



2021 REPORT  
CHAPTER 71.09 RCW  
INDIGENT DEFENSE  
REPRESENTATION PROGRAM  
(CIVIL COMMITMENT OF INDIVIDUALS CONVICTED OF  
SEXUALLY VIOLENT OFFENSES)

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## Office of Public Defense

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## Introduction

Washington law codified at Chapter 71.09 RCW establishes the legal procedure to civilly commit and provide treatment for persons convicted of sex crimes who have completed criminal sentences and are determined by a court to be at high risk for re-offending.

The Washington State Office of Public Defense (OPD) is responsible for ensuring the constitutional right to counsel for indigent respondents in these highly complex cases. Among its duties, OPD is required to report annually on program operations to the Legislature, the Governor, and the Chief Justice of the Washington Supreme Court. This is the ninth annual report on the Chapter 71.09 RCW Indigent Defense Representation Program, covering operations for Fiscal Year 2021 (July 1, 2020 through June 30, 2021). As required by statute, the report includes the time to trial for commitment proceedings, an update on activities in Chapter 71.09 RCW defense practice, and recommendations for policy changes to improve the civil commitment process.

Chapter 71.09 RCW provides that civilly committed persons who demonstrate progress in treatment at the Special Commitment Center (SCC) and meet certain criteria may be eligible for conditional release to a “less restrictive alternative” (LRA). OPD and other stakeholders remained focused in Fiscal Year 2021 on laying the groundwork to transfer the primary development of LRA placements from defense counsel to the state Department of Social and Health Services (DSHS) to ensure fair and equitable siting across the state.

## Pre-Commitment Filings, Litigation, and Negotiations

**New Filings.** During Fiscal Year 2021, prosecutors<sup>1</sup> filed nine new petitions for civil commitment in counties. As illustrated in [Figure 1](#), King and Pierce counties continue to see the highest number of filings across the state and an increase in Thurston County. Due to the pandemic, the prosecutors have filed fewer petitions than average. It is expected that the filing numbers will increase during the next few years due to the backlog.

| County       | New Filings |
|--------------|-------------|
| Grays Harbor | 1           |
| King         | 2           |
| Pierce       | 3           |
| Thurston     | 2           |
| Yakima       | 1           |
| <b>Total</b> | <b>9</b>    |

*Figure 1*

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<sup>1</sup> The King County Prosecuting Attorney (KCPAO) files Chapter 71.09 RCW cases in King County. The Washington Attorney General (AGO) files Chapter 71.09 RCW cases in all other counties.

**Continuances.** Trial courts granted 16 continuances in initial commitment cases set for trial during FY21. As illustrated in Figure 2, the number of

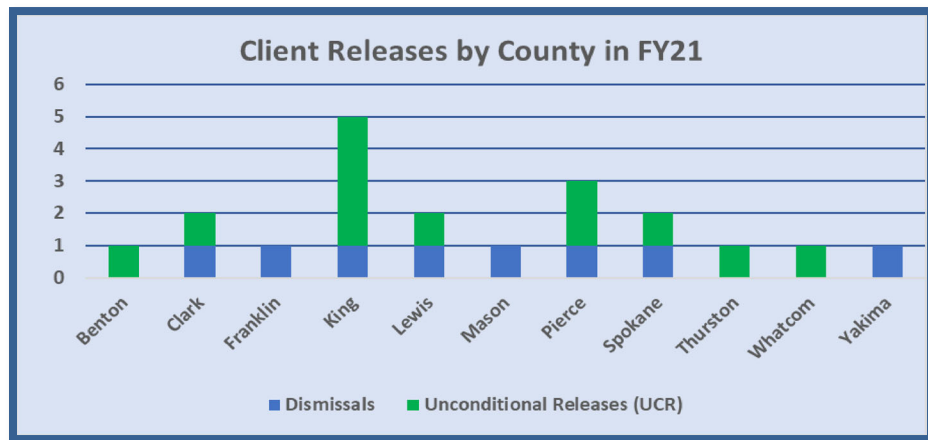
| County       | Total Cases Continued | Total Continuances | Continuances per case (Avg.) |
|--------------|-----------------------|--------------------|------------------------------|
| King         | 5                     | 9                  | 1.8                          |
| Lewis        | 2                     | 3                  | 1.5                          |
| Pierce       | 1                     | 1                  | 1                            |
| Snohomish    | 1                     | 2                  | 2                            |
| Spokane      | 1                     | 1                  | 1                            |
| <b>Total</b> | <b>10</b>             | <b>16</b>          | <b>1.46</b>                  |

continuations increased in FY21, however, half were due to the courts' suspension of trials during the COVID-19 pandemic. Reasons for non-COVID continuances include additional discovery provided by the State, preparing for other clients' earlier trial dates and post-commit hearings, a client's health, and judicial scheduling conflicts.

Figure 2

**Case Outcomes.**

Two initial civil commitment proceedings were completed during FY21. The pandemic made it nearly impossible to conduct a four to six-week



initial commitment jury trial. Despite this, as illustrated in Figure 3, the 71.09 contractor teams successfully had eight initial commitment petitions dismissed, and 12 post-commit clients unconditionally discharged from 71.09. Finally, three residents died during FY21.

Figure 3

As illustrated in Figure 4, the wait time between filing and dismissal of a petition for those in pre-commit status was less than two years for half the cases dismissed in FY21.

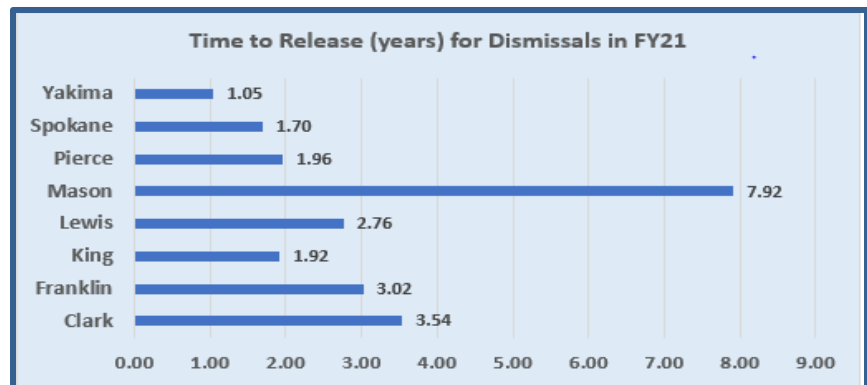


Figure 4

## Developments and Challenges in 2021

**Challenges.** As more persons demonstrate eligibility for release from total confinement at the SCC, the overriding challenge has become a lack of appropriate community housing – for LRAs as well as for unconditional discharges. As soon as a court orders conditional release to an LRA, that individual no longer meets the statutory criteria to be held in total confinement at the SCC. Unfortunately, under the current LRA system, the burden to locate suitable housing largely falls on defense counsel, yet the authority and financial means to contract with placements lies solely with DSHS. With another community LRA housing facility at risk due to local zoning restrictions, and the recent closure of a facility designated for respondents who are part of the class-action federal lawsuit brought by DRW, the available housing in the community will be substantially reduced, making it much more difficult for DSHS to meet its obligations under the statute.

**Developments.** As of July 1, 2021, the legislature transferred the primary responsibility for siting and developing Less Restrictive Alternatives in the community to the SCC. Defense continues to retain the ability to petition for a community LRA not created by the SCC. However, when siting LRAs or contracting with housing providers who provide LRA housing, the SCC must adhere to what is called “fair share” placement. Fair share means that the number of individuals under 71.09 jurisdiction in each county must roughly match the number of individuals placed in LRAs in that same county.

## Policy Recommendations

RCW 2.70.025 directs OPD to make recommendations for public policy changes that may improve Chapter 71.09 RCW civil commitment proceedings.

For this report, OPD endorses the policy recommendations developed by the Washington Sex Offender Policy Board and published in its November 2021 report to the Legislature. The SOPB recommendations represent a broad stakeholder consensus to improve the LRA process.