

**State of Washington
Joint Legislative Audit and Review Committee (JLARC)**



**Office of Public Defense
Sunset Review**

Report 08-2

January 9, 2008

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The Joint Legislative Audit and Review Committee (JLARC) works to make state government operations more efficient and effective. The Committee is comprised of an equal number of House members and Senators, Democrats and Republicans.

JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and the Committee.

The statutory authority for JLARC, established in Chapter 44.28 RCW, requires the Legislative Auditor to ensure that JLARC studies are conducted in accordance with Generally Accepted Government Auditing Standards, as applicable to the scope of the audit. This study was conducted in accordance with those applicable standards. Those standards require auditors to plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. The evidence obtained for this JLARC report provides a reasonable basis for the enclosed findings and conclusions, and any exceptions to the application of audit standards have been explicitly disclosed in the body of this report.

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Committee Approval

On January 9, 2008, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

Acknowledgements

We appreciate the assistance provided by the Supreme Court and Office of Public Defense staff in conducting this study. In particular, we would like to thank the Office of Public Defense staff for their availability and responsiveness.

**OFFICE OF PUBLIC
DEFENSE SUNSET REVIEW**

REPORT 08-2

JANUARY 9, 2008



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Report Summary

The Office of Public Defense

In Washington, individuals are guaranteed the right to be represented by an attorney when they are threatened with loss of liberty or when their children may be taken from them. When a defendant is indigent, or too poor to hire a lawyer, he or she is eligible for a court appointed defense attorney at government expense.

The Office of Public Defense (OPD) was established in 1996 by Substitute Senate Bill 6189 as an independent agency within the judiciary branch with a dual purpose. The Legislature directed OPD to “implement the constitutional guarantee of counsel” and “ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington” (RCW 2.70.005).

Initially, OPD’s duties related exclusively to the second, more specific duty, ensuring the effective and efficient delivery of indigent defense services for appeals, and OPD had no duties related to defendants’ trials. Beginning in 2001, the Legislature has progressively expanded the duties of OPD. These expansions relate to the first, more general duty, to “implement the constitutional guarantee of counsel.”

Currently, OPD has duties in six areas:

1. Operating a program that contracts for state funded appellate indigent defense in all 39 counties;
2. Operating a Parents’ Representation Program that contracts for defense counsel for parents in a dependency proceeding or termination of parental rights proceeding in 25 of the 39 counties;
3. Providing continuing education and training for public defenders;
4. Compiling and prioritizing counties’ extraordinary criminal justice costs and reporting these annually to the Legislature;
5. Consulting with counties to assist them with improving their indigent defense; and
6. Operating a grant program that assists counties and cities with meeting standards or improving indigent defense outcomes.

OPD is Scheduled to Sunset

The Office of Public Defense is scheduled to terminate on June 30, 2008, pursuant to the Washington Sunset Act (RCW 43.131.389 to 43.131.390). As required by this legislation, JLARC conducted a sunset review to assist policymakers with deciding whether the Office should be continued, modified, or terminated.

Results of JLARC's Sunset Review

As a result of its sunset review, JLARC finds that OPD is substantially:

- Meeting legislative intent, as expressed in statute and budget provisos;
- Operating in an efficient and economical manner, with adequate cost controls in place;
- Meeting its performance goals and targets as identified in the 2001 pre-sunset plan, and is evaluating its performance in areas of responsibility established since 2001; and
- Not duplicating services provided by other agencies or the private sector.

JLARC Recommendation

The Legislature should repeal the Sunset provision and permit OPD to continue without substantive modification.

- Absent specific action by the Legislature, the Office of Public Defense will cease to exist on June 30, 2008.
- The state would continue to have an obligation for the Constitutional guarantee of counsel, even if the Office of Public Defense were terminated.

BACKGROUND

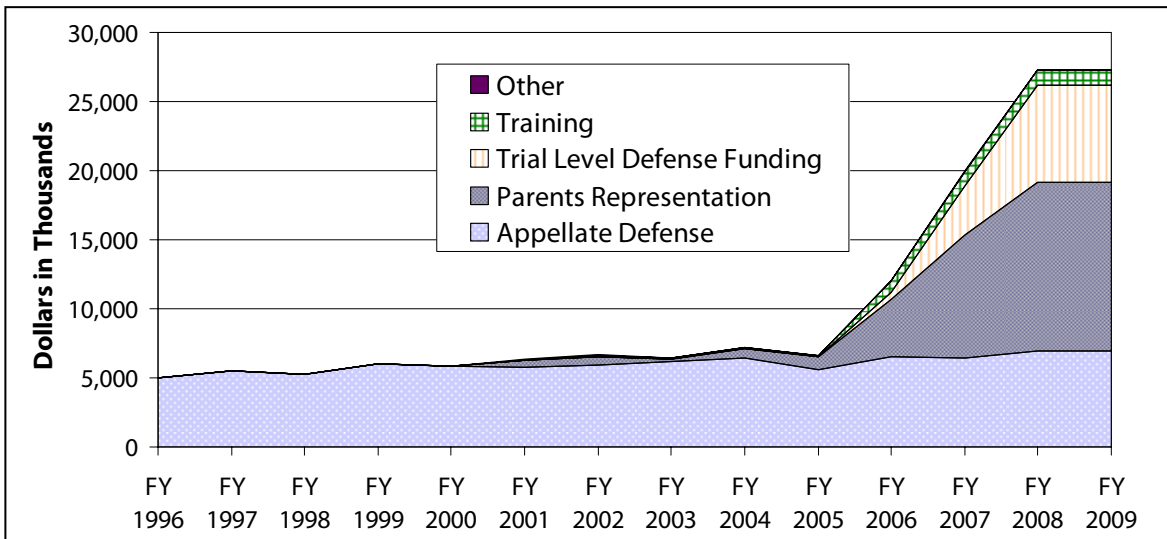
The Office of Public Defense (OPD) was established in Chapter 2.70 RCW with an enabling provision that states the Legislature’s intent that it “implement the constitutional guarantee of counsel and to ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington.”¹ At the time OPD was established, its only duties related to the second part of this charge, ensuring the effective and efficient delivery of indigent appellate services, without hiring attorneys to represent clients.²

The Legislature has since expanded OPD’s responsibilities to a point that appellate indigent defense now represents only about 25 percent of OPD’s budget. However, the added responsibilities all fit within the legislative intent that OPD “implement the constitutional guarantee of counsel.”

OPD currently manages a \$54 million budget and has a staff of 15. None of the staff represent clients in court. Representing indigent persons in court is done by contracted attorneys who are managed and supervised by OPD staff. The bulk of OPD’s budget is paid to contractors, pilot programs, counties, and cities under programs set in statute or budget provisos.

In 2005, the Legislature began expanding OPD’s duties in the areas of parents’ representation, improvement of public defense at the trial level, and training. Consequently, there has been a dramatic increase in the funding to OPD since 2005. However, as Figure 1 shows, the funding increases have related to the new and expanded duties assigned to OPD by the Legislature, not to significant increases in the original duty, indigent appellate defense.

Figure 1 – OPD Funding Has Increased As Its Duties Have Expanded



Source: Senate Ways & Means data, JLARC analysis of OPD data.

¹ RCW 2.70.005.

² RCW 2.70.020 (“The office of public defense shall not provide direct representation of clients.”).

In preparing this report, JLARC was able to rely on the financial audits by the State Auditor's Office to determine that these payments are made properly and that OPD has adequate controls on the payment process. This allowed JLARC to focus on the efficiency and economy portions of the second objective.

What is a JLARC Sunset Review?

Before an agency is scheduled to terminate under the Sunset Act, JLARC is required to study the agency and answer several questions. The Sunset Act requires the agency to provide JLARC with performance goals and targets at the time the sunset is established. OPD worked with JLARC in 2000 to meet this requirement for the appellate indigent defense program, which was OPD's primary duty at the time. Since that time, the Legislature has greatly expanded OPD's duties and appellate indigent defense now reflects only about one-quarter of OPD's budget.

The study scope and objectives were designed to answer the Sunset Act questions for the full range of OPD services.

The four objectives address the question: To what degree is the state's Office of Public Defense:

- 1) Complying with legislative intent as contained in Chapters 2.70, 10.73, 10.101, and 43.330 RCW and budget provisos?
- 2) Operating in an efficient and economical manner, with adequate cost controls in place?
- 3) Reaching expected performance goals and targets?
- 4) Duplicating activities performed by another agency or the private sector?

The report also briefly reviews the possible impacts of termination or modification of the Office if the Legislature were not to accept JLARC's recommendation to repeal the Sunset Provision.

Challenges with this Sunset Review

The intent to "implement the constitutional guarantee of counsel" can only be measured qualitatively, and there is very little additional expression of legislative intent against which to measure OPD. Where there is an expression of intent, it may or may not be codified. For a number of duties, the only expression of intent is in an expired budget proviso or appropriation clause in a bill, or, in some cases, the staff budget notes on expired budgets.

Organization of the Report

The remainder of the report is structured around OPD's duties and JLARC's statutory sunset questions. Specifically, there are sections on the following OPD program areas:

- Indigent Appellate Defense
- Parents' Representation Program
- Training
- Trial-Level Programs

Each of these sections discusses the programs in light of the four sunset questions. The final section, Trial-Level Programs, contains three briefer discussions of smaller or newer programs.

INDIGENT APPELLATE DEFENSE

Introduction

The Office of Public Defense (OPD) was charged with ensuring “the effective and efficient delivery of the indigent appellate services funded by the state of Washington” in 1996. The law prohibits OPD staff from directly representing clients in court. Consequently, OPD contracts with attorneys to represent indigent persons on appeal. OPD’s role has been to establish procedures with the goal of: improving the quality of appellate defense, ensuring that appropriate indigency screening has occurred, establishing a process for accurate and timely payment to the attorneys providing defense, and providing appellate defense attorneys with resources and training. While the responsibility for appointing the appellate attorney originally rested with the trial court and OPD worked with those county level courts to meet the appellate defense standards, all attorneys for indigent appeals are now appointed by the appellate court and, with one exception,³ contracted by OPD.

Does the Indigent Appellate Defense Program Meet Legislative Intent?

At the time OPD was established, appellate attorneys were appointed by trial courts, and it has been reported that many did not have the skills or experience needed to be effective. OPD worked with the trial courts to encourage appointment of OPD’s contract attorneys, who were required to operate under the public defense standards. By 2005, about 80 percent of appellate attorneys were appointed from among OPD’s contract attorneys. In documents submitted to the Court and Legislature, OPD has reported that the quality of appellate work from the remaining 20 percent varied widely, however, and as a result, the Supreme Court changed the appointment process in 2005. Under the new process, the Court of Appeals appoints the attorney based on a recommendation from OPD, and virtually all indigent appeals where there is a right to an attorney are handled by attorneys under contract with OPD.

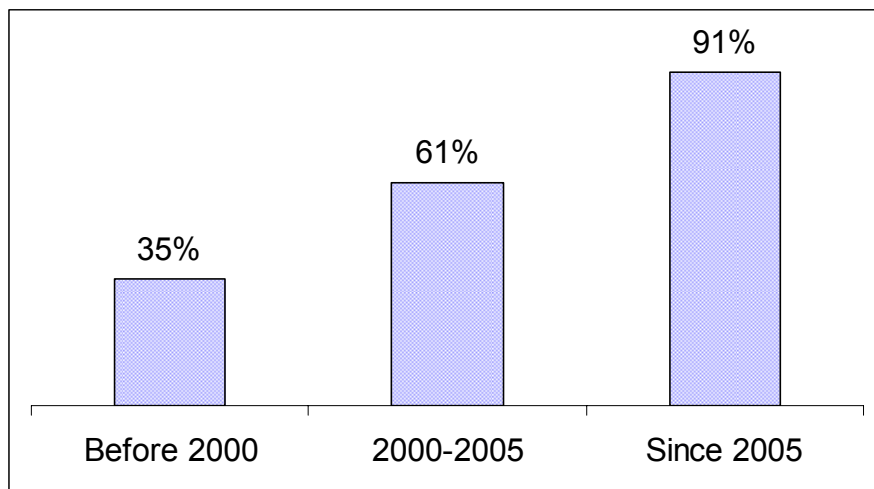
OPD has established rigorous RFP and evaluation processes for contracting and retaining attorneys in order to improve the quality of indigent appellate defense. The cornerstone of both processes is the in-depth evaluation of attorneys’ briefs both before contracting and as part of the evaluation while under contract. OPD has terminated contracts for failure to meet deadlines, violation of the rules of professional conduct, maintaining excessive caseloads in addition to the OPD contract, and unacceptable work quality. Further, where OPD is concerned about a particular attorney’s work product, but the concern does not rise to the level of contract

³ In about five cases per year, non-contract attorneys apply to OPD for appointment as appellate counsel for specific cases and are appointed. In many of these cases, the case originated at the district or municipal court level and was appealed to the Superior Court, and the applying attorney may already have represented the client in the Superior Court appeal and be familiar with the appellate issues. The attorneys must pass OPD’s “Provisional Appointment” application process before appointment at the appellate court level. This application process is designed to ensure the quality of defense.

termination, OPD has chosen to use one-year contract renewals and improvement plans to monitor these attorneys. At the end of the one-year contract, if there are still significant concerns, OPD does not renew the contract. Following its first appellate contract, OPD put 14 contractors on one-year contracts under this process and chose not to renew ten of these contracts after the one-year period.

JLARC worked with OPD to survey appellate judges to obtain their observations of the effectiveness of OPD and its contracted appellate attorneys. Twenty of the 22 Court of Appeals judges and three of the nine Supreme Court justices responded to the survey. The survey explored two areas: the effectiveness of indigent appellate attorneys and OPD's efficiency.

Figure 2 – Appellate Judges' Ratings of Effectiveness Increased as More OPD Contracted Attorneys Were Appointed to Indigent Appeals

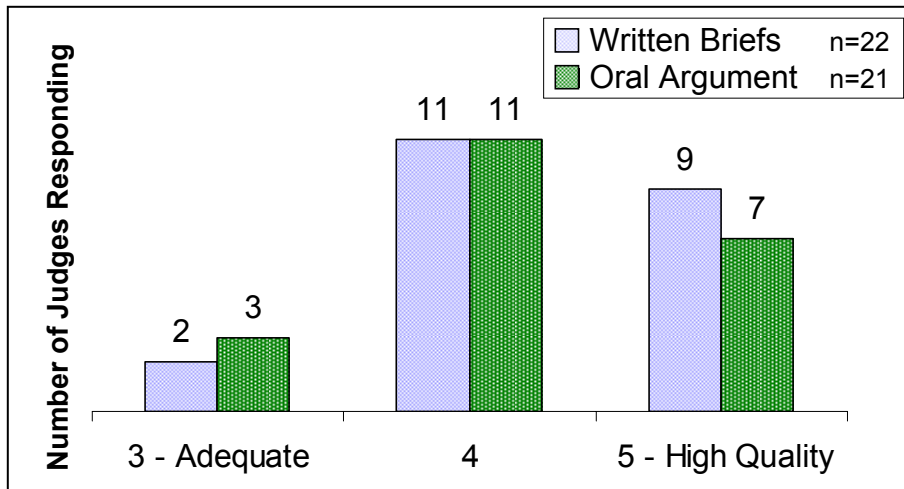


Source: Office of Public Defense Indigent Appeals Survey.

Judges were asked several questions about attorney effectiveness. In the major question of overall attorney effectiveness, the percentage of judges rating appellate attorneys at 4 or 5, with 5 meaning “very effective” grew from 35 percent, for the period before 2000, to 91 percent for the period since 2005, as shown in Figure 2.

Judges also rated the quality of oral argument and written briefs by OPD contracted attorneys. Again, there was a five-point scale with 5 meaning “high quality” and again, the overwhelming majority of appellate court judges scored OPD contract attorneys at a 4 or 5 on the scale, as shown in Figure 3. None of the judges rated the quality of briefs or oral argument as less than adequate.

Figure 3 – Appellate Judges Give OPD’s Contracted Attorneys Good Ratings for Written Briefs and Oral Argument



Source: Office of Public Defense Indigent Appeals Survey.

Is the Indigent Appellate Defense Program Operating in an Efficient and Economical Manner?

In the September 2007 survey of appellate judges, the judges were asked to rate the efficiency of the OPD process for the appointment of appellate attorneys on a scale of 1-5 with 5 being “very efficient.” Twenty-one of the 23 judges (91 percent) rated this process as efficient or very efficient.

OPD’s funding needs fluctuate with the number of appellate cases filed. Case filings vary with decisions beyond the control of OPD.

Despite the fluctuations in OPD’s caseload and consequent funding needs, OPD has taken a number of measures to maximize the predictability of its budget and minimize its costs and the state’s cost for appeals. The following are among the most significant of these measures:

1. OPD established procedures and training for indigency screening, to ensure that state-funded defense services are provided to only those who qualify as indigent.
2. OPD established a “presumptive fee” payment structure in which it makes payments on receipt of documentation that certain procedural steps have occurred in the case, rather than as an hourly fee. Presumptive fees are defined in the biennial or annual contract and are higher for more complex cases than for simpler cases.⁴ This ensures that more experienced attorneys handling more challenging cases are not disadvantaged by the type of cases they handle. Attorneys also have the ability to negotiate additional funding if something unforeseen occurs. Unforeseen occurrences include things such as changes in the law during appeal, discovery of unexpected claims, or requests from the court for supplemental briefs. This payment structure provides a maximum of predictability in OPD’s budget and ensures that cases proceed before payment is made. It also encourages

⁴In this arrangement, the length of the trial transcript is used as a proxy for complexity of the case.

efficient use of time by attorneys, without penalizing those with cases that are outside the normal expectations for the amount of effort.

3. OPD limited payments when a defendant withdraws the appeal before a brief is filed or where an attorney files an “*Anders* Brief,” which is a brief in which the appellate attorney seeks to withdraw from the case because there is no non-frivolous issue for appeal. The limitation on payment for *Anders* Briefs was a response to excessive filing of what OPD and the US Supreme Court believe should be a rare type of brief.
4. OPD has instituted deadlines and documentation requirements for submission of invoices. This means that payments are made close in time to the events in the case and increases the predictability of the budget. OPD audits the invoices to ensure that payments made are for valid claims. Audits by the State Auditor found that OPD’s internal controls on the payment process were adequate.
5. In selecting the necessary documentation for the invoice for the initial brief, OPD chose to require an electronic copy of the brief that was filed with the court. This has permitted OPD to develop a searchable “brief bank” as a research tool for OPD’s contracting attorneys without requiring any additional work of the attorneys. The brief bank currently has over 8,800 briefs. Brief banks are one of the tools established for efficiency in large law firms. OPD’s brief bank provides that large firm economy for research and argument structure to its contractors, many of whom have solo or small office practices.
6. At the request of the Supreme Court and the Legislature, OPD was able to develop a presumptive fee structure for death penalty appeals and personal restraint petitions. The presumptive fee for each of these cases is separately determined following review by an out-of-state death penalty expert. OPD then contracts with counsel for that particular case. OPD used models in other states to inform the development of its presumptive fee structure. Like the fee structure on non-death penalty cases, an attorney faced with unforeseen circumstances may request additional funding. OPD has historically granted these requests when documented. This change has enabled the Court to appoint counsel for these cases after a hiatus in which no qualified attorneys would take these cases due to the low payments. Timely appointment of counsel is necessary to meet constitutional requirements, provides for more efficient administration of appeals, and where an appeal overturns the death penalty, creates savings for the Department of Corrections by returning the convicted person to the regular prison population.
7. Based on its ongoing review of its contractors’ appellate caseloads and time records, OPD recently recommended an increase in appellate caseloads to the Washington State Bar Association (WSBA) Committee on Public Defense standards. The recommendation was adopted by the Committee and the WSBA Board of Governors and referred to the Supreme Court. The recommendation was based on OPD’s experience with appeals. Increasing caseloads means fewer attorneys can handle more cases, improving office efficiency. This recommendation applies only to appellate cases.

Is the Indigent Appellate Defense Program Meeting its Performance Goals and Targets?

OPD established five outcome measures to assess its performance in appellate indigent defense. These measures were documented in JLARC's Pre-Sunset Report (01-6). OPD documented these measures and provided the data to JLARC.

MEASURE 1: In at least 75 percent of statewide appeals, indigent defense will be provided by attorneys working under OPD contracts.

OUTCOME: OPD met this objective in 2003, and included this information in their annual report. Since the 2005 changes to court rules, virtually all indigent appellate defense has been provided by attorneys under OPD contract.

MEASURE 2: At least 70 percent of appellate judges responding to an OPD survey will rate the quality of indigent appeal services as "effective."

OUTCOME: OPD has exceeded this target. In a September 2007 survey, 91 percent of appellate judges rated OPD contracted attorneys as effective or very effective.

MEASURE 3: At least 70 percent of appellate judges responding to an OPD survey will indicate they feel such services are being provided efficiently.

OUTCOME: OPD has exceeded this target. In a September 2007 survey, appellate judges were asked to rate the efficiency of the OPD process for the appointment of appellate. Twenty-one of the 23 judges (91 percent) rated this process as efficient or very efficient.

MEASURE 4: Less than 5 percent of indigent appellate defense briefs will be rejected by the court as being of unacceptable quality.

OUTCOME: OPD has met this target. In a September 2007 survey, appellate judges were asked what percentage of briefs they had rejected for either failure to conform to court rules or for unacceptable quality before 2005 and after 2005. One judge indicated rejecting more than five percent of briefs before 2005, but all judges indicated that they had rejected less than five percent of briefs after 2005. While half the judges indicated rejecting at least one brief for failure to conform to court rules, all but two judges indicated that they had never rejected a brief for unacceptable quality.

MEASURE 5: The contract fee funding method for death penalty appellate cases will be increased to 100 percent of the cases.

OUTCOME: OPD has met this target. All indigent death penalty appeals and personal restraint petitions are now handled by qualified death penalty counsel and are paid under a presumptive fee contract with the Office of Public Defense.

To What Degree is OPD Duplicating Activities Performed by Another Agency or the Private Sector?

The state is constitutionally required to provide appellate public defense because indigent defendants are unable to access private defense representation. Consequently, there is, by definition, no private duplication of services. While there are trial-level defense agencies and defense attorneys contracted with local government, there is no agency duplication because trial-level agencies do not have the authority to submit names of counsel to the appellate court for appointment.

PARENTS' REPRESENTATION PROGRAM

Introduction

Dependency proceedings are court hearings that occur when the state has removed a child from his or her parent's custody because the child has been abandoned, abused, neglected, or no one is able to care for him or her. The purpose of these proceedings is to establish whether the child can return to the parent's custody, what must occur to make that happen, and if the child cannot return to the parent's custody, to develop another option for the child.

Termination proceedings are court hearings to terminate a person's parental rights because the person's child has been in state custody for 15 months and the parent has been unable to correct the problems that make it unsafe for the child to be in the parent's home.

Although dependency and termination proceedings are civil proceedings, because of the fundamental rights involved, parents have a right to counsel in these proceedings.⁵ Therefore, this duty falls under the broad charge of OPD's enabling legislation that it was established for the "implementation of the constitutional right to counsel."⁶

In 1999, the Legislature asked OPD to develop a proposal to address the costs of legal representation and reasonably related expenses for indigent parents and others in dependency and termination proceedings.⁷ The proposal was to address the increased number of cases filed by the state, how this effected indigent defense costs, and recommend strategies to ensure establishment of an equitable method of paying for indigent defense costs in these proceedings.

OPD provided the Legislature with a report and proposal in December 1999, and during the 2000 Legislative Session, OPD was asked to develop a pilot program in two courts. The courts chosen for the pilots were Benton-Franklin Juvenile and Pierce County Juvenile Court. The Legislature began expanding the program in 2005, and it now operates in 25 of the state's 39 counties. As with indigent appellate defense, OPD contracts with attorneys to provide these services.

Does the Parents' Representation Program Meet Legislative Intent?

The Parents' Representation Program was first funded to **enhance** the representation of parents in dependency and termination proceedings. The 2001 Supplemental Operating Budget included a proviso establishing a dependency and termination legal representation funding pilot program, specifying the program goal and necessary components of the program, as follows:

⁵ All parents have a statutory right to counsel in dependency and termination proceedings so indigent parents have the right to publicly funded counsel. Any parent who could be charged with a crime as a result of the proceedings has a federal constitutional right to counsel. A parent who has abused, neglected, or abandoned his or her child could be charged with a crime. Consequently, almost all parents in dependency and termination proceedings have a federal constitutional right to counsel in addition to their statutory right.

⁶ RCW 2.70.005.

⁷ Chapter 371, Laws of 1999 (SSB 5744).

- Enhance the quality of legal representation, thereby reducing the number of continuances requested by defense counsel, including requests based on unavailability of counsel.
- Do not exceed 90 dependency and termination cases per full-time attorney.
- Implement enhanced practice standards including, but not limited to, those related to reasonable case preparation and delivery of adequate client advice.
- Use investigative and expert services in appropriate cases.
- Implement effective indigency screening of all parents, guardians, and legal custodians represented by appointed counsel in these cases.
- Contract for an independent evaluation of the program, with an interim report.

OPD's performance related to these measures is discussed in the performance goals and targets section on the following page.

The Legislature has greatly expanded the program based on the overall view of the pilot programs' success. When it expanded the program, the Legislature changed the previous requirement for counties to continue including a share of their defense funding for this program. As stated in the 2005-07 Biennial Operating Budget Notes, "The new funding to expand the program to additional counties **will relieve the counties of the financial burden** of defending the cases." The implementation of a Parents' Representation Program in a county under the expansion language generates savings in the county budget. OPD is aware that several counties have used those savings to make improvements in other trial-level public defense services.

Presiding judges and commissioners in counties with Parents' Representation Programs rate their programs highly. In a September 2007 online survey by OPD, judges rated the quality of indigent parents' representation in dependency and termination of parental rights cases at an average score of 4.2 on a 5-point scale, and rated the quality of OPD Parents' Representation Program attorneys' preparation for court proceedings at an average score of 4.3. The survey was completed by 13 of the 15 courts with programs. Because some counties are combined into joint judicial districts, these 15 courts represent programs in 18 counties.

Is the Parents' Representation Program Operating in an Efficient and Economical Manner?

While this program began with a \$500,000 proviso, it now represents a \$24.3 million biennial commitment and constitutes about 45 percent of OPD's total budget. The Legislature began expanding the Parents' Representation Program to additional counties in 2005. The program is currently operational in Benton, Clallam, Clark, Cowlitz, Ferry, Franklin, Grant, Grays Harbor, Kitsap, Kittitas, Pacific, Pend Oreille, Pierce, Skagit, Snohomish, Spokane, Stevens, and Yakima counties. It is expanding to seven additional counties this fall: Chelan, Jefferson, Klickitat, Mason, Skamania, Thurston and Wahkiakum.

It is difficult to identify cost efficiencies in a program where the state is expanding its role and, as a result, its costs. However, OPD established an application process for counties who wanted a Parents' Representation Program in order to target limited funds where they will have the most impact. OPD's goal, within the available funding, has been to ascertain which juvenile courts had

the greatest need and could be expected to experience the greatest positive impacts from the program, thereby maximizing the impact of the state funds. OPD's application process has considered such things as the size of caseload, level of interest, existing need, reported outcomes, potential for impacting need and potential for court improvement.

The payments that OPD makes under the Parents' Representation Program are audited by the State Auditor. These audits have found that OPD has adequate controls on their processes.

Is the Parents' Representation Program Meeting Performance Goals and Targets?

With one amendment discussed in Measure 2, OPD uses the original criteria from the 2001 proviso as the goals and standards for the program. Consequently, JLARC is using these as the six performance goals and targets for this program.

MEASURE 1: The goal of the program is to enhance the quality of legal representation, thereby reducing the number of continuances requested by defense counsel, including requests based on unavailability of counsel.

OUTCOME: OPD meets this target. A final evaluation of the first two pilots in 2002 reported that defense continuances due to over scheduling had dropped to four percent from six percent in the first report.

An interim evaluation looked at the reasons for continuances in the first few months of the program and showed that OPD attorneys and their clients caused fewer continuances than either the state or the court. Further, most defense attorney continuances related to their clients, not to the attorney schedule. The largest single reason for continuances (33 percent) was a need for further information; for example, a paternity determination or the results of a criminal trial.

In 2007, OPD surveyed the 15 courts in which there are Parents' Representation Programs. Thirteen courts responded, and ten of the 13 had noticed a reduction in continuances (77 percent).

OPD will be better able to answer specific questions about current caseloads in the near future. It has developed and implemented an automated database tied to its invoice and payment system. The database includes information about continuances and other outcomes. OPD and its vendor are currently in process with programming to permit reporting of relevant information, including the number of continuances per case, who requested them, and why they were requested.

MEASURE 2: The Parents' Representation Program will not exceed 90 dependency and termination cases per full-time attorney.

OUTCOME: OPD meets this target. OPD adopted the 90-case caseload requirements and enhanced caseload standards as part of the pilot program contracts and enforced

them, up to terminating or not renewing contracts with program attorneys who will not limit outside practice so that their caseloads comport with the standard.

In 2003, following review and approval by its Advisory Committee, OPD lowered the caseload standard to 80 cases per full-time attorney to permit adequate time for case preparation and communication with the clients.

MEASURE 3: The Parents' Representation Program will implement enhanced practice standards including, but not limited to, those related to reasonable case preparation and delivery of adequate client advice, as identified in OPD's 1999 report.

OUTCOME: OPD met this target. The enhanced parents' representation standards are part of the contract that program attorneys and firms sign with OPD. This permits OPD to enforce adherence to the standards.

The interim evaluation of the two pilots demonstrated that attorneys were spending more time on each case and, overall, that 84 percent of attorney time was used for case preparation and client communication. This was a very substantial increase over the time reported in the 1999 OPD report that led to the establishment of the program.

MEASURE 4: The Parents' Representation Program will use investigative and expert services in appropriate cases.

OUTCOME: OPD meets this target. OPD provides funding for investigators, social workers, and other expert services, and conducts training for attorneys in the appropriate use of these resources. It also trains the investigators and social workers in how to effectively assist counsel. OPD has chosen not to renew contracts when attorneys do not use these resources appropriately.

MEASURE 5: OPD will implement effective indigency screening of all parents, guardians, and legal custodians represented by appointed counsel in these cases.

OUTCOME: OPD met this target. OPD developed and conducted statewide training for personnel involved in indigency screening of parents, guardians, and legal custodians involved in dependency and termination proceedings. In addition, on implementing a Parents' Representation program, OPD has ensured indigency screening is being performed by the court before attorneys are appointed. OPD has periodically updated the status of indigency screening practices in the program courts.

OPD also published a new statewide report on indigency screening practices.⁸ The report includes a simplified indigency screening form that OPD developed, has piloted, and recommends using as a basis for indigency determinations.

⁸ OPD, Update on Criteria and Standards for Determining and Verifying Indigency, October 2007.

OPD is currently providing this form and training in its use to all program court personnel who are responsible for ensuring effective indigency screening.

MEASURE 6: OPD will contract for an independent evaluation of the program, with an interim report.

OUTCOME: OPD met this measure. Both evaluations were conducted by Northwest Crime and Social Research, Inc. The interim evaluation was submitted to the Legislature in January 2001. The final evaluation was submitted in February 2002. While this study discussed the costs and benefits of the program, the benefits discussion was largely qualitative while the cost discussion was a brief recitation of the funding and an approximation of the average funding per case.

The program has had two additional reviews of the pilot sites, each of which focused more narrowly on particular aspects of the program. The first, by the National Council of Juvenile and Family Court Judges in 2003, found noticeable differences in case processing timeframes, time spent in out-of-home care, and case outcomes among the samples. While it acknowledged that there were other factors that may also have contributed to these results, the evaluators found it “evident” that the Parents’ Representation Program was having a positive impact on the legal representation of parents in dependency and termination proceedings.

The second, by the Northwest Institute for Children and Families Evaluation Services Team in 2005, was restricted to cases that resulted in reunification and for those cases found similar benefits. However, because the study looked only at reunifications and not the full range of case outcomes, the findings cannot be generalized to the full programs in either county or to other counties.

To What Degree is OPD Duplicating Activities Performed by Another Agency or the Private Sector?

The state provides public defense because indigent defendants are unable to access private defense. Consequently, there is, by definition, no private duplication of services. As explained below, there is also no duplication of services with another agency.

In 24 of the 25 counties in which it operates Parents’ Representation Programs, all the defense attorneys representing parents in dependency and termination cases have contracts with OPD. In Pierce County, because the pilot funding was not sufficient for OPD to contract both with the Department of Assigned Counsel and conflict counsel (who represent additional parents in multiple parent cases), OPD and Pierce County have divided the responsibility in a manner that assures there is no duplication of services.

TRAINING PROGRAM

Introduction

Practicing attorneys must participate in ongoing training and continuing legal education to maintain their licenses to practice. In addition, there are defense standards adopted by the bar association and referenced in statute that require public defense attorneys to have annual continuing education specific to public defense. While most of OPD's training is focused on contracted attorneys, OPD also trains other public defenders, public defense support staff, social workers, and investigators. The training is delivered using several methods. OPD provides:

1. Continuing legal education (CLE) programs at both the trial and appellate level;
2. Training in small groups and for individual contract attorneys, social workers, and investigators through OPD's staff supervising attorneys and social services managers;
3. A resource attorney and CLE courses for death penalty qualified attorneys and those pursuing this qualification through a contract with the Death Penalty Assistance Center;
4. Pass-through funding to the Washington Defender Association which offers state-funded CLE courses, resource attorneys to public defenders, and materials (i.e., desk books) to public defense attorneys under contract with OPD;
5. Online legal reference resources to OPD's contracting attorneys including a proprietary brief bank, access to the Judicial Information System, and online legal research tools; and
6. Individual monitoring and supervision of contracted staff, if there are concerns about the quality of work.

Does the OPD Training Program Meet Legislative Intent?

RCW 2.70.005, OPD's enabling statute, charges OPD with the duty to "implement the constitutional guarantee of counsel" and the Budget Notes related to implementation of E2SSB 5454 (2005),⁹ which included training funding, repeatedly state one purpose as "to improve indigent defense services".

Improving indigent defense services is part of implementing the constitutional guarantee of services because the constitutional guarantee is more than the mere physical presence of an attorney in the courtroom. The constitutional guarantee contains the premise that the representation is competent. Consequently, to the extent that public defenders are becoming trained in better defense practices and tools, have the resources they need and are able to meet defense standards relating to supervision and consulting, OPD's training and resources are a step toward improving indigent defense services, and thereby implementing the constitutional guarantee of counsel.

⁹ Chapter 457, Laws of 2005 §20(1) (court funding legislation that contained an appropriations for OPD training).

Each of the six training methods listed in the introduction to this chapter are focused on improving public defense through both OPD contract attorneys and the public defense community in general. In a number of these areas, OPD is the only source of training. Further, OPD has an evaluation process for its CLE programs, and the evaluations by the participants are positive. Consequently, OPD appears to be meeting legislative intent with its training program.

Does the OPD Training Program Operate in an Efficient and Economical Manner?

OPD has taken opportunities to maximize training opportunities while minimizing costs in a number of the areas listed above. The primary way OPD has done this is by targeting its continuing legal education (CLE) courses to underserved markets and tailoring the content of the presentation to the specific needs of the public defense community in the community where the class is being held. This will be discussed further under duplication of services.

A second way that OPD economizes is that it has sought and received grants to cover some training costs. OPD received a grant to cover the full outside costs of the first Parents' Representation Conference in 2004, including all facility costs. OPD has sought and received grants for producing the extensive training materials it provides its attorneys. OPD also economizes in the selection of locations in which it offers CLE courses. OPD reports that, when possible, it selects sites at which it can obtain rooms for free or at a discount and where it can provide economical food and beverage service, particularly for trainings that include substantive lunch sessions.

A third way that OPD has ensured that its program operates in an efficient and economical manner is the double use of materials and staff. For example, OPD developed its online brief bank using the briefs required to document attorney invoices. Similarly, when OPD contracted with the Washington Defender Association (WDA) for two resource attorneys, it knew that the two attorneys needed to be available full-time, but their time would not always be occupied in consulting, so the contract requires them to write a reference manual for use by trial-level defense attorneys.

Is the OPD Training Program Meeting Performance Goals and Targets?

The Legislature has not provided OPD with criteria for its training. However, there are two criteria that can be applied to measure OPD's performance in the area of training. The first relates to external standards of quality for CLE. The second is an OPD internal goal.

MEASURE 1: Do the trainings offered meet criteria for attorneys to earn required CLE credit toward both their licensing requirements and Standard #9 of the Defense Standards, which requires defense attorneys to obtain seven CLE credits per year in defense training related to their caseloads?

OUTCOME: OPD meets this target. OPD applies for and receives CLE credit for each course. OPD's courses average 7.68 CLE credits apiece. This means that

attorneys may be able to meet Defense Standard #9 with minimal disruption to their trial schedule.

MEASURE 2: During the 2005 Legislative Session, OPD set a goal that training funds would be used to target contract attorneys working in non-urban areas.” The context of this goal was the appropriation of funding for trial-level training.

OUTCOME: OPD meets this target. Since January 2006, 65 percent of OPD’s non-appellate courses have been located outside the Seattle-Metro, Spokane, and Vancouver areas. Of the six courses that were located in these urban areas, three were regional trainings in Spokane or Vancouver, urban areas surrounded by rural counties, and the location was central to attorneys in those non-urban areas. If these three courses are also counted, the percentage of targeted courses is 82 percent.

To What Degree is OPD Duplicating Activities Performed by Another Agency or the Private Sector?

There are three major providers of criminal defense training: OPD, the Washington Defenders’ Association (WDA) and the Washington Association of Criminal Defense Lawyers (WACDL). In addition to its own programs, OPD provides specialized death penalty defense training through a contract with the Death Penalty Assistance Center (DPAC).¹⁰ As shown in Figure 4, between January 2001 and December 31, 2006, these organizations offered 868.75 continuing legal education credits focused on criminal defense training.

Figure 4 – OPD is the Largest Provider of Defense CLE Courses

Year	2001	2002	2003	2004	2005	2006	Total
OPD Units	5.75	7.00	23.50	32.00	25.25	107.00	200.50
DPAC Units	0.00	33.00	20.50	18.25	10.50	25.75	108.00
OPD & DPAC Total	5.75	40.00	44.00	50.25	35.75	132.75	308.50
WDA Units	34.00	11.50	55.00	34.50	84.75	40.00	259.75
WACDL Units	55.50	43.75	60.50	53.25	36.75	50.75	300.50
Annual Totals	95.25	95.25	159.50	138.00	157.25	223.50	868.75

Source: WSBA Mandatory CLE Database (<http://pro.wsba.org/SponsorHome.asp>).

¹⁰ OPD contracts with DPAC to provide specialized death penalty defense training and a resource attorney for public defenders with death penalty cases. JLARC aggregated DPAC training courses with those offered by OPD because OPD funds the training and DPAC is contractually obligated to provide it. By contrast, state funding for WDA currently passes through OPD’s budget, but the funding is designated by the Legislature and is not the result of a contractual obligation OPD.

Training Program

The vast majority of the WDA and WACDL CLE courses are offered in major metropolitan areas of the state (Seattle-Metro, Vancouver, and Spokane), while the majority of OPD courses are offered in less urban settings.

Although there have been infrequent defense training courses in the specialized areas of criminal appeals, parents' representation, and the death penalty, OPD is the only **regular source** of specialty defense CLE credits for death penalty defense, indigent appellate defense, and parents' representation since it began offering these trainings.

Training Type	OPD's Portion
Death Penalty	100% since 2002
Criminal Appeals	92% since 2001
Parents' Representation	83% since 2003

When looking at general trial-level defense, OPD has taken steps to ensure that it does not duplicate services.

- First, OPD targets course content to issues requested by the attorneys in the region where the class is being held, limits the courses to public defense attorneys, and individually invites the attorneys in the area to the class in order to maximize attendance and the interaction between practitioners in the same geographical region. This attention to regional and local needs and direct interaction with invited attorneys is unique among providers.
- Second, OPD offers classes outside the major urban areas, so that defense attorneys can obtain this training near their practices.

JLARC has determined that, because of the scope of training services OPD provides and OPD's targeting of CLE course content and location, there is little substantive duplication in OPD's training program.

TRIAL-LEVEL PROGRAMS

Overview

There are three remaining duty areas for OPD: preparing the annual Extraordinary Criminal Justice Costs Report, providing county consulting, and three new programs to improve trial-level indigent defense. The trial-level indigent defense improvement programs include three pilot programs and a state grant program to counties and cities. Each of these duty areas is either too small or too new for a full discussion of all the objectives and will be addressed together in a summary manner. Further, each of these programs is a unique duty established by the Legislature and assigned to OPD. As a consequence, there is no duplication of services with other agencies or the private sector.

Extraordinary Criminal Justice Costs

Every year the OPD prepares a report of extraordinary criminal justice costs for which counties have petitioned for reimbursement. The report establishes priorities for reimbursement. Extraordinary criminal justice costs are unforeseen costs related to investigation and litigation of first degree aggravated murder cases.

The Legislature required OPD to establish procedures for this report and prepare it annually in consultation with the Washington Association of Prosecuting Attorneys (WAPA) and the Washington Association of Sheriffs and Police Chiefs (WASPC).

To prepare the report, OPD must audit the counties' petitions to ensure that they include only permitted costs and that these costs are adequately documented. OPD verifies county documentation and ranks each county by the impact of claimed cases on its budget. OPD, WAPA, and WASPC also consider whether the county uses death penalty qualified defense attorneys for these cases, placing a higher priority on those counties that do. Using a death penalty qualified attorney at the trial level will reduce expenses at the appellate level.

The primary objective in this program is that OPD produce a timely and valid annual report to guide legislators. OPD has consulted with WAPA and WASPC and submitted the report each year since 1999, and the operating budgets for each year show that the Legislature has partially funded at least the first priority each year, and in some years has partially funded additional priorities from the list. Further, the Legislature generally has not funded extraordinary criminal justice costs from requests outside this report.

County Consulting

The Office of Public Defense provides training and technical assistance to counties to improve the provision of trial-level criminal indigent defense. These consulting services were mandated in E2SSB 5454 (2005) and funded in both the 2005-07 and the 2007-09 Operating Budgets.

Following the effective date of the legislation, OPD publicized this opportunity through presentations to the Fall Judicial Conference, the Superior Court Judges' Association Best Practices Committee, and the Washington State Association of Counties (WSAC) Conference, and the Washington State Bar Association.

OPD has met with judges or public defenders in Clallam, Benton, Pierce, King, Spokane, Clark, Grays Harbor, Mason, Kitsap, Thurston, Walla Walla, and Okanogan counties and with county commissioners or other officials in Skagit, Thurston, Benton, Clark, and Kitsap counties. Following consultations in these 14 counties, ten counties have made changes ranging from the adoption of ordinances and review of contracts to the establishment of public defender offices. One additional county resolved a dispute between the court and the defenders on the use of defense funds. There is no mandate on the counties to use the training and technical assistance they receive, so the fact that 11 of 14 counties have taken action following consulting implies that the counties find the service relevant and valuable.

While the legislation does not have strong intent language or establish performance targets, we found evidence that the training and technical assistance OPD provides is resulting in local changes to improve public defense and implement the constitutional guarantee of counsel.

Trial-level Indigent Defense

Engrossed Second Substitute Senate Bill 5454 (E2SSB 5454) appropriated \$1 million for “a criminal indigent defense pilot program for persons charged with felony or misdemeanor offenses.”¹¹ The appropriation required the pilot to include “effective implementation of indigency screening; enhanced defense attorney practice standards; and use of investigative and expert services.”¹²

The following session, the 2006 Supplemental Operating Budget provided that “Within amounts appropriated in this section and in Engrossed Second Substitute Senate Bill No. 5454, the office may, at its discretion, implement Second Substitute House Bill No. 1542 (indigent defense services).”¹³ The budget notes indicate that \$3 million was appropriated in addition to the pilot funding to improve criminal indigent defense services at the trial level. 2SHB 1542 established the county and city grant program for improving criminal indigent defense services at the county and city levels. This program is codified at RCW 10.101.050 through 10.101.080.

Pilot Programs

OPD used the \$1 million appropriation to fund three trial-level pilot programs. Because OPD worked within the already existing structures of public defense in these three locations, it was able to leverage its funding to go beyond the expectation of one trial-level pilot program. The three pilots are distinct. They are in three different types of trial court and handle a different sort of case than OPD has previously addressed. Two of the programs handle misdemeanor cases and

¹¹ The section also appropriated \$1.3 million for “criminal indigent defense assistance and enhancement in the trial courts.” This is the funding source for county training and technical assistance consulting and trial-level defense training.

¹² Chapter 457, Laws of 2005 (E2SSB 5454) §20 (1)).

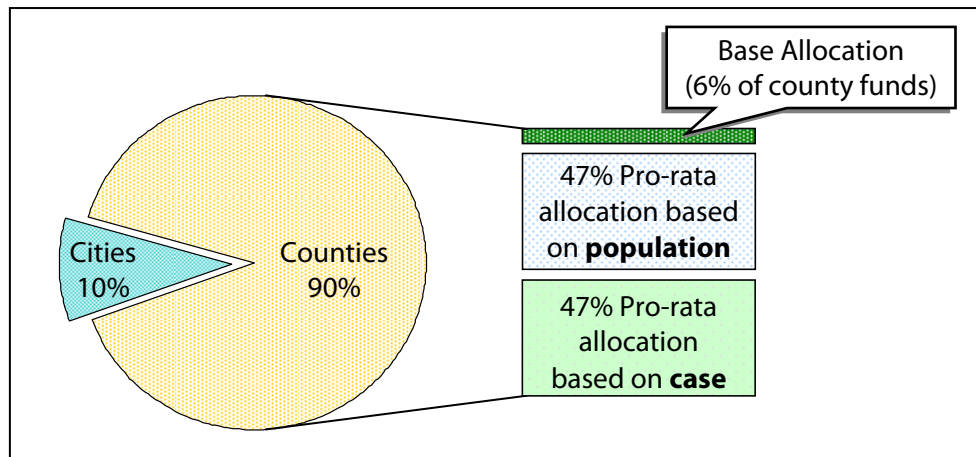
¹³ Chapter 372, Laws of 2006 (ESSB 6386 § 113(3)).

the third is in a juvenile court. The three pilots are described in Appendix 3. OPD evaluated the first year of the pilots using an independent evaluator. The quantitative portion of this evaluation was based on OPD’s required documentation and the qualitative portion was based on extensive stakeholder interview. OPD plans a final evaluation in late 2008 that will update the earlier report and, to the extent possible, look at impacts on the court process.

County and City Grants

In 2006, 38 of Washington’s 39 counties applied for trial-level defense improvement grants under 2SHB 1542.¹⁴ 2SHB 1542 was codified into Chapter 10.101 RCW, which specifies eligibility criteria for counties, identifies categories of programs and actions for which counties can spend this funding, and establishes a formula for disbursing the funds. The disbursement formula is laid out in Figure 5. OPD reviewed the applications, worked with counties to ensure that their intended uses were permitted by the statute, and disbursed the funds as required.

Figure 5 – Distribution of Grant Funding



Source: RCW 10.101.070.

This method of funding the county grants minimizes the cost of administering the program because there is no competitive process and OPD does not determine the value of each proposal. However, because the formula is not linked to the county’s anticipated costs, OPD has little control over the effectiveness and efficiency of county use. OPD is required to determine whether the counties are using the funds for purposes specified in statute. If not, there is a procedure established to correct the improper use. However, OPD does not have authority to designate how counties use the funds within allowable categories.

The 10 percent of the appropriation for city grants has many fewer specifications. While cities must still conform to the eligibility criteria and use the grant for an allowable program or action, the city grants are established as competitive grants and OPD has discretion in how the funding is distributed and for what purposes it is used.

This is the first year of the funding and OPD will begin reviewing the use of funds in early 2008.

¹⁴ Douglas County did not apply.

CONCLUSION AND RECOMMENDATION

Findings

The Office of Public Defense is meeting legislative intent, operating in an efficient and economical manner, with adequate cost controls in place, is meeting established goals and targets, and does not substantially duplicate services offered by other agencies or the private sector.

Termination of the Office of Public Defense would have substantial and wide-reaching ramifications on the court system in Washington State. The right to counsel is a constitutional right, and provision of counsel for indigent defendants is a government responsibility

<p style="text-align: center;">If the Legislature does not act, the Office of Public Defense will cease to exist on June 30, 2008.</p>

Recommendation

Recommendation 1

The Legislature should repeal the Sunset provision and permit OPD to continue without substantive modification.

Legislation Required:	Yes
Fiscal Impact:	None
Reporting Date:	June 30, 2008

APPENDIX 1: SCOPE & OBJECTIVES

OFFICE OF PUBLIC DEFENSE SUNSET REVIEW

SCOPE AND OBJECTIVES

AUGUST 23, 2007



STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

STUDY TEAM

Fara Daun

PROJECT SUPERVISOR

Keenan Konopaski

LEGISLATIVE AUDITOR

Ruta Fanning

Joint Legislative Audit &
Review Committee
506 16th Avenue SE
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(360) 786-5171
(360) 786-5180 Fax

Website:

www.jlarc.leg.wa.gov
e-mail: neff.barbara@leg.wa.gov

Why is JLARC Performing a Sunset Review of the Office of Public Defense?

The Office of Public Defense (OPD) is scheduled to terminate on June 30, 2008, pursuant to the Washington Sunset Act. As required by this legislation, JLARC will conduct a sunset review to assist policymakers with deciding whether the Office should be continued, modified, or terminated.

Background

In Washington, individuals are guaranteed the right to be represented by an attorney when they are threatened with loss of liberty or when their children may be taken from them. When a defendant is indigent, or too poor to hire a lawyer, he or she is eligible for a court appointed defense attorney at government expense.

The Office of Public Defense was established in 1996 by Substitute Senate Bill 6189 as an independent agency within the judiciary branch with a dual purpose. The Legislature directed OPD to “implement the constitutional guarantee of counsel” and “ensure the effective and efficient delivery of the indigent appellate services funded by the state of Washington” (RCW 2.70.005).

Initially, OPD’s duties related exclusively to the second, more specific duty, ensuring the effective and efficient delivery of indigent defense services for appeals and had no duties related to defendants’ trials. Beginning in 2001, the Legislature has progressively expanded the duties of OPD. These expansions relate to the first, more general duty, to “implement the constitutional guarantee of counsel.”

Currently, OPD has duties in six areas:

1. Operating a contract program for state-funded appellate indigent defense in all 39 counties;
2. Operating a parents’ representation program that provides defense counsel for parents in a dependency or termination of parental rights proceeding in 25 of the 39 counties;
3. Compiling and prioritizing counties’ extraordinary criminal justice costs and reporting these annually to the Legislature;
4. Consulting with counties to assist them with improving their indigent defense;
5. Providing continuing education and training for public defenders; and
6. Operating a grant program that assists counties and cities with meeting standards or improving indigent defense outcomes.

Absent specific action by the Legislature, the Office of Public Defense will cease to exist on June 30, 2008.

Study Scope

This review will examine the operations and duties of the Office of Public Defense. The review will focus on the evaluation criteria specified by the Washington Sunset Act.

Study Objectives

JLARC will address the following four questions.

To what degree is the state’s Office of Public Defense:

- 1) Complying with legislative intent as contained in Chapters 2.70, 10.73, 10.101, and 43.330 RCW and budget provisos?
- 2) Operating in an efficient and economical manner, with adequate cost controls in place?
- 3) Reaching expected performance goals and targets?
- 4) Duplicating activities performed by another agency or the private sector?

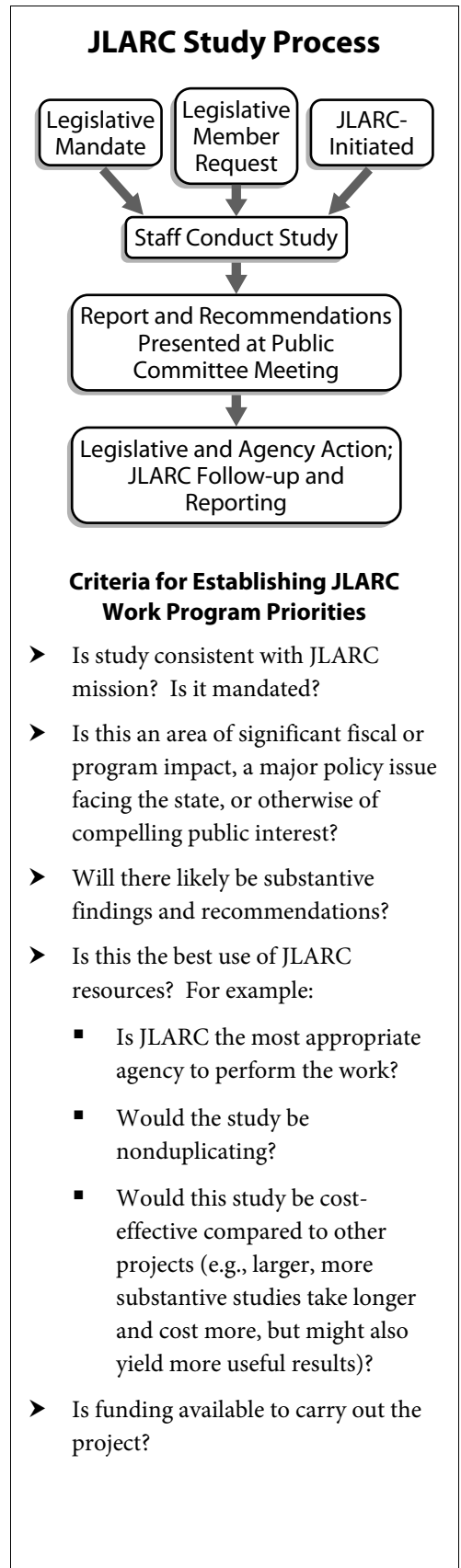
The report will also review the possible impacts of termination or modification of the Office and make a recommendation whether to terminate, modify, or continue the Office without modification.

Timeframe for the Study

Staff will present the preliminary report at the JLARC meeting in November 2007, and the proposed final report with agency responses at the JLARC meeting in January 2009.

JLARC Staff Contact for the Study

Fara Daun (360) 786-5174 daun.f@leg.wa.gov



APPENDIX 2: AGENCY RESPONSES

- Washington State Office of Public Defense
- The Supreme Court
- Office of Financial Management



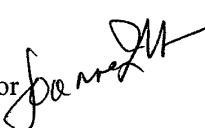
Internet Email: opd@opd.wa.gov

**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

(360) 586-3164
FAX (360) 586-8165

DATE: December 5, 2007

TO: Ruta Fanning, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Joanne Moore, Office of Public Defense Director 

RE: **Preliminary Report "Office of Public Defense Sunset Review"**

Thank you for the opportunity to comment on JLARC's preliminary report on the "Office of Public Defense Sunset Review."

Recommendation	Agency Position	Comments
1A. The Legislature should repeal the Sunset provision and permit OPD to continue without substantive modification.	Concur	

The Supreme Court
State of Washington

GERRY L. ALEXANDER
CHIEF JUSTICE
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(360) 357-2029
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December 4, 2007

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JLARC

Ms. Ruta Fanning
Legislative Auditor
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323

Re: Preliminary Report—Office of Public Defense Sunset Review

Dear Ms. Fanning:

Thank you for the opportunity to comment on JLARC's preliminary report on the "Office of Public Defense Sunset Review."

I strongly concur in JLARC's recommendation that the legislature repeal the sunset provision and permit OPD to continue without substantive modification.

The judiciary has concluded that the Office of Public Defense carefully manages state indigent defense funds, administers program responsibilities capably, and has created and implemented a number of positive systemic changes.

Thus, I am pleased to see JLARC's only audit finding is that the "The Office of Public Defense is meeting legislative intent, operating in an efficient and economical manner, with adequate cost controls in place, is meeting established goals and targets, and does not substantially duplicate services offered by other agencies or the private sector." Also noteworthy is JLARC's recognition of the State's obligation to ensure the constitutional guarantee of counsel, which the U.S. Supreme Court identified 44 years ago in the landmark case *Gideon v. Wainwright*.

I look forward to your final report.

Sincerely,

A handwritten signature in black ink that reads "Gerry L. Alexander".

Gerry L. Alexander
Chief Justice



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

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JLARC

November 29, 2007

TO: Ruta Fanning, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Victor A. Moore *V.A.M.*
Director

**SUBJECT: PRELIMINARY REPORT – OFFICE OF PUBLIC DEFENSE
SUNSET REVIEW**

Thank you for giving the Office of Financial Management (OFM) the opportunity to review JLARC's preliminary report on the Office of Public Defense Sunset Review.

Here is our response to the recommendation contained in the report.

Recommendation	Agency Position	Comments
1. The Legislature should repeal the Sunset provision and permit OPD to continue without substantive modification.	Concur	

We look forward to your final report. If you have any questions, please contact Garry Austin at (360) 902-0564.



APPENDIX 3: TRIAL-LEVEL PILOT PROGRAMS

OPD Trial-level Pilot Programs

	Bellingham	Grant County	Thurston County
Court Type	Municipal Court	Juvenile Court	District Court
Area Served	Urban	Rural	Mixed
Types of Cases	Misdemeanors and gross misdemeanors	Juvenile offenses	Misdemeanors and gross misdemeanors
Who provides defense services?	City contracts with an office of assigned counsel	County contracts with private attorneys as independent contractors	County public defense agency
How is supervision provided?	A private contractor and lead attorney provide on-site supervision	A private attorney with a separate practice provides off-site supervision	Agency has on-site supervision through its office director
OPD Funded Attorneys	2 new attorneys [Expands existing office from 3 to 5 attorneys]	2.25 new attorneys (jointly funded by OPD and Grant County) [Although this does not expand attorney resources, practice for pilot attorneys is limited to juvenile public defense]	3 new attorneys [Expands existing office unit from 2 to 5 attorneys]
OPD Funded Staff	1 full-time investigator 1 social worker/paralegal (half-time to each role)	1 part-time social worker 1 part-time office assistant	1 full-time paralegal Additional funding for investigators
OPD Goals for Pilots	Represent misdemeanor defendants at their arraignment Improve attorney-client communication Appropriate use of investigation and motions Reduce caseloads to 400 per attorney	Represent juveniles at their arraignment Improve attorney-client communication Appropriate use of investigation and motions Reduce caseloads to 250 per attorney	Represent misdemeanor defendants at their arraignment Improve attorney-client communication Appropriate use of investigation and motions Reduce caseloads to 400 per attorney

Source: Office of Public Defense.

