

Annual Report

Fiscal Year 2012

STATE OF WASHINGTON OFFICE OF PUBLIC DEFENSE ANNUAL REPORT

FISCAL YEAR 2012



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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:

- 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;
- administering pass-through state funding to the Washington Defender Association (WDA) and the Death Penalty Assistant Center (DPAC), which provide training and resources to public defense attorneys throughout Washington; and
- providing information, special reports and recommendations to the Legislature, including an annual prioritized list of aggravated murder costs eligible for state reimbursement.

The federal and state constitutions and 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 are entitled to legal representation at public 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.

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 the fiscal year the Advisory Committee conducted business at quarterly meetings in September 2011, December 2011, March 2012, and June 2012. 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. OPD's administration and activities during fiscal year 2012 are described in this report.

Agency Structure

During fiscal year 2012, OPD staff included managing attorneys, a financial and budget manager, a social services manager, and assistants. OPD creates and implements procedures to improve provision of defense services to indigent defendants in trial-level criminal proceedings, to indigent parents in dependency and termination proceedings, and for indigent appellants in cases where there is a right to counsel. This responsibility involves developing and implementing policies to ensure that the state's constitutionally mandated representation services are adequately overseen and are effective and efficient. Direct services for constitutionally mandated representation services are primarily handled through some 200 OPD contracts with private and public defense attorneys and social workers. OPD also provides state funds for improving trial level public defense. In addition, OPD contracts with the Administrative Office of the Courts (AOC) for varied fiscal and budget support services.

Appellate Program

Appellate Appointments. During fiscal year 2012, OPD's Appellate Program Manager worked with the Courts of Appeal to maintain the agency's indigent appellate program, including the electronic Appellate Appointment Program, which designates appellate attorneys for appointment in appellate cases. This system allows rotating case appointments to OPD contract attorneys for about 1,400 appeals annually, and allows OPD to monitor appointments to ensure that the courts are provided qualified attorneys in a timely manner.

Contract Renewal. OPD issued a Request for Qualifications (RFQ) to award indigent appellate legal services contracts. To encourage practice specialization, OPD mostly selected full-time contract attorneys who are paid on a monthly basis. Contracts were awarded for a total of 44 attorneys working as sole proprietors or in law firms.

Tools for Attorneys. OPD continued to encourage its contracted attorneys to use a variety of electronic resources during fiscal year 2012. The agency's on-line brief bank was increased to more than 14,542 briefs. This searchable collection allows attorneys to save time and improve the quality of their research. OPD contracts also provide attorneys with access to Westlaw for online legal research for legal and law-related materials as well as technical support and training updates on the use of the research service. The state's Judicial Information System (JIS) is available to public defense attorneys, including appellate attorneys, at no cost through the Administrative Office of the Courts, allowing access to superior court and appellate court dockets. In 2012, the agency also offered a continuing legal education (CLE) course on case law updates and ethics issues, which was located at the University of Washington School of Law in Seattle, Washington and was attended by most of OPD's contract appellate attorneys.

The Appellate Program supports the appellate cost recovery system through rapid processing of cost summary requests.

OPD responded to prosecutors' requests for cost summaries in 641 cases. 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.

Chapter 71.09 RCW Defense Administration Transferred to OPD Under SSB 6493.

Pursuant to a proviso in the 2011-2013 biennial state operating budget, OPD developed a proposal to transfer statewide responsibility for indigent defense in Chapter 71.09 RCW sexually violent predator civil commitment cases from the Department of Social and Health Services (DSHS) to OPD.

At the time, RCW 71.09 civil commitment representation was decentralized, generally organized at the county level, and subject to local practice variations. However, the State of Washington covered virtually all costs associated with the commitment proceedings, including defense legal services.

OPD performed all research and outreach activities associated with developing this Proposal, including contacting numerous individuals and organizations that might be considered potential stakeholders. Research tools included online surveys, personal interviews and site visits, and data collection.

OPD's report proposed four possible options for providing public defense in RCW 71.09 cases, ranging from continuing the existing reimbursement process, to hiring state employees. Each option was projected to generate cost savings to the state, while ensuring that quality representation would be provided under OPD oversight.

The 2012 Legislature passed SSB 6493, Chapter 257, Laws of 2012, establishing that OPD administer RCW 71.09 defense services through a contract attorney system. Due to representation specialization, training opportunities, and enhanced oversight of the program, the transfer to OPD was projected to save \$1.2 million in fiscal year 2013.

The Legislature transferred Chapter 71.09 RCW Defense Administration from DSHS to the Office of Public Defense pursuant to SSB 6493, Chapter 257, Laws of 2012.

During the spring of fiscal year 2012, OPD conducted a Request for Proposal process and selected 23 experienced attorneys for RCW 71.09 representation contracts. Approximately 300 ongoing cases were transferred to the new contract attorneys. In addition to the ongoing representation contracts, OPD executed eight short-term contracts with additional attorneys representing respondents with trials set within the next six months. By following this transition plan, OPD was able to successfully begin administration of the new program on July 1, 2012.

Parents Representation Program

The Parents Representation Program continued to provide effective and efficient representation and conducted Continuing Legal Education Trainings.

Program Overview. The Parents Representation Program provides attorney representation for indigent parents in dependency and termination cases, as required by state statutes and the Washington Constitution. Originally begun as a pilot program, the Legislature gradually expanded the program to a total of 25 counties—two-thirds of the state.¹ State budget limitations have slowed the 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 their clients' ability to access services ordered by the court. Through additional contracts with social workers, OPD makes limited social worker services available to attorneys. The social worker component of the program provides access to social work theory and resources that are available to the contract attorneys in the various communities.

The Parents Representation Program is managed by three experienced OPD attorneys who develop formal and informal trainings for attorneys throughout the state and oversee the program's contracts. A Social Services Manager oversees the social worker component of the program by selecting experienced social workers, managing their contracts, and developing informal and formal training.

Quality Management. During fiscal year 2012, OPD's managing attorneys and the social services manager conducted continuing legal education (CLE) trainings on state and federal case law and statutory changes pertinent to dependency and termination of parental rights cases. Additional CLE topics included *Ethical Considerations of the Missing Client* and *Crossing Borders: Legal Advocacy Meeting Child Welfare and Sexual Domestic Violence for Immigration & Refugee Families*, as well as other ethics subjects.

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

The Parents Representation Program is nationally recognized as a leader in the field. In May 2012, the OPD director gave a speech on the Parents Representation Program's data and case outcomes at the national federally funded Court Improvement Program conference in Washington, D.C.

Trial Level Public Defense Consulting Program

In June 2012, the Supreme Court adopted amendments to criminal court rules CrR 3.1, CrRLJ 3.1, and JuCR 9.2 requiring that appointed counsel for indigent persons certify compliance on a quarterly basis with "applicable Standards for Indigent Defense Services to be approved by the Supreme Court." At the Court's request, these Standards were first developed on a proposed basis by the Washington State Bar Association (WSBA) Council on Public Defense.

The Supreme Court adopts Standards for public defense

The Standards for Indigent Defense (Standards) set forth the basic requirements attorneys must meet to ensure quality representation in public defense cases. Applying to both staff attorneys of county and city public defense offices and contracted attorneys who accept public defense appointments, the key components of the Standards include qualifications, access to an office, investigator use, and caseload limits.

The Supreme Court set an effective date of October 1, 2012 for attorneys to certify compliance in the above categories. Under the Standards, public defense attorneys who represent clients in indigent criminal and/or juvenile offender cases are required to certify quarterly in each court in which they are appointed as indigent defense counsel that they meet the applicable Standards listed on the certification form.

OPD continued to conduct its annual public defense improvement funds application process in fiscal year 2012, distributing 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 in a separate OPD application process. Twenty-seven cities applied and 12 were awarded grants.

In addition, OPD published the "2011 Status Report on Public Defense in Washington State." The report is available at: <http://www.opd.wa.gov/index.php/program/trial-defense/12-pd/100-tl-report> This 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.

Trial Level Public Defense Services. Two OPD managing attorneys provide consultation services regarding public defense issues to local jurisdictions, among other responsibilities. 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 12 cities receiving state grant funding as well as to more than 20 counties, focusing first on counties that were not visited the previous year.

Training Program. OPD's regional training curriculum for trial-level public defense attorneys was continued during fiscal year 2012. Many Washington public defense attorneys do not work among colleagues in public defender agencies, but rather contract directly with counties and cities to provide public defense, often practicing in remote geographic areas without professional supervision or access to relevant Continuing Legal Education (CLE) programs.

Washington Defender Association. OPD continued to contract with the Washington Defender Association (WDA) for training, publications, and high-quality, readily available consultation with attorneys engaged in public defense work throughout Washington State during fiscal year 2012. Services provided by WDA's felony and misdemeanor resource attorneys include technical assistance, case consultation and research. The WDA also provides public defenders with technical assistance on immigration consequences impacting criminal cases, education and training programs, legal research, a brief bank, case law updates, an expert bank, and website resources.

Death Penalty Assistance Center. In fiscal year 2012, OPD continued to contract with The Defender Association's Death Penalty Assistance Center (DPAC) for unique expertise in handling death penalty cases and assisting death penalty defense attorneys. Initiated by the Legislature in 2001, the services provided by DPAC include technical case assistance for defense attorneys in aggravated murder cases where the death penalty may 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.

Extraordinary Criminal Justice Costs

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 2011 Franklin, King, Skagit, and Yakima counties filed petitions seeking a total reimbursement of \$3,343,067. 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. OPD prepared a priorities list in consultation with the Washington Association of

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

Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs, and submitted the list to the Legislature. In April 2012 the Legislature granted partial reimbursement to Franklin, King, and Yakima counties from a total state appropriation of \$849,000.

OPD Worked With Jurisdictions To Improve Indigency Determinations. The appointment of attorneys to public defense cases is not required unless the client is low-income pursuant to established standards. OPD continuously reviews indigency screening standards and in 2012 consulted with a number of trial courts regarding screening issues. OPD's website includes information on indigency requirements, standards, and forms. The indigency screening form was updated during fiscal year 2012.

*The agency
timely
processed
14,976 invoices
in fiscal year
2012.*

During fiscal year 2012 OPD staff processed 14,976 invoices from contract attorneys, court reporters and county clerks, as well as invoices for appellate court photocopying of briefs for the preparation of pro se transcripts, and agency administrative invoices. During routine operation, the agency in fiscal year 2012 also responded on a daily basis to requests for information and assistance from courts, attorneys, county officials, incarcerated persons, criminal defendants, and the public.

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, conducted a Request for Proposal (RFP) process and entered into contract with attorneys specializing in indigent appellate defense.

In the area of chapter RCW 71.09 defense services, OPD was transferred responsibility for sexually violent predator civil commitment cases; conducted a Request for Proposal (RFP) process; and subsequently entered into client services contracts with sole practitioners and firms.

In the area of parents' representation, OPD maintained and oversaw program services as authorized in two-thirds of the counties, renewed and modified contractors in counties where needed, and established caseload adjustments for fiscal year 2013 contractors.

In the area of trial level public defense, OPD addressed the Supreme Court's Order for certification of public defense attorneys in accordance with the new adopted Standards, provided resource attorney services, advised counties and cities regarding public defense contracting, conducted regional trainings for attorneys throughout the state, and distributed state funding to counties and cities to improve the local delivery of public defense services.

Throughout fiscal year 2012, OPD worked with the legal community, the courts, stakeholders, 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.