

WASHINGTON STATE  
OFFICE OF PUBLIC DEFENSE

# ANNUAL REPORT

---

FISCAL YEAR 2010



WASHINGTON STATE  
OFFICE OF PUBLIC DEFENSE  
ANNUAL REPORT

---

FISCAL YEAR 2010

Washington State Office of Public Defense  
711 Capitol Way South, Suite 106  
P.O. Box 40957  
Olympia, Washington 98504-0957

Phone: (360) 586-3164  
Facsimile: (360) 586-8165  
Email: [opd@opd.wa.gov](mailto:opd@opd.wa.gov)  
Website: [www.opd.wa.gov](http://www.opd.wa.gov)

---

## ADVISORY COMMITTEE MEMBERS

---

Honorable Bobbe Bridge, Chair  
Retired Washington Supreme Court Justice

Russell M. Aoki  
Aoki, Sakamoto and Grant, LLP

Honorable Sherry Appleton  
Washington State House of Representatives

Judge George Finkle (Retired)  
Gubernatorial Appointee

Jeff Hall  
State Court Administrator

Jane Ragland-Kirkemo  
Association of Washington Cities

Honorable Kathy Lambert  
Washington State Association of Counties

Andy Pascua  
Gubernatorial Appointee

Honorable Debbie Regala  
Washington State Senate

Honorable Matt Shea  
Washington State House of Representatives

Honorable Karen Seinfeld  
Retired, Washington Court of Appeals

Catherine Smith  
Edwards, Sieh, Smith & Goodfriend

Honorable Val Stevens  
Washington State Senate

---

## OFFICE OF PUBLIC DEFENSE

---

Joanne I. Moore, Director  
Sophia Byrd McSherry, Deputy Director  
711 Capitol Way South, Suite 106  
P.O. Box 40957  
Olympia, Washington 98504-0957

---

## MISSION STATEMENT

---

The mission of the Washington State Office of Public Defense 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." RCW 2.70.005.

---

## INTRODUCTION

---

The Washington State Office of Public Defense (OPD) is an independent judicial branch agency. Created by the Legislature in 1996, and permanently reauthorized in 2008, the agency works to ensure high-quality legal representation for indigent clients, consistent with constitutional and statutory requirements, by:

- implementing quality-control procedures for appointment of appellate attorneys and evaluation of indigent appellate attorney services;
- administering funds appropriated for court-appointed counsel in appellate cases and supporting the appellate cost recovery system through timely responses to requests;
- administering state funds to counties and eligible cities, and supporting efforts to improve the quality of trial-level indigent defense in Washington state;
- initiating and responding to legislative policy proposals and court rule changes;
- administering a state-funded Parents Representation Program for indigent parents in child dependency and termination of parental rights cases; and
- providing information, special reports and recommendations to the Legislature, including an annual prioritized list of aggravated murder costs eligible for state reimbursement.

The Washington State Office of Public Defense Advisory Committee, made up of state legislators and members appointed by the Governor, the Washington State Supreme Court Chief Justice, the Court of Appeals Executive Committee, the Washington State Bar Association, the Washington State Association of Counties, and the Association of Washington Cities, oversees the activities of the agency.

During fiscal year 2010, the Advisory Committee conducted business at quarterly meetings in September 2009, December 2009, March 2010 and June 2010, and met additionally by conference call as necessary to consider time-sensitive issues. As required by RCW 2.70.030 the Advisory Committee reviewed draft legislation and court rule

proposals, adopted agency policies and procedures, provided oversight of the budget and agency programs, and resolved fiscal appeals pursuant to court rules. After serving in the position for 11 years, retired Spokane Judge Harold Clarke stepped down in December as Chair of the Advisory Committee. Former Supreme Court Justice Bobbe Bridge was appointed by Chief Justice Gerry Alexander as the new Chair of the Advisory Committee.

Both the federal and state constitutions as well as state statutes guarantee the right to counsel for indigent persons in criminal cases and other cases involving fundamental rights, including dependency proceedings, parental rights terminations, criminal contempt convictions, and involuntary civil commitments. Indigent parties involved in these cases, in which their constitutional interests are at risk, are entitled to legal representation at state expense. Indigent defendants are also entitled to court-appointed representation for responses to state appeals and for 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 that the court has determined are not frivolous.

Despite an ongoing series of bleak state revenue forecasts as well as agency budget reductions during fiscal year 2010, OPD maintained its direct services to clients with statewide appellate level indigent defense services and the Parents Representation Program in 25 counties. In consultation with the state Center for Court Research, OPD reviewed case outcomes in the Parents Representation Program and found statistically significant increases in successful family reunifications as well as earlier resolution of cases. OPD also continued working with concerned legal community leaders on critical issues regarding the delivery of trial-level criminal indigent defense in Washington State. The agency consulted with local jurisdictions to identify and implement appropriate uses for state funds to improve public defense, and provided Continuing Legal Education (CLE) programs throughout the state for local public defense attorneys.

---

## AGENCY STRUCTURE

---

During fiscal year 2010, the agency staff was composed of a director, a deputy director, an executive assistant, a senior financial analyst, a senior fiscal analyst, an administrative technical assistant, two public defense services managers, three parents representation managing attorneys, an appellate managing attorney, a parents representation social services manager, and an administrative assistant.

The public defense services managers and the parents representation managing attorneys develop and implement procedures to improve provision of defense services to indigent defendants in trial-level criminal proceedings and to indigent parents in dependency and termination proceedings. The social services manager implements procedures to improve social services to assist parents and their attorneys in dependency and termination proceedings.

The biennial state budget included a significant funding reduction that OPD was able to accommodate largely within the agency administration in order to minimize impact on constitutionally mandated client services and pass-through funding to local programs. To implement the budget reduction OPD laid off one staff attorney and declined to fill other open positions. Remaining staff took 733 hours of voluntary unpaid furloughs that saved the agency \$38,000. Reduced mileage reimbursements to staff using their own vehicles for agency travel saved an additional \$60,000.

Since 2008, OPD has contracted with the Administrative Office of the Courts (AOC) for budget support services, and the agency maintained this relationship during fiscal year 2010. An AOC budget manager works with OPD's director and senior fiscal analyst to plan and implement the agency budget.

***OPD maintained quality indigent appellate services through the appellate appointment system, resources for appellate attorneys, and evaluations of attorney work products.***

**Appellate Appointments.** During fiscal year 2010, OPD worked with the Courts of Appeal to maintain the agency's indigent appellate program, including the electronic Appellate Appointment Program, first initiated in 2005. Pursuant to court rule, the agency designates appellate attorneys for appointment by the appellate courts in approximately 1,500 cases per year. In Division I, the Court makes rotating appointments to two OPD contract attorney firms. In Divisions II and III, the Courts appoint an OPD contract attorney designated for each individual case through the Appellate Appointment

Program. Located at OPD, the system is accessible to the courts through a password-protected web page. Attorneys are selected in rotation based on their location, the case type, and the number of cases assigned in the current year and month. The Appellate Appointment Program system continued to operate efficiently in fiscal year 2010, allowing OPD to monitor the system and ensuring that the courts were provided qualified and available attorneys in a timely manner.

**Tools for Attorneys.** OPD maintained and periodically updated the agency's on-line brief bank, which offers access to more than 11,000 briefs. This searchable collection allows attorneys to save time and improve the quality of their research. Attorneys throughout the state and around the nation have accessed the brief bank, and upon request, OPD has provided information to other states that are interested in setting up similar on-line resources.

OPD continued to encourage its contracted attorneys to use a variety of electronic resources. The agency provides appellate contract attorneys with a Westlaw subscription as well as technical support and training updates on the use of the online legal research service. The state's Judicial Information System (JIS) also is made available to public defense attorneys at no cost through the Administrative Office of the Courts, allowing access to superior court and appellate court dockets. OPD worked with attorneys and counties to improve electronic access to trial court files, which appellate attorneys must review to prepare their briefs.

During 2010 the Appellate Program Manager, working with independent expert consultants, completed rigorous individualized performance evaluations of all 66 contracted appellate attorneys and renewed 22 of 31 contracts. (Note that several contracts are with firms that employ multiple attorneys.) The evaluations enable the program to maintain high quality client representation utilizing attorneys who specialize in appellate practice.

OPD presented Continuing Legal Education (CLE) programs for appellate contract attorneys during the fiscal year, including a statewide conference in October 2010. The two-day conference included presentations on Supreme Court practice from two state Supreme Court justices and a Court commissioner, as well as tips on writing effective appellate briefs from the contractor evaluation consultants. Because many of the contract attorneys are sole practitioners who are geographically remote from other OPD contractors, these specialized CLEs provide unique opportunities to exchange information about current cases and build relationships for mutual support.

To better ensure compliance with the Supreme Court's formatting requirements for trial transcripts, the Appellate Program Manager stepped up routine quality-control monitoring of transcripts filed by local court reporters. Pursuant to court rule, OPD pays court reporters by the page for trial transcripts provided to appellate attorneys. The

enhanced monitoring program has standardized court reporter practices and further improved agency efficiency by reducing the size of transcripts filed for indigent appeals.

***The Parents Representation Program continued to improve case outcomes while enhancing system efficiencies.***

**Program Overview.** The Parents Representation Program provides attorney representation for parents in dependency and termination cases, as required by state statutes and the Washington Constitution. The program began as a pilot to improve standards for parents' representation in 2000 in Benton-Franklin and Pierce County juvenile courts. After several positive evaluations of the pilot, the Legislature gradually expanded the program to a total of 25 counties – two-thirds of the state.<sup>1</sup> State budget limitations have precluded further expansion, though Senate Bill 5454 in 2005 expressed unambiguous legislative intent to extend the program statewide.

**Program Structure.** Parents' attorneys under contract with OPD follow enhanced practice standards that emphasize frequent communication with parent clients, careful case preparation, and vigilant oversight over parents' ability to access services ordered by the court. In addition, OPD makes limited social worker services available to program attorneys through contracts with program social workers, who work with individual parents as requested by their attorneys. The social worker component of the program efficiently supports both attorneys and parents by providing access to social work theory and resources available in the community, and by helping attorneys evaluate ways their clients can participate in their cases successfully. Whenever possible, the OPD program seeks to engage in collaborative, non-adversarial relationships with child welfare professionals.

The Parents Representation Program is managed by three experienced OPD staff attorneys who conduct formal and informal trainings for contracted program attorneys throughout the state, provide support and one-on-one consultation for attorneys, and oversee the program's contracts. A Social Services Manager oversees the social worker component of the program by selecting experienced social workers and managing their contracts, conducting training, and providing resources and support.

---

<sup>1</sup> The 25 counties are: Benton, Franklin, Chelan, Clallam, Clark, Cowlitz, Jefferson, Ferry, Stevens, Pend Oreille, Grant, Grays Harbor, Kittitas, Kitsap, Klickitat, Mason, Pacific, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Wahkiakum, Yakima.

**Evaluating Program Outcomes.** As part of its statutory oversight responsibilities OPD conducts periodic case outcome studies. In FY 2010, in consultation with the state Center for Court Research, OPD completed an evaluation of case outcomes on 1,817 dependency cases filed before and after the Parents Representation Program was implemented. The evaluation found statistically significant increases in successful family reunifications as well as earlier resolution of cases in Program counties.

The percentage of children who were reunified increased by 10.4 percent of case filings, which is statistically significant and represents a 39 percent rate of increase in reunifications.

The federal Adoption and Safe Families Act mandates more timeliness in case resolution. With respect to parents in dependency cases, a case resolution is defined as a dismissal of a case due to any of the following: a reunification or entry of a third-party custody order; a dependency guardianship; or a termination or relinquishment of parental rights (necessary before children can be adopted). OPD's 10.9 percent increase in case resolution is statistically significant and represents an 18.3 percent rate of change in case resolution.

The full report, including the research audit conducted by the Center for Court Research, is available at: [Reunification and Case Resolution Improvements in OPD Parents Representation Program Counties](#)

**Training and Quality Management.** During fiscal year 2010, OPD conducted Parents Representation Program trainings for program attorneys in four regions in November and December. Presentations focused on the impacts of poverty, ethical issues that arise in representing parents, new legislative mandates and case law, and other relevant topics. Uniform, high-quality education is viewed as a critical step for improving practice standards

OPD staff participated in many state child welfare policy committees during fiscal year 2010, including Catalyst for Kids, the Birth Parent Advocacy Group, and the state Supreme Court Commission on Children in Foster Care. In addition, the National Association of Counsel for Children conference in Brooklyn, NY in August, the Washington CASA annual conference in October, the state Reasonable Efforts Symposium in March, the Court Improvement Training Academy in April, and the Children's Justice Conference in May all featured major presentations by OPD staff attorneys.

***OPD improved trial-level public defense by distributing state funds and consulting services to counties and cities, and providing training and resources to attorneys.***

In recent years, the public and all branches of government have become aware of urgent problems in trial-level public defense in Washington. The courts' Justice in Jeopardy initiative and Washington State Bar Association (WSBA) reports have consistently emphasized the state's duty to address chronic underfunding of public defense and a general lack of adequate oversight over much of the state's public defense system. In response the Washington Legislature in 2005 amended Chapter 10.101 RCW to create a state funding process for improving public defense and following an initial appropriation in 2006, the Legislature has continued funding the program at \$6 million annually. Public defense improvement funds are distributed to counties and cities by OPD under the program.

OPD conducted the fourth annual grant application process in fiscal year 2010, distributing each of the 38 participating counties' pro-rata share of state funds, calculated in accordance with a formula established in Chapter 10.101 RCW. Pursuant to the statute, 10 percent of the appropriated funds were distributed to cities, which competed for grants pursuant to a separate OPD application process. Thirty-three cities applied and 17 were awarded grants. City applications increased by 10 over the previous year and the number of cities receiving grants increased by three.

In fiscal year 2010, OPD published the [2009 Washington State Public Defense Status Report](#). This fourth annual report compiles information reported by counties and cities in their Chapter 10.101 RCW state funding applications, including local ordinances and contracts, to provide an up-to-date detailed description of Washington's public defense systems. Prior to the Chapter 10.101 RCW process, much of this information was not available in a comprehensive format from a single source. OPD plans to publish this document each year, providing an annual progress report on the public defense improvement efforts of the local jurisdictions and the state.

In addition to providing statewide data, the 2009 Report highlighted a recent landmark state Supreme Court case, *State v. A.N.J.*, in which the Court ruled that the guilty plea of a 12-year-old boy could not stand due to ineffective assistance of counsel rendered by his public defense attorney. The case clarified an attorney's duty to communicate effectively with a client and independently investigate the facts of a case, and was prominently featured in a series of CLEs presented by OPD around the state.

During fiscal year 2010 OPD continued a longstanding engagement in the courts' Justice in Jeopardy Implementation Committee, co-chaired by Chief Justice Barbara

Madsen and King County Superior Court Judge Deborah Fleck, as well as the WSBA Council on Public Defense. The OPD director is a member of both organizations and OPD staff participate in meetings and special projects. An OPD staff attorney attended the U.S. Department of Justice (DOJ) National Symposium on Indigent Defense in February in Washington, D.C. By invitation of the Department of Justice, the OPD Director met privately in June with Lawrence Tribe, U.S. Attorney General's senior counsel for access to justice.

**Resource Attorneys.** OPD's Public Defense Services Managers provide consultation services regarding public defense issues to local jurisdictions, among other tasks. During the year, they provided numerous in-person and telephone consultations to counties and cities upon request. By the end of the fiscal year OPD had planned or executed visits to all 17 cities that received state grant funding as well as to more than 20 counties, focusing first on counties that were not visited in the previous fiscal year.

In addition, OPD continued to contract with the Washington Defender Association for resource attorney services during fiscal year 2009, pursuant to Chapter 10.101 RCW. Two attorneys are funded through this program to provide consultation and support to individual public defense attorneys practicing throughout the state who contact them about specific case issues. Each resource attorney has provided hundreds of consultations with individual local attorneys during the year.

**Training Program.** OPD continued its regional training curriculum for trial-level public defense attorneys during fiscal year 2010. Many of Washington's public defense attorneys do not work among colleagues in public defender agencies, but rather contract directly with counties and cities to provide public defense. Most of these attorneys practice in remote geographic areas without professional supervision or access to relevant Continuing Legal Education (CLE) programs.

During fiscal year 2010 the agency presented four all-day comprehensive trainings in Moses Lake, Port Townsend, Spokane and Olympia, as well as four additional trainings in Vancouver, Seattle, Yakima and Spokane limited to updates on securing client placement in the state residential Drug Offender Sentencing Alternative (DOSA) program. Two of the all-day CLEs (Spokane and Olympia) focused in-depth on practice standards and ethics issues identified in the *A.N.J.* case.

OPD attorneys were also featured speakers at CLEs hosted by Seattle University and the Washington Defender Association, and attended state and national Access to Justice conferences.

More than 500 local public defense practitioners attended these programs, evaluating the CLEs as being high-quality and often noting their appreciation of the programs' local nature. The legislative allotment to OPD for training covers the cost of materials and

CLE credits. These regional seminars help raise the quality of public defense practice and encourage professional networking among otherwise isolated public defense practitioners.

***OPD developed and submitted the 2009 Extraordinary Criminal Justice Costs Act prioritized list.***

The Extraordinary Criminal Justice Costs Act, RCW 43.330.190, allows counties that have experienced high-cost aggravated murder cases to petition for state reimbursement. Under the Act, OPD annually implements the petition process and submits to the Legislature a prioritized list of counties determined to be eligible for reimbursement. Pursuant to the statute, priority is based on the comparatively disproportionate fiscal impact on the individual county's general fund budget.

In December 2009 Benton, Franklin, Jefferson King and Skagit counties filed petitions seeking a total reimbursement of \$4,647,648. OPD audited and verified costs claimed in these petitions, including costs for investigation, prosecution, indigent defense, jury empanelment, expert witnesses, interpreters, incarceration, and other allowable expenses. As required by the statute, OPD prioritized the petitions in consultation with the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs, and submitted the list to the Legislature. In April 2010 the Legislature adopted and the Governor signed a budget that granted partial reimbursement to Franklin, Jefferson and Skagit counties from a total state appropriation of \$620,000.

***The agency processed 12,739 invoices in fiscal year 2009.***

During fiscal year 2009 OPD staff processed 12,739 invoices including attorney invoices, pro se transcript invoices, court reporter invoices, county clerk invoices, appellate court brief photocopying invoices, and administrative invoices.

Vendors continued to submit invoices on a timely basis pursuant to OPD's payment policies posted on the OPD website. The policies, instituted in fiscal year 2004, require timely submission of vendor invoices and proscribe penalties for late invoices. These changes have improved OPD's ability to forecast future budget demands. Notwithstanding the policies, OPD's appellate funding requirements continue to fluctuate based on case filings, which vary for reasons beyond the control of OPD or its contract attorneys.

During routine operation, the agency in fiscal year 2009 also responded on a daily basis to requests for information and assistance from courts, attorneys, county officials, incarcerated persons, criminal defendants, and the public.

***OPD supported the appellate cost recovery system through rapid responses to cost summary requests.***

Under the Rules of Appellate Procedure, the appellate court determines the costs assessed to unsuccessful appellants. When an indigent defendant is unsuccessful on appeal, the appellate costs become part of the legal financial obligations that can be imposed by judgment. The rules require that a cost bill, prepared by the original prosecuting attorney, be filed with the appellate court within 10 days of the filing of an appellate decision terminating review. Prosecutors' offices forward requests for appellate case cost summaries to OPD. The agency responds within 24 hours in most cases. In fiscal year 2009, OPD answered 727 requests from prosecutors.

---

## CONCLUSION

---

OPD continuously seeks ways to improve the quality of its services and more fully meet its mandates of implementing the constitutional and statutory guarantees of counsel and ensuring the effective and efficient delivery of state-funded indigent defense services.

In the area of appellate services, OPD evaluated the performance of all contract appellate attorneys, encouraged the use of electronic research services, enforced court reporters' adherence to court rule requirements, and conducted Continuing Legal Education conferences.

In the area of parents' representation, OPD maintained and oversaw program services as authorized in two-thirds of the counties, and completed an "Outcomes Analysis" that found the program significantly improves the rate of family reunification as well as overall case resolution.

In the area of trial level public defense, OPD received a highly favorable independent evaluation of three pilot programs, provided resource attorneys, advised counties and cities when requested regarding public defense contracting, conducted regional trainings for attorneys throughout the state, and enhanced programs to distribute public defense funding to counties and cities to improve the local delivery of public defense services.

Throughout fiscal year 2010, OPD worked with the legal community, the courts, and interested groups to improve trial level public defense and will continue to seek funding from the Legislature to improve public defense in Washington State.