial courts to expand contract participation by suggesting new possible attorney appointment procedures and ensuring that the contracts met the needs of the trial courts whenever possible. With the approval of these trial courts, OPD conducted a second RFP process in May and June of 2000. Successful establishment of contracts in Clallam, Jefferson, Grays Harbor, Pacific-Wahkiakum, Kitsap, Chelan, Okanogan, Douglas, Ferry-Stevens-Pend Oreille, and, shortly thereafter, Benton-Franklin Counties resulted from OPD's

efforts to work with the local courts. A total of 45 Divisions II and III appellate indigent defense attorneys were awarded appellate contracts as a result of the 1999 and 2000 contract solicitations.

If the trial courts make maximum use of the contracts in appointing indigent appellate attorneys in Divisions II and III, up to 80% of indigent appellate defendants statewide will be represented by contract attorneys. Preliminary evaluations show that contract attorneys average more hours per case than non-contract attorneys and generally produce high quality written documents.

3. Submitted “Costs of Defense and Children’s Representation in Dependency and Termination Cases” to the Legislature

The 1999 Legislature directed OPD to develop a cost proposal examining county-paid defense and children’s representation costs in dependency and termination cases and recommending strategies to ensure an equitable method of paying for these cases.

OPD performed all the research and development of the cost proposal. OPD Advisory Committee members and the OPD director observed dependency proceedings in Benton-Franklin, Grays Harbor, King, Mason, Pierce, Snohomish, Thurston, and Yakima Counties. A stakeholder’s work group was formed to provide information and feedback regarding the study. Two extensive surveys were distributed, one to the courts and one to defense attorneys. Based on the information gathered, OPD reported in the December 1999 cost proposal:

- **Statewide, 1998 county payments for parents' attorneys in dependency and terminations averaged only about \$398 per case**
- **The state invests massive resources to pursue dependency and termination cases, spending for the Attorney General an average two to three times the amount paid for defense attorneys, in addition to substantial amounts expended by DSHS**
- **Parents are often represented by underfunded, underprepared attorneys and thus are commonly unable to fully participate in these cases, to the detriment of the children and parents involved**

The report recommends that the Legislature provide adequate state funding, tied to the implementation of quality defense standards, for parents’ attorneys in dependency and termination cases.

4. Established a Defense Pilot Project for Dependency and Termination Cases

In response to OPD’s dependency and termination cost proposal, the 2000 Legislature directed OPD to establish an adequate representation pilot program during FY 2001, to be held in one eastern and one western Washington juvenile court. During the last quarter of FY 2000, OPD prepared for the inception of the pilot. Pierce and Benton-Franklin

juvenile courts were selected as sites. Each area presents dependency and terminations issues routinely that are found statewide.

In Benton-Franklin, OPD met with and signed an agreement with the Benton County and Franklin County commissioners, worked with the juvenile court and existing attorney panel to determine optimal representation and payment arrangements, and conducted an RFP process to contract with two additional half-time attorneys. In Pierce, OPD met with the Department of Assigned Counsel to determine the best possible public defender attorney and staff arrangements and negotiated a representation contract to carry out the enhanced defense standards specified by the Legislature.

Defense representation under the pilot program commenced at the beginning of Fiscal Year 2001. An interim report will be filed with the Legislature by January 1, 2001.

5. Established Procedures to Implement the Extraordinary Criminal Justice Costs Act

The 1999 Legislature, in recognition of the high expense of aggravated murder cases and shortage of sufficient criminal justice funds to pursue them in many county budgets, adopted the Extraordinary Criminal Justice Costs Act. Pursuant to the Act's requirements, OPD implemented a petition and prioritizing process in consultation with the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs.

Eight counties submitted claims for reimbursement under the Act. The OPD Advisory Committee created policies and procedures for establishing a prioritized list based on disproportionate fiscal impact, efficient use of resources, and the extraordinary nature of the costs. **OPD's report, "State Reimbursement of Extraordinary Criminal Justice Costs," was distributed to the Legislature and the counties in January 2000 along with the prioritized list, recommending partial state reimbursement to Cowlitz, Thurston, and Franklin Counties. The 2000 Legislature authorized partial payment for the three counties, which is being distributed by the Office of Financial Management.**

6. Provided Information to Courts and Cost-Recovery Support and Information to Prosecutors

The Office of Public Defense frequently receives requests for information from the trial courts and defendants regarding indigent appellate issues and from defense attorneys regarding appellate pay methods. These requests are answered as quickly as possible, within a turnaround period of one day to one week.

In addition, in Fiscal Year 2000 OPD received 685 requests from prosecutors for case-specific recoupment information pursuant to RCW 10.73.160 and Title 14 of

the Rules of Appellate Procedure. These requests are normally answered within 24 hours. This information is used by the counties to recoup costs pursuant to state law.

CONCLUSION

The Office of Public Defense performs a number of tasks to support indigent appellate defense and the constitutional right to counsel. During Fiscal Year 2000, OPD carried out both its ongoing assignments and the new tasks presented to the agency by the courts and the legislature to the fullest extent possible. Thus, OPD was able to effectuate better implementation of the constitutional guarantee of counsel and ensure effective and efficient delivery of indigent appellate services in Washington, in accordance with its mission.

STATISTICAL REPORT

I. Costs

These figures represent the total fees paid to attorneys for constitutionally mandated representation of indigent clients for all types of appellate cases.

<u>Attorney Fees</u>	
Division I	\$1,754,024
Division II	1,360,407
Division III	696,663
Supreme Court	<u>358,003</u>
TOTAL	\$4,169,097

These figures represent the total costs paid to court reporters who have transcribed the record for indigent cases on appeal.

<u>Court Reporter Costs</u>	
Division I	\$661,877
Division II	361,825
Division III	172,140
Supreme Court	<u>158</u>
TOTAL	\$1,196,000

These figures represent the total costs reimbursed to county clerks for reproducing the record for indigent cases on appeal.

<u>County Clerk's Papers Costs</u>	
Division I	\$22,918
Division II	18,448
Division III	11,017
Supreme Court	<u>0</u>
TOTAL	\$52,383

These figures represent the total costs for reproducing briefs for indigent cases on appeal and for indigent pro se transcripts.

<u>Brief and Pro Se Transcript Copying Costs</u>	
Division I	\$24,388
Division II	28,204
Division III	11,706
Supreme Court	<u>7,935</u>
TOTAL	\$72,233

II. Statistics: Number of Invoices Processed by OPD During FY 2000

<u>Invoices</u>	
Attorneys	4,596
Court Reporters	2,985
County Clerks	1,782
Briefs	<u>1,953</u>
TOTAL	11,316

RCW CHAPTER 2.70

2.70.005 Intent. In order to implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington, an office of public defense is established as an independent agency of the judicial branch.

2.70.010 Director—Appointment—Qualifications—Salary. The supreme court shall appoint the director of the office of public defense from a list of three names submitted by the advisory committee created under RCW 2.70.030. Qualifications shall include admission to the practice of law in this state for at least five years, experience in the representation of persons accused of a crime, and proven managerial or supervisory experience. The director shall serve at the pleasure of the supreme court and receive a salary to be fixed by the advisory committee.

2.70.020 Director—Duties—Limitations. The director, under the supervision and direction of the advisory committee, shall:

- (1) Administer all criminal appellate indigent defense services;
- (2) Submit a biennial budget for all costs related to state appellate indigent defense;
- (3) Establish administrative procedures, standards, and guidelines for the program including a cost-efficient system that provides for recovery of costs;
- (4) Recommend criteria and standards for determining and verifying indigency. In recommending criteria for determining indigency, the director shall compile and review the indigency standards used by other state agencies and shall periodically submit the compilation and report to the legislature on the appropriateness and consistency of such standards;
- (5) Collect information regarding indigency cases funded by the state and report annually to the legislature and the supreme court;
- (6) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how attorney services should be provided.

The office of public defense shall not provide direct representation of clients.

2.70.030 Advisory committee—Membership—Duties—Travel and other expenses. (1)

There is created an advisory committee consisting of the following members:

- (a) Three persons appointed by the chief justice of the supreme court, including the chair of the appellate indigent defense commission identified in subsection (3) of this section;
- (b) Two nonattorneys appointed by the governor;
- (c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;
- (d) One person appointed by the court of appeals executive committee;
- (e) One person appointed by the Washington state bar association.

(2) During the term of his or her appointment, no appointee may: (a) Provide indigent defense services except on a pro bono basis; (b) serve as an appellate judge or an appellate court employee; or (c) serve as a prosecutor or prosecutor employee.

(3) The initial advisory committee shall be comprised of the current members of the appellate indigent defense commission, as established by Supreme Court Order No. 25700-B, dated March 9, 1995, plus two additional legislator members appointed under subsection (1)(c) of this section. Members shall serve until the termination of their current terms, and may be reappointed. The two additional legislator members, who are not on the appellate indigent defense commission, shall each serve three-year terms. Members of the advisory committee shall receive no compensation for their services as members of the commission, but may be reimbursed for travel and other expenses in accordance with rules adopted by the office of financial management.

2.70.040 Employees—Civil service exemption. All employees of the office of public defense shall be exempt from state civil service under chapter 41.06 RCW.

2.70.050 Transfer to office of appellate indigent defense powers, duties, functions, information, property, appropriations, employees, rules, and pending business—Appointment—Effect on collective bargaining. (1) All powers, duties, and functions of the supreme court and the office of the administrator for the courts pertaining to appellate indigent defense are transferred to the office of public defense.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the supreme court or the office of the administrator for the courts pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office of public defense. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the supreme court or the office of the administrator for the courts in carrying out the powers, functions, and duties transferred shall be made available to the office of public defense. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office of public defense.

(b) Any appropriations made to the supreme court or the office of the administrator for the courts for carrying out the powers, functions, and duties transferred shall, on June 6, 1996, be transferred and credited to the office of public defense.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the supreme court or the office of the administrator for the courts engaged in performing the powers, function, and duties transferred are transferred to the jurisdiction of the office of public defense. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the office of public defense to perform their usual duties upon the same terms as formerly, without any loss of rights,

subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the supreme court or the office of the administrator for the courts pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office of public defense. All existing contracts and obligations shall remain in full force and shall be performed by the office of public defense.

(5) The transfer of the powers, duties, functions, and personnel of the supreme court or the office of the administrator for the courts shall not affect the validity of any act performed before June 6, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law.