

WASHINGTON STATE OFFICE OF
PUBLIC
DEFENSE

ANNUAL REPORT FISCAL YEAR 2017

JOANNE I. MOORE, DIRECTOR | SOPHIA BYRD MCSHERRY, DEPUTY DIRECTOR
711 CAPITOL WAY SOUTH, SUITE 106 | OLYMPIA, WA 98501 | (360) 586-3164
OPD.WA.GOV



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Page 8: Pacific County Courthouse by Steven Pavlov, available on Wikimedia Commons

CONTENTS

- 01 Advisory Committee Members
- 02 Mission Statement
- 04 Executive Summary
- 06 Appellate Program
- 08 Public Defense
Improvement Program
- 10 Parents Representation Program
- 12 RCW 71.09 Program

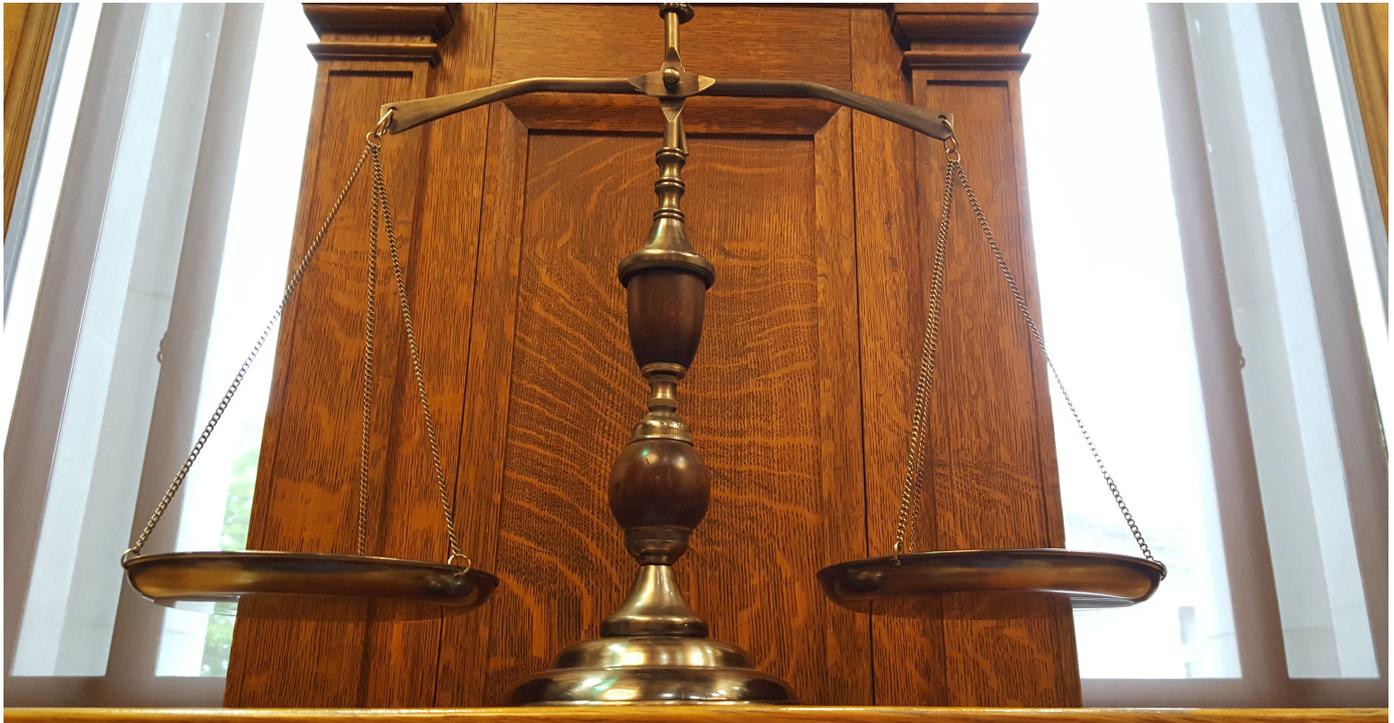
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Honorable Sherry Appleton	Washington State House of Representatives
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MISSION STATEMENT

"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 Justices of the Supreme Court, Governor Inslee, Members of the Washington State Legislature, judges, elected officials, and residents of Washington,

Welcome to the 2017 annual report for the Washington State Office of Public Defense (OPD). This report covers fiscal year 2017, which ran from July 1, 2016, to June 30, 2017. I hope you will find it to be an informative summary of our agency's activities for the year.

OPD had 15 employees in fiscal year 2017: a Director and a Deputy Director, eight Managing Attorneys, a Social Services Manager, and four administrative staffers. The agency is 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, in certain cases in which the state proceeds against individuals.

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

- Implementing defense representation through contract attorneys for indigent parties in appeals to the Washington State Court of Appeals and the Washington Supreme Court;
- Administering grants to counties and eligible cities for improvement of trial-level public defense;
- Implementing defense representation through contract attorneys for indigent parents who are at risk of losing their children in dependency and termination cases; and
- Implementing defense representation through contract attorneys for indigent detainees who are subject to civil commitment as sexually violent predators.

OPD does not supervise public defense across the entire state. Washington gives its counties and cities a great deal of autonomy in administering the criminal justice process. Accordingly, counties and cities implement all public defense services for felony and misdemeanor cases in Superior, District, and Municipal

courts, and are not subject to control by OPD.

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 (named after the chapter of the Revised Code of Washington dealing with the civil commitment of alleged sexually violent predators).

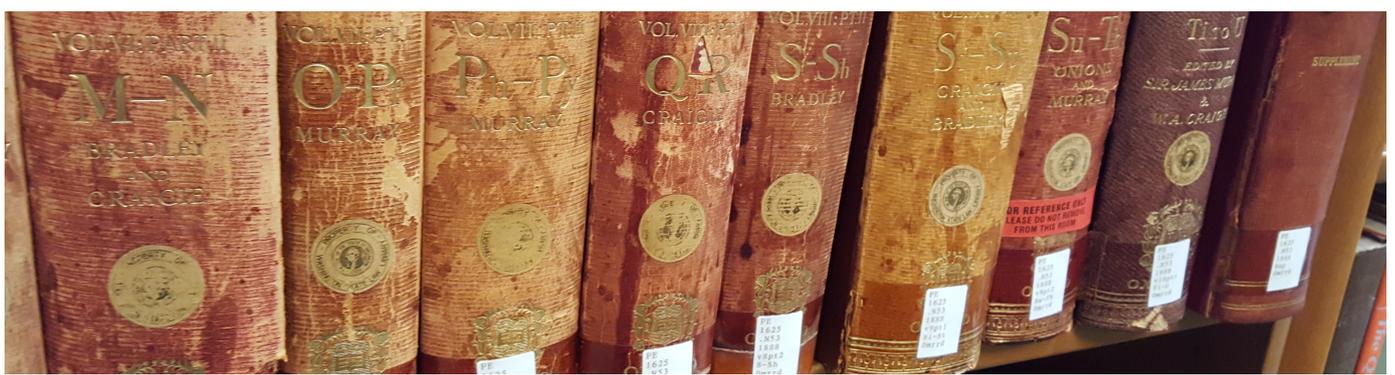
In fiscal year 2017, OPD and its contract attorneys implemented innovations to address changes in public defense needs. The Appellate Program added a slate of new contingent contractors, paid per case they accept instead of receiving a guaranteed caseload, to deal with a “new normal” increased caseload that began in fiscal year 2016. Appellate contract attorneys won several big victories for clients in the Supreme Court, including the reversal of *State v. Houston-Sconiers*, in which youths were sentenced to decades-long prison sentences for robbing other children mostly of candy on Halloween, with no consideration of their age as a mitigating factor.

The RCW 71.09 program attorneys negotiated a record number of Less Restrictive Alternative placements with the State, fulfilling the purpose of Washington’s laws without wasting state funds on unnecessary litigation expenses.

The Parents Representation Program collaborated with the American Bar Association’s National Parent Alliance to put on a national training in Washington, D.C., and a regional training in Vancouver, WA. The Parents Representation Program also continued collaborative work with the Department of Social and Health Services to implement family-friendly policies that promote reunification.

OPD also took some of its first steps into the modern media world with a series of online videos created by the Public Defense Improvement Program. These videos are designed to educate youth, families, and professionals about the collateral consequences of juvenile offense dispositions.

As Justice Hugo Black wrote more than 50 years ago in the watershed case of *Gideon v. Wainwright*, “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials... this noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him.” This ideal is why the right to counsel is guaranteed to alleged criminals, allegedly unfit parents, and even offenders accused of being sexually violent predators. OPD strives to realize the noble ideal of fundamental fairness for all by working daily to improve public defense in Washington.





Washington State Law Library

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 independent attorneys across the state. OPD's contract attorneys represent clients 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.

Case Weighting

In fiscal year 2017, OPD maintained the case weighting standard set in 2016. The case weighting system is designed to ensure reasonable caseloads for appellate public defenders in accordance with the Washington Supreme Court Standards for Indigent Defense. Those standards limit appellate public defenders to no more than 36 cases per year with an average transcript of 350 pages. Case weighting apportions additional credits for longer cases, ensuring that an attorney's caseload remains within the standards.

OPD entered fiscal year 2017 prepared for the impacts of case weighting, which in 2016 led to the program's contract attorneys reaching their maximum caseloads before the end of the fiscal year. Rather than add new full-time contractors to cover 2017's projected caseload, OPD added 16

part time “contingent” contract attorneys through a competitive process. Unlike regular contract attorneys, who are paid a set monthly amount for a maximum annual caseload, contingent contractors are paid per case. Adding contingent contractors allowed the program to conserve resources in the event that caseloads were not as high as projected. Ultimately, caseloads in 2017 were similar to those seen in 2016, showing that the Appellate Program has reached a “new normal” and will likely need to accommodate a similar caseload going forward.

Training

The Appellate Program held an appellate continuing legal education seminar at the Criminal Justice Training Commission in Burien in May 2017. Topics included appellate court rules, oral advocacy, juvenile litigation strategies, immigration law, postconviction law, and the ethics of electronic evidence. Speakers included attorneys from among OPD’s contractors, as well as private and nonprofit attorneys.

Big Supreme Court Wins for Clients

Case: In re Parental Rights to B.P.

Attorney: Jill Reuter

Result: The superior court terminated a mother’s parental rights to her daughter on the grounds that the child had special needs that the mother could not meet. The Department of Social and Health Services provided services for the child’s foster parents to meet these special needs, but failed to provide such services to the mother. The Supreme Court held that because the Department did not provide the mother with the necessary services, termination of the mother’s parental rights was inappropriate.

Case: State v. Houston-Sconiers
Attorneys: Stephanie Cunningham and Kathryn Russell Selk

Result: Defendants, aged 16 and 17, committed several robberies on Halloween, robbing mostly other groups of children and stealing mostly candy. The youths carried a gun, but it was loaded

with the wrong kind of ammunition and would not have fired. One was sentenced to over 30 years in prison and the other received a sentence of more than 40 years. Though finding these sentences excessive, the trial judge believed these sentences were the minimum allowable by law. The Supreme Court held that courts may always consider a juvenile offender’s youth as a mitigating factor at sentencing, permitting departure below what would normally be the minimum sentence for an adult.

Case: State v. Bluford

Attorney: Casey Grannis

Result: The defendant was charged with several different robberies, some of which included sexual offenses and some of which did not. The trial court joined all the incidents together in a single trial. The Supreme Court reversed, holding that the efficiency of a single trial cannot be allowed to outweigh the prejudice to the defendant caused by joining unrelated crimes into a single proceeding. The inherently

prejudicial nature of sex offenses meant that the defendant in this case could not receive a fair trial on the charges where no sex offenses were alleged.

State v. Estes

Attorney: Jennifer Dobson

Result: The defendant was convicted of an assault wherein he cut the victim’s little finger and foot with a small knife. He was sentenced to life in prison without parole under Washington’s “three strikes” law. The assault would not have been considered a third strike, except for the fact that the jury found that a deadly weapon was used. The defendant’s trial attorney had misunderstood his client’s potential sentence at trial and was surprised to find his client facing life in prison at sentencing. The Supreme Court reversed the life sentence, finding that the defendant was entitled to be accurately advised about the risks of proceeding to trial and that his attorney, who misunderstood the risks, could not have accurately done so.



Historic Pacific County Courthouse

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 of Managing Attorneys Katrin Johnson 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 emphasizes local control. Thus, counties and cities administer and largely 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 providing technical assistance on key issues, and by administering state funds allocated by the legislature to improve local public defense.

Juvenile Justice Strategic Plan

In fiscal year 2016, OPD applied for and was awarded a Youth Access to Justice State Reform Planning Grant from the United States Office of Juvenile Justice and Delinquency Prevention. The

grant was awarded for the development of a strategic plan to ensure that youth involved with the criminal justice system in Washington have fair and equal access to quality legal representation, resulting in OPD's publication of Plan to Reform Public Defense Representation in Juvenile Offender Cases: Steps to Eliminate Justice by Geography (available at <https://bit.ly/2L3Jmwn>). OPD began to work on implementing components of this plan in fiscal year 2017. This included producing a video series focused on educating youth, their families, and the community at large about the collateral consequences of juvenile offender convictions. It also included launching the Juvenile Defense Training Academy, a 24-hour intensive program designed to improve the quality of representation at every stage of a juvenile offender case. In order to participate, attorneys were required to apply for a limited number of slots, and commit to attending four days of instruction. The first day of the Academy was held in Spring 2017 at the Washington Defender Association conference in Winthrop.

Public Defense Improvement Grants

The Public Defense Improvement Program also continued to carry out one of its core functions in fiscal year 2017, distributing grants to counties and cities for the improvement of trial level public

defense. As mandated by Chapter 10.101 RCW, the program distributed state funds to each of the 38 counties that applied for the funding. In addition, OPD administers a competitive grant program for cities. Twenty-one cities were awarded grant funds for local public defense improvements such as increased attorney compensation, reimbursement of attorney training costs, representation at preliminary appearance hearings, and increased use of investigators, experts, and social workers. OPD worked with the city and county grant recipients to make improvements to their public defense systems.

OPD's Public Defense Improvement Program managing attorneys visited 17 jurisdictions that received state funds. 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 defense attorneys navigate the complex issues of federal immigration law. WDA also provides training across the state for public defense attorneys, including death penalty defense assistance. Under its contract with OPD, WDA provides training and resources for attorneys, investigators, mitigation specialists, and support staff working on capital cases.

Juvenile Collateral Consequences Videos
During OPD's evaluation of juvenile justice public defense services statewide, it became clear that youth in many areas rarely receive meaningful assistance with the collateral, i.e. out-of-court, consequences of their cases. A juvenile adjudicated as guilty of a crime can have trouble with access to housing, education, employment, and health care. This is especially true for juveniles from poor families. The representation provided by public defenders generally stops at the courtroom and doesn't extend into these collateral matters. And while some communities have non-profit agencies that can provide assistance, many don't. As part of its activities under the federal juvenile justice grant, OPD developed a series of online videos designed to educate youth,

their families, and professionals about collateral consequences. Each video was developed by teams of attorneys experienced in juvenile public defense and civil legal aid. The six 20-minute videos address the following topics:

- Education
- Employment
- Healthcare
- Housing
- Record Sealing
- Reentry/Aftercare Needs

The videos can be accessed online at <http://bit.ly/2ozMGDk>



PARENTS REPRESENTATION PROGRAM

OPD's Parents Representation Program oversees the legal representation of indigent parents in dependency, termination, and guardianship cases. These are cases in which the State asks 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, with another suitable adult, or in foster care. Indigent parents have a constitutional and statutory right to counsel in these cases to protect their fundamental right to raise their children. The Parents Representation Program has been providing counsel in these cases for almost two decades, since the Legislature authorized funding to address the typically poor quality of representation that was found to be the norm 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, Jacob D'Annunzio, and Jana Heyd are OPD's Parents Representation Managing Attorneys. They support the program's contract attorneys in applying 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.

Social Services Manager Mike Heard, the fifth member of the Parents Representation team, manages a group of independent social workers on contract with OPD. He provides both formal and informal training for the social workers, who give OPD's contract attorneys access to client support, social work theory, and resources in the community.

The Parents Representation Program continued its process of expanding statewide in fiscal year 2017. Five new counties will join the Program in fiscal year 2018 and expansion into all counties will be complete in fiscal year 2019.

Collaboration with the National Parent Alliance
The Parents Representation Program participated in two events with the American Bar Association National Parent Alliance in fiscal year 2017. Parents Representation Program managing

attorneys helped organize and presented at the 5th National Parent Representation Conference in Washington D.C. Director Joanne Moore received the ABA's National Parent Attorney Conference's 2017 award in recognition of her achievements in creating the Parents Representation Program.

Earlier in the fiscal year, the program's managing attorneys, also in conjunction with the National Parent Alliance, hosted the Parent Representation Leadership Forum in Vancouver, Washington. This event included training for some 100 attorneys, social workers, judges, and other leaders in child welfare reform. Participants came not only from Washington, but from Oregon, Idaho, and Alaska as well.

Continuing Efforts and Initiatives

The Parents Representation Program continued ongoing efforts to ensure top quality representation of parents in covered counties in fiscal year 2017. This involved in-person visits to almost 160 contract attorneys in every covered county. Managing attorneys observed contract attorneys in court and met with them to review their performance and compliance with the program's rigorous standards.

Managing attorneys continued the program's work with the Department of Social and Health Services (DSHS) to improve and implement parent-friendly policies. DSHS is in charge of finding out-of-home placements for children who cannot reside in the home due to safety issues during a dependency case. While the juvenile courts have final say on where children are placed and how often the parents may visit them, DSHS's recommendations carry great weight. Thus, DSHS's enactment of policies designed to promote reunification of parents and children is vital. In fiscal year 2017, OPD was part of a joint project with DSHS and the courts to implement a new, more family-friendly visitation policy and ensure that parents are granted the visitation that meets the developmental needs of the child. OPD released its first-ever podcast to help educate attorneys about this new policy.

In a similar vein, managing attorneys worked constructively with a coalition including DSHS on issues related to incarcerated parents. When parents are in jail or prison parents and children do not lose their right to have contact with each other, but incarceration poses difficulties for visitation which the coalition including OPD and DSHS is working to address on an ongoing basis. Managing attorneys also participated in a DSHS work group addressing policies related to background checks; background checks are performed on relatives who may be able to care for children during a dependency. Placement with relatives can greatly increase the chances of reunification and can vastly reduce the trauma on children of being separated from their parents during a dependency case.

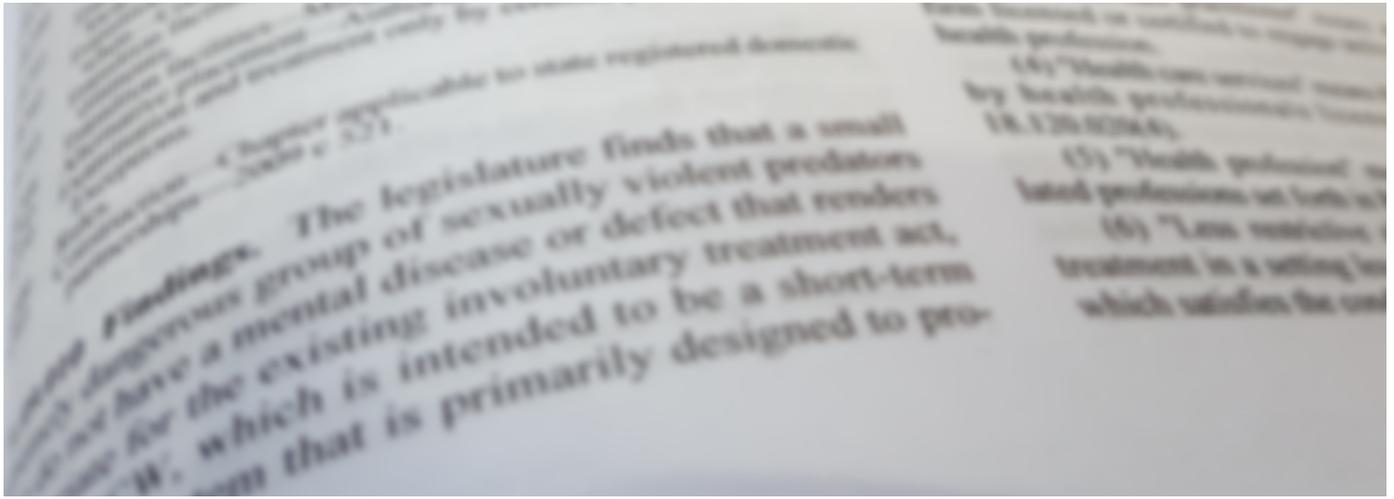
Parents for Parents Program

Fiscal year 2017 saw continued state funding for the Parents for Parents program. OPD administers this funding through a contract with the nonprofit Children's Home Society. This innovative program recruits "parent allies" to help parents in dependency cases navigate the system and reunite with their children.

Parent allies, who have previously been involved in their own dependency cases, receive extensive training and supervision to work with parents still in the dependency system. They provide peer mentoring to encourage positive engagement with child welfare stakeholders, increase compliance with court ordered services, and increase engagement in the dependency process as a whole.

Parent allies engage with their peers at the earliest stage of their dependency cases, providing the parents with support and showing them that there is hope for reuniting with their children. Parent allies also present "Dependency 101" classes to help introduce parents to the dependency system and educate them about how to succeed, and they provide ongoing support throughout the dependency process.

The Parents for Parents program is recognized as a promising practice for improving the child welfare system.



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 DSHS, 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.

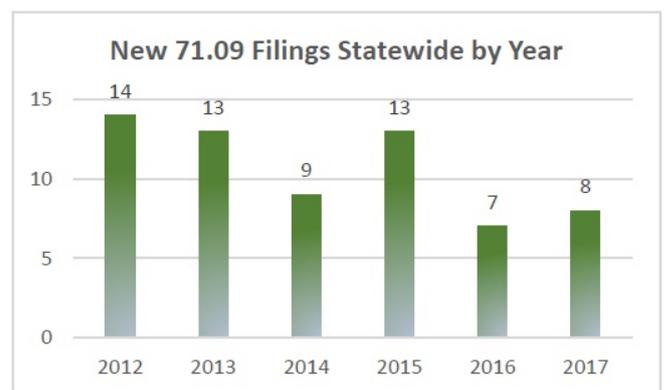
Washington law gives indigent civilly committed persons the right to counsel at every stage of the proceedings against them, including for each year’s annual review. OPD provides counsel, and does so by contracting with a small but dedicated group of attorneys. The RCW 71.09 Program is overseen by Managing 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 consults on issues that arise during cases and conducts training on handling RCW 71.09 cases for judges, judicial staff, and attorneys.

In fiscal year 2017, OPD maintained 10 contracts for RCW 71.09 representation with public and

private law firms, for a total of 21.5 full-time equivalent attorney positions. Most of these attorneys carried a full-time RCW 71.09 caseload. OPD also contracted for four social work positions. RCW 71.09 social workers collaborate with attorneys and clients to help the clients engage in treatment, to develop safe release plans, and to navigate public assistance options for clients preparing for release.

Specialized Training

The RCW 71.09 Program held two continuing legal education seminars for contract attorneys in fiscal year 2017, offering specialized training on this practice area. OPD contract attorneys also attended a three day conference put on by the Sex Offender Policy Board and the Washington State Office of Financial Management. Two OPD contractors presented at the conference on the myths about working with sex offenders, and shared practical tips for doing so. Shoshana was also part of a joint presentation on civil commitment delivered at the 2017 Annual Judicial Conference in Vancouver.



New 71.09 filings increased by one in FY17

Continuing Efficiency Gains

Since its inception, the RCW 71.09 Program has seen improvements in the functioning of the civil commitment process. In 2017, continuances in new RCW 71.09 cases fell by 50 percent, from 22 to 11, continuing their sharp downward trend since the program's inception. Ten civil commitment proceedings were completed in 2016, three of which were dismissed without a verdict of commitment.

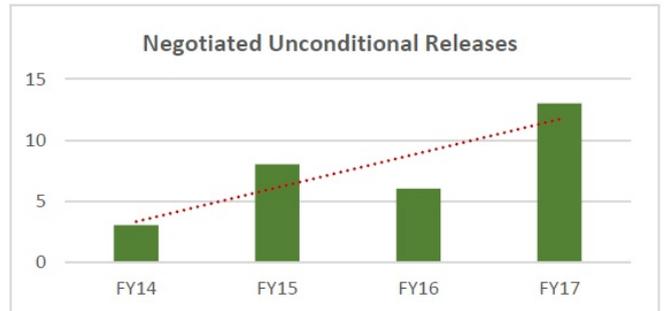
Continuing Treatment Progress

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 significant security procedures to keep the community safe, but permit civilly committed clients to transition out of total confinement in an institutional setting and prepare for reentry into society should they complete treatment and be deemed eligible for release. In 2017, OPD contractors helped 17 clients move to LRAs with the agreement of prosecutors, and won one contested LRA trial.

RCW 71.09 contractors secured unconditional release for a number of clients as well in 2017. Thirteen clients were released with the agreement of prosecutors for no longer being sufficiently mentally ill or dangerous for civil commitment. One client was unconditionally released after a contested trial.



OPD contractors delivered strong results for clients on agreed LRAs



Unconditional releases increased dramatically from FY16

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 a sex offender
- No travel without advance authorization
- Sex offender and other treatment
- Pre-approval for any work, education or volunteer activity
- A phone log of all calls made and received
- No contact with prior victims
- No contact with minors, felons, or persons with any sex crime conviction
- No firearms, alcohol, marijuana, or controlled substances, or pornographic or sex themed materials
- Alcohol and drug testing
- Polygraph testing to assess compliance