

ANNUAL REPORT

FISCAL YEAR 2015



**WASHINGTON STATE OFFICE OF
PUBLIC
DEFENSE**

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Page 7: "Wenatchee" by Nicole C. Engard

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ADVISORY COMMITTEE MEMBERS

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Robert Flennaugh II [The Law Office of Robert Flennaugh II, PLLC](#)

Honorable Sherry Appleton [Washington State House of Representatives](#)

Gerald Hankerson [Seattle NAACP](#)

Jane Ragland-Kirkemo [Association of Washington Cities](#)

Honorable Kathy Lambert [Washington State Association of Counties](#)

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Honorable Patricia Clark [King County Superior Court, Retired](#)
1945-2015

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Administrator, Retired](#)



MISSION STATEMENT

"To implement the constitutional and statutory guarantees of counsel and to ensure the effective and efficient delivery of indigent defense services funded by the state."



EXECUTIVE SUMMARY

Greetings Chief Justice Madsen, Governor Inslee, Washington State Legislators, judges, elected officials, and residents of Washington,

Welcome to the 2015 annual report for the Washington State Office of Public Defense. This report covers fiscal year 2015, which ran from July 1, 2014, to June 30, 2015. I hope you will find this report to be an informative summary of our agency's activities for the year.

First, some background. Our agency had 15 employees for fiscal year 2015: a Director (myself), a Deputy Director, eight full time Managing Attorneys, a Social Services Manager, and four administrative staffers. We are overseen by an advisory committee made up of appointees from a range of organizations, which conducts business at quarterly meetings.

OPD's duty is to implement the right to counsel guaranteed by the United States Constitution, the Washington State Constitution and the laws of the State of Washington. That means our job is to ensure that people who are indigent—lacking the funds to afford a lawyer—are provided with public defense attorneys when charged with crimes or when subject to certain other proceedings that place their constitutional rights in jeopardy.

In spite of our name, the Washington State Office of Public Defense does not supervise public defense across the entire state. Washington gives its counties and cities a great deal of autonomy in the criminal justice process. Accordingly, counties and cities supervise all public defense services for felony and misdemeanor cases in Superior, District, and Municipal courts, and are not subject to control by OPD.

The Legislature has given OPD specific responsibilities with respect to public defense in the state. Those responsibilities are, primarily:

- Administering funds for court-appointed counsel for indigent parties in appeals to the Washington State Court of Appeals and the Washington Supreme Court;
- Administering grants to counties and cities for the improvement of trial-level public defense;
- Administering funds for court-appointed counsel for indigent parents who are at risk of

losing their children in dependency and termination cases; and

- Administering funds for court-appointed counsel for indigent detainees who are subject to civil commitment as sexually violent predators.

OPD is organized into four programs based around these primary responsibilities. They are, respectively, the Appellate Program, the Public Defense Improvement Program, the Parents Representation Program, and the RCW 71.09 Program.

In fiscal year 2015, the Appellate Program, the Parents Representation Program, and the RCW 71.09 Program held their first joint continuing legal education (CLE) conference in Wenatchee, bringing together attorneys and social workers from each of OPD's practice areas. The conference included joint training on important issues such as stress and substance abuse, as well as specialized training for each program. Attorneys also had the chance to network and build connections with fellow public defenders outside of their geographical locations and practice areas.

Also in fiscal year 2015, the Appellate Program continued to develop its case weighting system, while the Trial Level Public Defense Improvement Program worked to help implement the Supreme Court caseload standards at the local level. The Parents Representation Program continued the process of integrating representation in King County, and the RCW 71.09 program saw continuing gains in case processing efficiency.

As Justice Hugo Black wrote in the watershed case of *Gideon v. Wainwright*, "The right to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." OPD strives to realize this ideal of fundamental fairness for all by working daily to improve public defense in Washington. I hope this report will provide an understanding of how OPD works to uphold justice and protect individual rights by implementing the right to counsel across each of its program areas.

Sincerely,



Joanne I. Moore
Director



View of the Washington State Capitol



Washington State Supreme Court Bench

APPELLATE PROGRAM

Indigent appellate representation was OPD's first program, established at the agency's founding in 1996. At that time, OPD assumed responsibility for administering public defense services statewide for appeals to the Washington Court of Appeals and the Washington Supreme Court.

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

If a client is indigent and convicted of a crime, or is subject to another type of proceeding where there is a constitutional or statutory right to counsel, OPD is responsible for providing an appointed public defense attorney. OPD provides attorneys by contracting with qualified independent attorneys across the state. OPD's contract attorneys provide representation before the Court of Appeals, and may continue cases before the Washington Supreme Court if they are unsuccessful in the Court of Appeals. OPD's Appellate Program attorneys represent more than 1,000 indigent clients every year. Appellate Program Manager Gideon Newmark runs the day-to-day operations of the Appellate Program in close consultation with Director Joanne Moore.

Case Weighting

A key issue in public defense nationwide is ensuring a reasonable workload. Public defense attorneys require sufficient time to devote to each case, otherwise they are not able to provide the effective representation for each client demanded by the Constitution.

In 2012, to help ensure appropriate public defender workloads, the Washington Supreme Court created the Standards for Indigent Defense. Included in the standards is a maximum workload for appellate public defense attorneys: no more than 36 cases per year, with an average of no more than 350 court transcript pages per case.

In fiscal year 2015, the Appellate Program built on the previous year's efforts to ensure attorney workloads remained within this standard. Based on statistical analysis performed in fiscal year 2014, the Appellate Program launched a case weighting system that gave attorneys credit for larger-than-average cases.

This case weighting system proved to be timely, as fiscal year 2015 saw a significant increase in appellate case transcript lengths. By giving attorneys credit for the actual length and complexity of their cases, the Appellate Program was able to ensure that the workload was more appropriately distributed between attorneys, consistent with Washington Supreme Court standards.

Training

The Appellate Program also participated in the first ever OPD joint CLE in Wenatchee, which included the Appellate, Parents Representation, and 71.09 Programs. Appellate topics included troubleshooting issues in communicating with incarcerated clients, communication between appellate and trial counsel, case law updates, issues with legal financial obligations, the ethics of petitions for Supreme Court review, and current issues in juvenile law. The Appellate Program also held an important online meeting to discuss case law and strategy surrounding legal financial obligations after the momentous Blazina decision (see below).



Wenatchee, Washington

Big Supreme Court Wins for Clients

Case: In re Detention of D.W.
Attorney: Jennifer Sweigert

Result: Due to overcrowding at state psychiatric hospitals, mentally ill patients were being "boarded" in non-psychiatric facilities while awaiting a bed at a state hospital. The Court found this practice to be unlawful.

Case: State v. Crumpton
Attorney: Tom Weaver

Result: A judge denied a defendant's motion for post-conviction DNA testing where the existing evidence of guilt was strong. The Court held that when post-conviction DNA testing could demonstrate the defendant's innocence with a favorable result, it must be granted.

Case: State v. Blazina
Attorneys: Jennifer Dobson, Jared Steed

Result: Overtuning the longstanding practice of courts imposing court costs on convicted defendants without regard to their ability to pay, the

Court held that judges must consider a defendant's financial circumstances in every case before imposing costs.

Case: State v. W.R., Jr.
Attorney: Greg Link

Result: Washington law had long required those accused of forcible rape to demonstrate the victim's lack of consent. The Court recognized that the lack of consent is an element of the crime that must be proved by the State, and cannot be treated as the defendant's burden to prove.

Case: State v. Friedlund

Attorney: Marie Trombley
Result: A judge sentenced the defendant to serve an "exceptional" sentence above the normally-allowed maximum for jail time. The Court held that written findings were required to support such a sentence.

Case: State v. Walker
Attorneys: Jodi Backlund, Manek Mistry

Result: The prosecutor presented an inflammatory and racially-tinged PowerPoint

presentation to the jury. The Court held that this was egregious misconduct, invalidating the defendant's conviction.

Case: State v. MacDonald

Attorney: Jennifer Winkler
Result: The prosecutor offered the defendant a plea agreement with a reduced sentence, but allowed a police officer to testify against that reduced sentence. The Court held that this violated the plea agreement, allowing the defendant to withdraw the plea.

Case: In re Pers. Restraint of Tsai
Attorney: Eric Nielsen

Result: After the defendants were convicted and the one-year time limit to bring a post-conviction challenge had passed, the U.S. Supreme Court held that attorneys must inform their clients of the immigration consequences of a plea bargain. The Washington Supreme Court held that this rule was a major change in the law, allowing the defendants to challenge their convictions after the one-year time limit had elapsed.



Sculpture entitled "Ensemble pour la Paix et la Justice"

PUBLIC DEFENSE IMPROVEMENT PROGRAM

Unlike OPD's other programs that retain and manage contract attorneys, OPD's Public Defense Improvement Program works with local jurisdictions to improve trial level public defense in courtrooms across Washington State. Comprised in fiscal year 2015 of Managing Attorneys Katrin Johnson, Kathy Kuriyama, and George Yeannakis, the program's staff bring a great deal of experience and creativity to this critical mission.

Like many aspects of Washington's government, Washington's judicial system places great emphasis on local control. Thus, counties and cities administer and fund their own court systems, including their own local public defense systems. This has led to a series of locally governed public defender agencies, independent law firms, and sole practitioners with contracts to provide public defense services across the state. OPD's Public Defense Improvement Program supports this diverse array of local public defense operations by holding trainings and consultations on key issues, and by administering state funds allocated to improve local public defense.

Standards for Indigent Defense: Misdemeanor Milestones

The Washington Supreme Court adopted the Standards for Indigent Defense in 2012, placing caseload limits on public defenders. The maximum number of misdemeanor cases that a

full-time, fully supported public defense attorney can take per year is 400. If the city or county has adopted a case-weighting system, which assigns greater or lesser value based on the seriousness of the charges, the annual limit is 300 case-weights. This standard proved to be a major change for many jurisdictions, however, and the Supreme Court consequently extended its effective date until January of 2015. This resulted in many jurisdictions making major changes in fiscal year 2015 to ensure that public defenders handling misdemeanors had appropriate caseloads.

OPD's support for jurisdictions implementing caseload standards in 2015 included a great deal of online content. This included an online FAQ ("frequently asked questions") with detailed information on implementing the Standards for Indigent Defense. OPD also provided web tutorials on how to count cases so as to ensure compliance with caseload limits. This compliance can become complicated when attorneys have mixed caseloads with multiple different types of cases; OPD posted online calculators to help attorneys track their mixed caseloads and ensure they did not exceed the Standards.

Public Defense Improvement Grants
The Public Defense Improvement Program also continued to carry out one of its core functions in fiscal year 2015, distributing grants to counties

and cities for the improvement of trial level public defense. As mandated by Chapter 10.101 of the Revised Code of Washington, the program distributed grants to each of the 38 counties that applied for the funding. In addition, 35 cities submitted applications for funding. 22 cities were awarded grant funds, and OPD worked with the city grant recipients to make improvements to their public defense systems.

OPD's Public Defense Improvement Program managing attorneys visited six counties and nine cities that received state funds in 2015. They observed courtroom procedures and met with judges, court administrators, public defense agency coordinators and directors, and public defense attorneys. They also met with city and county officials and their staff. These personal visits remain a vital tool for OPD to positively impact public defense in Washington State.

Washington Defender Association
 OPD continued to contract with the Washington Defender Association (WDA) for criminal law and immigration law resource attorney services. WDA's criminal resource attorneys are available for public defenders in Washington who need technical assistance with their cases. WDA's immigration resource attorneys are available to help public defense attorneys understand the immigration consequences of their clients' criminal cases. Criminal cases can have a wide variety of consequences for a person's immigration status, and WDA plays a pivotal role in helping public defenders navigate the complex issues of federal immigration law. WDA also provides training across the state for public defense attorneys.

Trial Level Public Defense Trainings Across Washington



Capital Case Litigation Initiative
 In late 2012, OPD received a Capital Case Litigation Initiative grant from the U.S. Department of Justice. This grant funded training for both prosecutors and defense attorneys on handling death penalty cases. OPD and the Washington Association of Prosecuting Attorneys each held separate two-day trainings in Spokane in August 2013, and again in Vancouver in August 2014.



The primary goal of OPD's death penalty training was to provide national-caliber instruction to local defense attorneys. This will help more attorneys qualify to handle death penalty cases, increasing the geographical diversity of a practice area whose members are chiefly concentrated in dense urban areas.

Participants in both trainings took pre- and post-tests to measure the program's effectiveness. Both groups demonstrated significant increase in knowledge of death penalty litigation and identified improvements in overall law practice from the training.



Regional Public Defense Trainings

Spokane, September 2014
 Speakers: Jamie Hawk, Gabe Caballero, Robert Butler, Katrin Johnson, George Yeannakis, Brooks Holland, Kristina Nichols



Wenatchee, October 2014
 Speakers: John Hays, Lisa Tabbut, Robert Butler, Joanne Moore, Katrin Johnson, Dan Fessler



Tumwater, November 2014
 Speakers: Les Tolzin, Robert Butler, George Yeannakis, Katrin Johnson, Jodi Backlund, Manek Mistry



Everett, November 2014
 Speakers: Robert Butler, Linda Coburn, Mark Conrad, George Yeannakis, Katrin Johnson, Kathleen Shea



PARENTS REPRESENTATION PROGRAM

OPD's Parents Representation Program oversees the legal representation of indigent parents by attorneys who provide legal representation in dependency, termination, and guardianship cases. These are cases in which the State seeks to take custody of a child after alleging that a parent has abandoned, abused or neglected the child, or is incapable of caring for the child. Children are often removed from their parents' custody and placed with relatives or in foster care. Indigent parents have a the right to counsel in these cases to protect their fundamental right to raise their children. The Legislature authorized funding for the OPD Parents Representation Program more than a decade ago, following an investigative report showing that many indigent parents throughout the state received poor legal representation in dependency and termination cases.

The Parents Representation Program contracts with attorneys, law firms, and public defender organizations to represent parents in all covered counties. These contractors follow the program's enhanced practice standards, which require regular client communication, diligent efforts to help

parents participate in necessary services, adequate case preparation, effective negotiation with the State, access to social workers and experts, and competent litigation if a negotiated settlement isn't possible.

Amelia Watson, Brett Ballew, and Jacob D'Annunzio, OPD's three Parents Representation Managing Attorneys, were joined in fiscal year 2015 by Jana Heyd. The four-person managing attorney team supports the program's contract attorneys in upholding OPD's practice standards. The managing attorneys provide legal resources during litigation, monitor attorney caseloads to ensure compliance with the Supreme Court Standards for Indigent Defense, conduct in-person attorney evaluations, and provide technical support and trainings each year.

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

King County Expansion

The Parents Representation Program continued to contract with attorneys and social workers in 31 counties in fiscal year 2015. The continued expansion to King County was a major focus in 2014-2015 due to the complexity of integrating the state's most populous county. As a former longtime King County public defender, Jana Heyd was instrumental to this process. It was a major undertaking, particularly because King County underwent a massive transition from a public defense system that was being provided by four independent nonprofit agencies to a single county public defense department.

Training

As part of its training offered to attorneys, the Parents Representation Program participated in OPD's first ever joint CLE in Wenatchee, which also included the Appellate and 71.09 Programs. Topics addressed included overcoming shame, views from the juvenile court bench, defense social worker update, collaborating with veteran parents, trial strategy in high conflict cases, paperless trial practice, and understanding psychosexual evaluations.

Parents Representation Program Initiatives in 2015



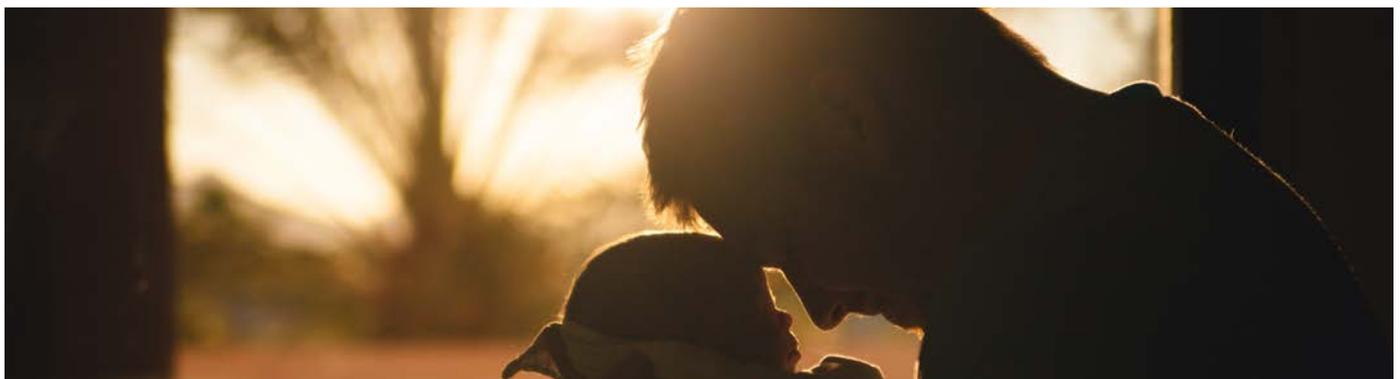
Parent Allies Program: This program brings "parent allies" on board to help parents navigate the system and reunify with their children. Parent allies are parents who themselves have been through the dependency system and have been reunited with their children. Their experience with the process and their ability to share the perspective of parents at risk of losing their parental rights makes them invaluable contributors to dependency and termination cases.

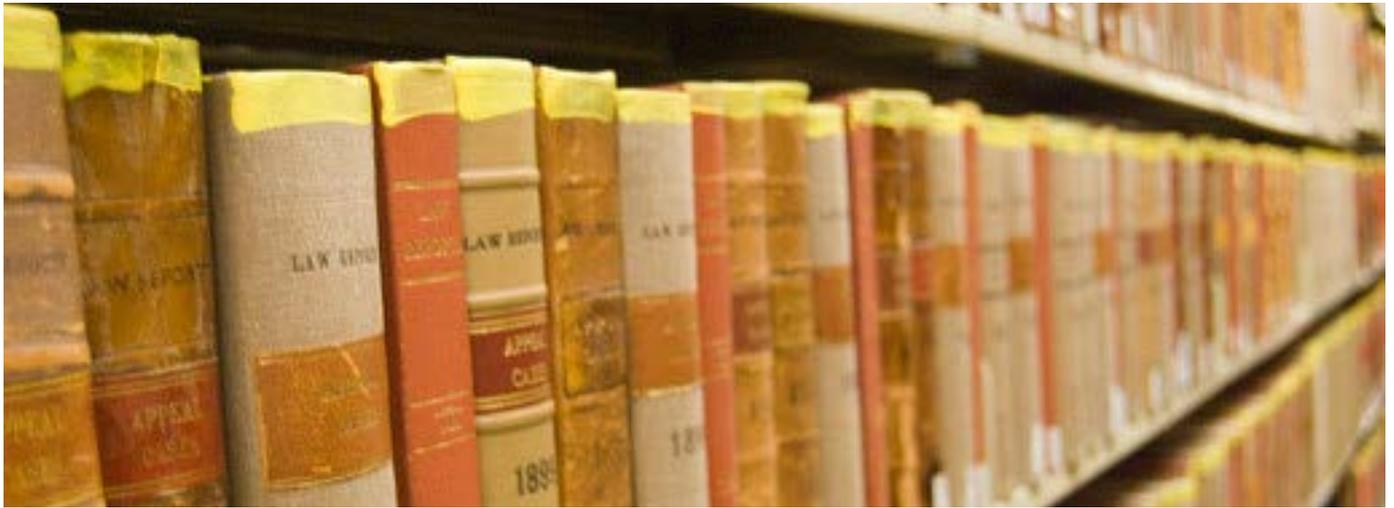


Paternity Project: OPD's Paternity Project is a pilot program seeking to establish paternity more quickly in dependency cases. The Paternity Project provides access to inexpensive DNA tests in order to quickly ascertain a child's paternity and enable the father participate in the case before it proceeds to a point where reunification is more difficult to achieve.



Children's Administration Visitation Protocol: OPD managing attorney Jacob D'Annunzio participated in the Department of Social and Health Services Children's Administration's efforts to develop a comprehensive visitation protocol for visits between parents and children in dependency cases. The new policy recognizes and supports the vital role that visitation plays in maintaining family connections. The new protocol supports timely visitation offered in the least restrictive but safe setting.





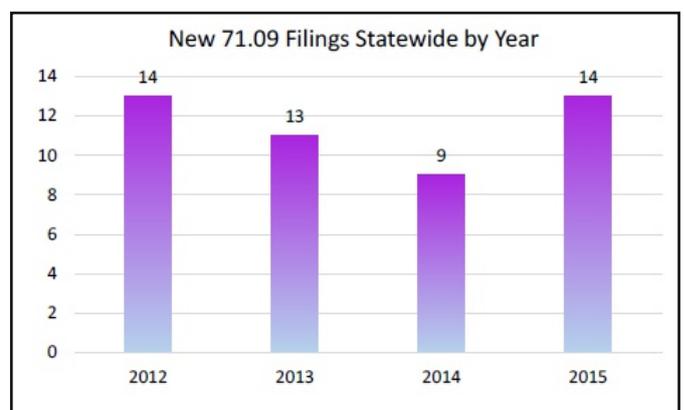
RCW 71.09 PROGRAM

The RCW 71.09 Program is OPD's newest practice area. The Legislature unanimously authorized the program in 2012, voting to transfer responsibility to OPD for public defense in civil commitment cases for sexually violent predators. Public defense in these cases had previously been managed by the Department of Social and Health Services, which also runs the Special Commitment Center (SCC) where the civilly committed are held. As civil detainees who are not under sentence for committing a crime, those in the civil commitment process must first be found by a jury to be mentally ill and likely to engage in future acts of violence due to the mental illness. Then, they have the right to annual reviews of their detention status, which can lead to trials on whether they should be released to a less restrictive setting or released unconditionally.

Washington law gives indigent civilly committed persons the right to counsel at every stage of the proceedings against them, including for each year's annual review. OPD is responsible for providing that counsel, and does so by contracting with a small but dedicated group of attorneys. The RCW 71.09 program is overseen by Managing Attorney Shoshana Kehoe-Ehlers. Shoshana maintains the program's quality of representation by carefully monitoring attorney caseloads and

meeting individually with attorneys to discuss their performance. She also conducts training for attorneys on handling RCW 71.09 cases, and provides technical assistance for judges, judicial staff, and attorneys.

In fiscal year 2015, OPD maintained 10 contracts for RCW 71.09 representation with public and private law firms, for a total of 23 full-time equivalent attorney positions. Most of these attorneys carried a full-time RCW 71.09 caseload. OPD also contracted for 2.75 social work positions. Social workers worked with attorneys and clients to help the clients engage in treatment, to develop reasonable release plans, and to navigate public assistance options for clients.

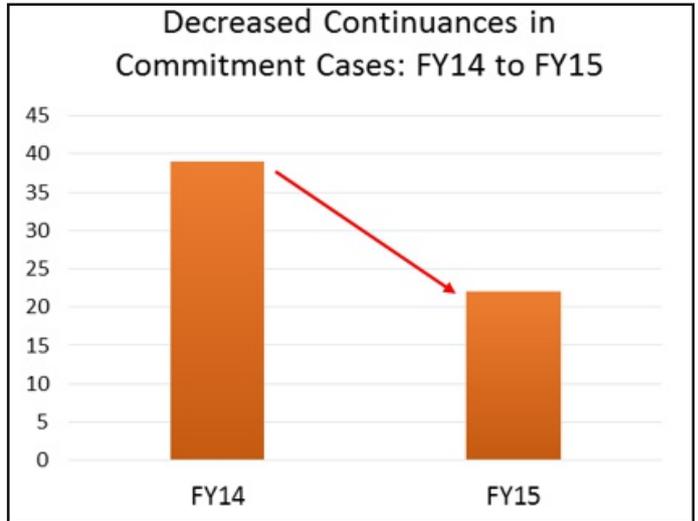


The filing of new RCW 71.09 cases has remained relatively steady over the OPD program's history.

Continuing Efficiency Gains

Since its inception, the RCW 71.09 program has seen improvements in the functioning of the civil commitment process. In fiscal year 2015, continuances in new RCW 71.09 cases fell by more than 40 percent, from 37 to 22, indicating that civil commitment matters are being tried in a much more efficient manner. Completions of pending civil commitment cases went up as well, from 9 in fiscal year 2014 to 16 in fiscal year 2015, an increase of more than 30 percent.

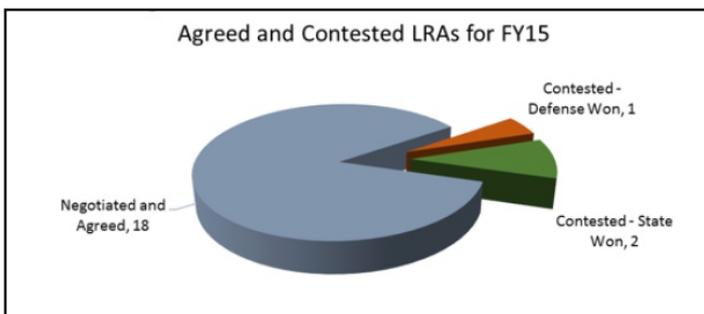
The RCW 71.09 program continues to see progress for committed clients, as well. Once they have undergone treatment, civilly committed clients can petition to be released from total confinement at the SCC to a less restrictive alternative (LRA), or they can request unconditional discharge. LRA settings retain a great deal of security to keep the community safe, but permit civilly committed clients to transition from total confinement in an institutional setting and prepare for reentry into society should they complete treatment and be deemed eligible for release. OPD contractors helped 18 clients achieve release to an LRA with the agreement of prosecutors, and won one contested LRA trial. RCW 71.09 contractors won unconditional release for a number of clients as well in fiscal year 2015. Eight clients were released with the agreement of prosecutors for no longer being sufficiently mentally ill or dangerous for civil commitment.



Conditions for LRAs

Courts impose conditions when respondents are approved for release from the SCC to a less restrictive alternative (LRA). These commonly include, among other requirements:

- DOC supervision; weekly reporting
- Electronic monitoring and chaperones
- Registration as sex offenders
- No travel without advance authorization
- Sex offender and other treatment
- Pre-approval for any work, school, or volunteer activity
- A phone log of all phone calls made or received
- No contact with prior victims
- No contact with minors, felons, or persons with any sex crime convictions
- No firearms, alcohol, marijuana, or controlled substances; no pornographic or sex themed materials
- Alcohol and drug testing



Of 21 LRAs granted during fiscal year 2015, approximately 85 percent were agreed by the parties.