



Washington State
**Office of
Public
Defense**

2024 Annual Report: Chapter 71.09 RCW Indigent Defense Representation Program

Civil Commitment of Individuals Convicted of Sexually Violent Offenses

July 1, 2023 – June 30, 2024

Washington State Office of Public Defense
711 Capitol Way South, Suite 106
P.O. Box 40957
Olympia, Washington 98504-0957
Phone: (360) 586-3164
Website: www.opd.wa.gov

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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 offenses 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 statutory right to counsel for indigent respondents in these highly complex cases.

Among its duties, OPD must report annually on program operations to the Legislature, the Governor, and the Chief Justice of the Washington Supreme Court. This is the twelfth annual report on the Chapter 71.09 RCW Indigent Defense Representation Program, covering operations for fiscal year 2024 which spans July 1, 2023 through June 30, 2024.¹

New Initial Commitment Filings

During fiscal year 2024, prosecutors filed ten new petitions for civil commitment across three counties, with an uptick in filings in the most populous counties. Table 1 shows the distribution of filings by county over the past two years.

Cases continue to be concentrated in the most populous counties, with multiple cases in King and Pierce counties each year.

While the total number of cases remains small, the issues presented are increasingly difficult. Recent Chapter 71.09 filings are more complex due to the combination of refiling old cases, the considerable number of historical documents, juries being unable to come to a unanimous decision, and cases being filed on those individuals with serious psychiatric illnesses.

Despite the slight increase in filings in fiscal year 2024, the number of new filings has trended down over the last ten years. (see Figure 1).²

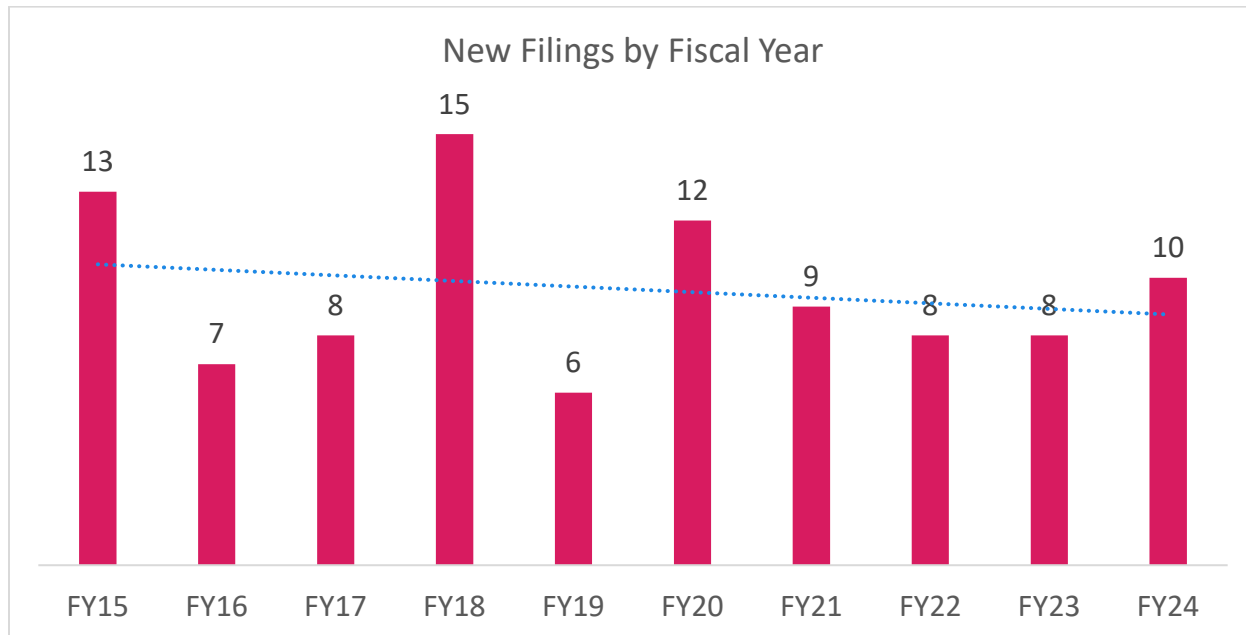
Table 1

County	FY23 Filings	FY 24 Filings
Clark	1	0
King	3	6
Lewis	1	0
Pierce	2	3
Skagit	1	1
Grand Total	8	10

¹ Unless otherwise noted, each reference made to a year within the scope of this report refers to the corresponding state fiscal year. For example, 2023 refers to the state fiscal year starting July 1, 2022 and ending June 30, 2023.

² Data for fiscal years 2019 – 2023 in Figure 1 is pulled from prior Annual Reports for the Chapter 71.09 RCW Indigent Defense Representation Program. These reports are publicly available on the OPD website here: <https://opd.wa.gov/about-us/reports>.

Figure 1



Initial Commitment Trial Continuances

Pursuant to RCW 2.70.025(6), OPD reports on the number of continuances granted from when a petition was first filed to the conclusion of the initial commitment trial.

Prior to 2012, before OPD took over the indigent representation of 71.09 respondents, the Legislature expressed concern with the high number of initial commitment trial continuances. Some clients waited up to 10 years for their initial jury trial.

Table 2

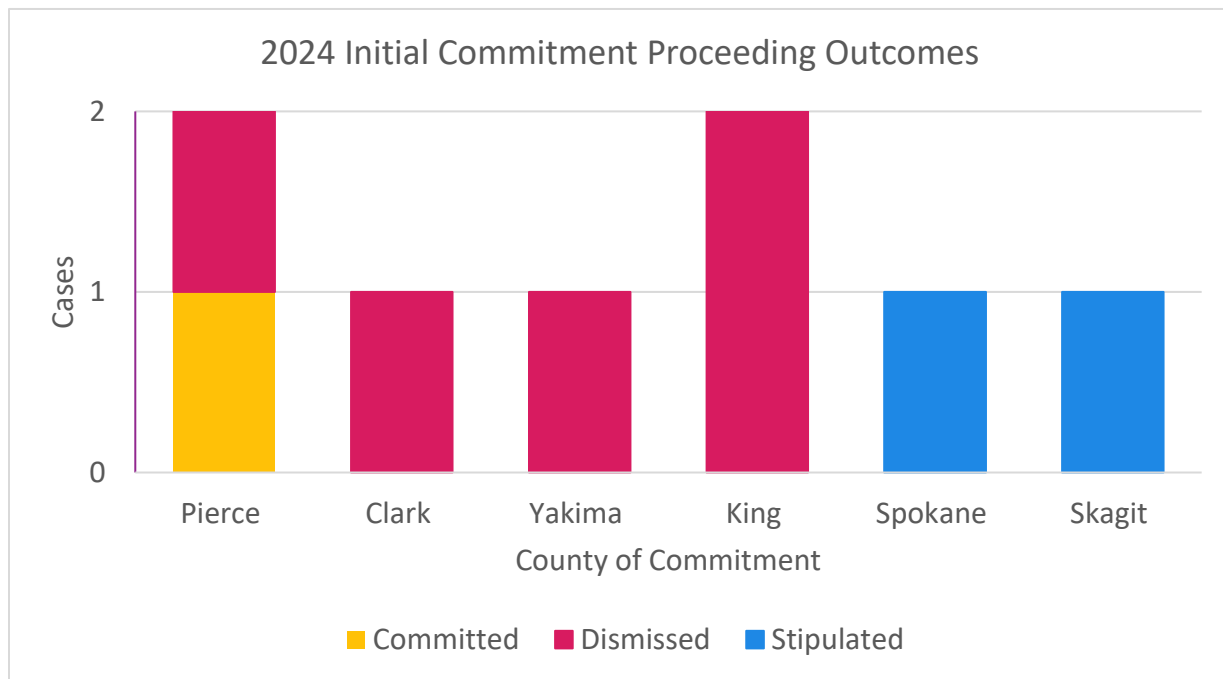
ICT Continuances	2023 Cases	2024 Cases
Zero	3	0
One	2	5
Two	3	2
Three	0	2
Five	0	1
Seven	1	0
Grand Total	9	10

Since then, initial commitment cases typically are decided within the first few years. Table 2 shows an overview of the number of continuances in the last two years. Within the ten initial commitment cases resolved in 2024, five have been continued one time either on motion by the state or the defense. The other five cases were continued two to five times either because the case was on appeal or on motion by the state or defense over the course of the entire initial commitment proceeding. One case was continued five times due to a number of both trial and appellate issues.

Trials and Outcomes

Eight initial civil commitment proceedings resolved during 2024 compared to nine in 2023.³ In 2024, three initial commitment cases went to trial: only one resulted in an order of commitment and the other two were dismissed. In addition, two clients stipulated to indefinite commitment and three cases were dismissed without an initial commitment trial. Figure 2 shows these initial commitment proceeding results by county of commitment.

Figure 2



Less Restrictive Alternative Releases

While Engrossed Second Substitute Bill (ESSB) 5163, adopted in 2021, changed many aspects of the Less Restrictive Alternative (LRA) release process, all LRA releases were negotiated between the prosecuting authority and the RCW 71.09 contracted defense attorneys in fiscal year 2024.⁴ However, new legislation being introduced in 2025 could end the ability to reach negotiated resolutions. Some of the new proposed legislation in fiscal year 2025 requires all LRA placement plans to be created exclusively by the Special Commitment Center (SCC). This proposal is problematic for several reasons.

³ Pursuant to RCW 71.09.060, Initial commitment proceedings refers to the litigation from when a petition is first filed to when it resolves through a dismissal, trial or stipulation.

⁴ See Appendix A for a detailed overview of the LRA process.

The SCC created two 71.09 LRA homes in 2022 (Tenino and Enumclaw) that were set to open in January 2023. The LRA home for individuals with disabilities in Tenino closed down before a single resident moved in. The community and local law enforcement backlash led to the home being vandalized and shot at. Shortly thereafter, the community in Enumclaw protested the opening of a house for 71.09 LRAs. The backlash was significant enough that the home had to close. These are the only two homes that the SCC has created since LRAs were initiated 20 years ago. All other current LRA housing was developed by defense counsel and community public safety partners. The SCC now contracts with these homes.

Because the defense has created hundreds of LRA placement plans, they have an expertise that the SCC has yet to develop. Without this expertise, many more trials will be conducted to determine whether the SCC's LRA placement plan is actually in the best interest of the resident and whether it provides adequate community safety.

For example, litigation conducted in fiscal year 2024 highlighted the SCC's continued reliance on the Secure Community Transition Facility (SCTF) in Pierce County for residents with special needs even though the Pierce County location has been the subject of lawsuits and is currently subject to an injunction. Additionally, in 2024, five residents were arrested from the King County SCTF and returned to the Special Commitment Center due to numerous residents possessing tobacco, considered contraband at the institution. Because of these issues, among numerous others, SCC created plans will likely not be agreed to by the parties.

Litigation costs have already increased under ESSB 5163. Granting the SCC exclusive control over the creation of LRA placement plans will require

Standard DOC Conditions for LRAs

Persons released to LRAs are required to follow up to 60 court-ordered conditions. Some conditions include:

- Can only live in preapproved housing. Most housing must have surveillance cameras and/or house managers. Must follow court-ordered curfew.
- Chaperoned outings into the community.
- Cannot attend school, work, or volunteer without preapproval.
- Cannot frequent places where minors congregate.
- Treatment with a certified sex offender treatment provider.
 - Must participate in both group and one-on-one counseling.
 - Must be transparent with provider and progress in treatment or risk revocation.
- Supervision by DOC
 - Must comply with all written and verbal instructions.
 - Must report all violations.
 - Active GPS monitoring.
 - Only permitted to go to preapproved locations at preapproved times.
 - Polygraph testing to ensure compliance with rules of supervision.
- No contact with children, minors or victims.
- No unapproved contact with community members.
- No drugs or alcohol.
- All media including movies, video games and music must be preapproved.

additional trials, contractors, and appellate review, all at taxpayer expense.

Since OPD assumed responsibility for Chapter 71.09 RCW defense, numerous individuals have been conditionally released under court-ordered conditions and without the expense of a complex civil trial. Prosecutors and Chapter 71.09 RCW defense attorneys continue to lead the nation in developing safe, supportive and secure conditional releases.⁵ To date, no one released to an LRA in Washington has been charged or convicted of committing a hands-on offense since the inception of LRAs. Defense attorneys operating under contracts with OPD have years or decades of experience creating LRAs and working with certified sex offender treatment providers, housing providers and community members that allow residents to be conditionally released and escorted in the community. OPD contracted attorneys and defense social workers along with the various prosecuting agencies have worked hard to create evidence-based conditions of release that allow residents to gradually and safely reintegrate into the community.

Unconditional Releases

Eighteen clients were unconditionally released post-commitment during 2024. All of these unconditional releases (UCRs) were agreed by expert forensic psychologists for both the State and defense, the parties, and the courts. See Table 3 to see the breakdown of releases by county of commitment. No unconditional release trials were conducted in 2024.

While the SCC is tasked with discharge planning under ESSB 5163, most discharge plans for individuals who were unconditionally released in 2024 were developed by OPD contract defense teams. However, the SCC has taken the lead in working with Home and Community Services to ensure residents are established in safe and secure adult family homes upon their release.

Finally, one Cowlitz County and one Snohomish County resident passed away during fiscal year 2024.

Table 3

County	Number of UCRs in 2024
Clallam	1
King	6
Kitsap	2
Lewis	2
Pierce	2
Snohomish	4
Stevens	1
Grand Total	18

⁵ See Sex Offender Civil Commitment Programs Network (SOCCPN) Annual Survey of Sex Offender Civil Commitment Programs 2022 available at www.soccpn.org.

Policy Recommendations

Modify Chapter 71.09 RCW Community LRA Residency Restriction

ESSB 5163 enacted a residency restriction for individuals conditionally released from the Special Commitment Center in Less Restrictive Alternative (LRA) housing, prohibiting such housing within 500 feet of specific schools and daycares. Washington State Office of Public Defense's RCW 71.09 program continues to support, as does the Washington State Sex Offender Policy Board (SOPB), eliminating this residency restriction recommendation for two reasons.

First, the 500-foot rule undermines the twin aims of ESSB 5163: to increase LRA housing and to distribute that housing in accordance with the principles of fair share. The 500-foot restriction has interfered significantly with the development of LRA housing in King County, which continues to file the most 71.09 civil commitment petitions, thereby requiring smaller counties to bear the burden of LRA placements. Second, the 500-foot restriction will necessitate housing in rural communities where there is no infrastructure and little to no access to court-ordered services. Those being released on LRAs are often required to travel in the community with paid chaperones to attend sex offender treatment, sober support meetings, job retraining or other activities that foster community reintegration. Placing LRAs in rural communities will result in a lack of access to critical services and employment. This places additional costs on taxpayers since without employment, DSHS will bear the entire cost of the LRA.

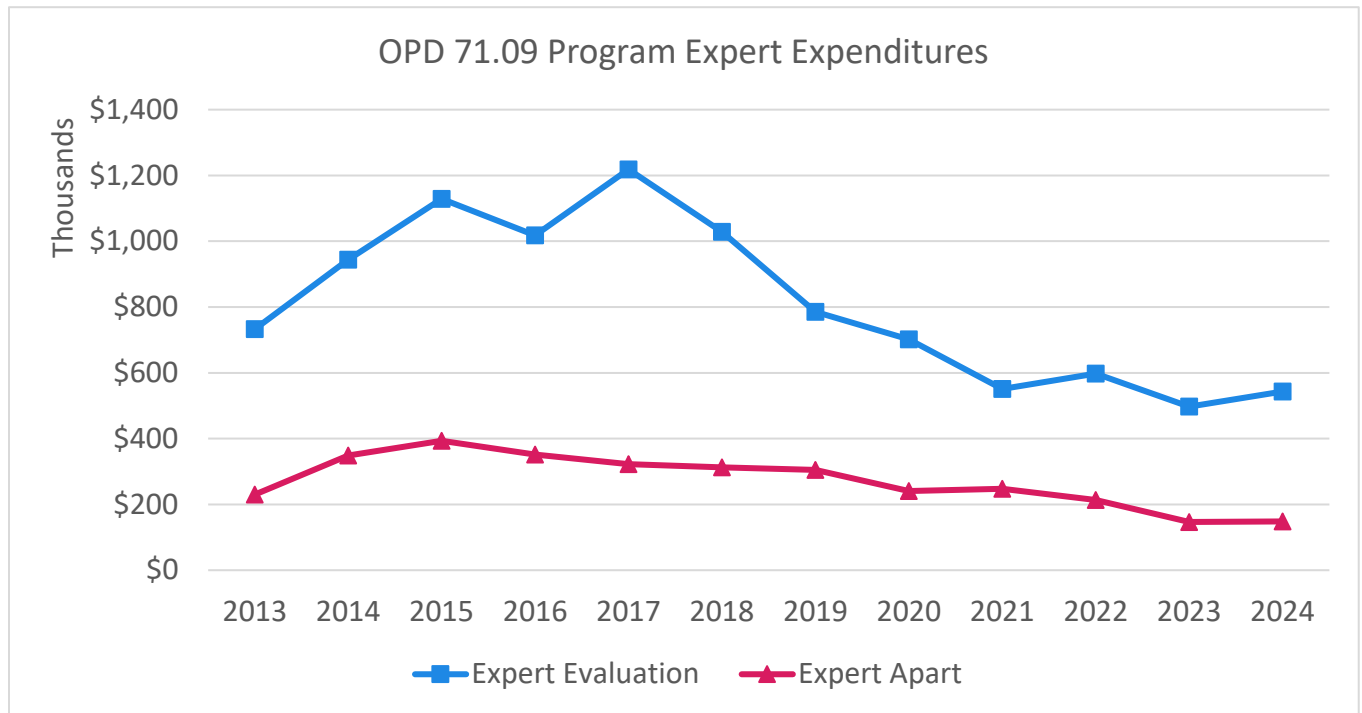
Increased funding for experts

RCW 71.09 filings are decreasing over time, as is spending on expert services (see Figure 3). Increasing expert rates will likely have a minimal impact on overall funding but will have a significant impact on those indefinitely committed, as well as community safety. When the expert rates were established in 2007, the RCW 71.09 program paid a competitive rate. However, 17 years later, expert rates have not kept up with inflation.

According to estimates generated from the Consumer Price Index, expert rates for report writing, interviewing and testifying should be raised an additional \$100 an hour.⁶ Further, increasing expert rates for both prosecution experts and defense experts allows for better trained specialists to provide researched-based opinions impacting both individual liberties and community safety.

⁶ https://www.bls.gov/data/inflation_calculator.html

Figure 3



Current funding for expert witnesses is inadequate. Expert rates have not increased in over 17 years, while case complexity continues to grow due to easier access to historical documents and refiling of dismissed cases, and increased filings on those with serious mental health diagnoses⁷ This requires experts (both prosecution and defense) to spend more time reviewing records and conducting interviews, at times leading to more requests for continuances and longer trials.

Stagnant hourly rates and outdated statutory caps also increase litigation. A recent case exemplifies how inadequate compensation and dated statutory funding caps can lead to retrials and undermine the justice system's efficiency. In fiscal year 2022, defense attorneys successfully challenged the state's expert witness, resulting in an acquittal. However, due to a provision allowing a second trial if new evidence arises, the prosecution refiled the case two years later with a different expert. This highlights a key issue: stagnant rates incentivize refiling cases rather than achieving finality. The system ends up spending more time and resources on retrials due to fiscal limitations that have not kept pace with rising costs and changing circumstances.

Further, a different court rejected the state's expert conclusion at a probable cause hearing leading to a dismissal. While the state's experts are not bound by statutory funding caps like

⁷ The average volume of records in refiled cases is around 20,000 pages. Further, cases where persons have been committed for longer than a decade are increasingly common. Those cases typically average anywhere from 15,000 to 25,000 pages of records.

defense experts are, the low hourly rates have created a vacuum of qualified experts used by both the state and the defense.

Further, the current statutory expert funding scheme has equal protection implications to those civilly committed. These dated caps create disparate treatment between defense and prosecution. State-appointed experts face no funding limitations under RCW 71.09.055, while defense attorneys are restricted by significantly outdated funding caps. This creates an uneven playing field that the privileges and immunities clause was designed to prevent. As such, the court has rejected the opinions of defense experts who are required to provide expert evaluation services under the 2012 funding caps regardless of the volume of records.⁸ It is not uncommon for the state's experts to receive two to three times more funding than what the Legislature provides defense. And unlike defense, the state is not required to seek court approval for expert funding. Anytime defense wants to exceed the statutory caps, they must obtain a court order authorizing the increase.

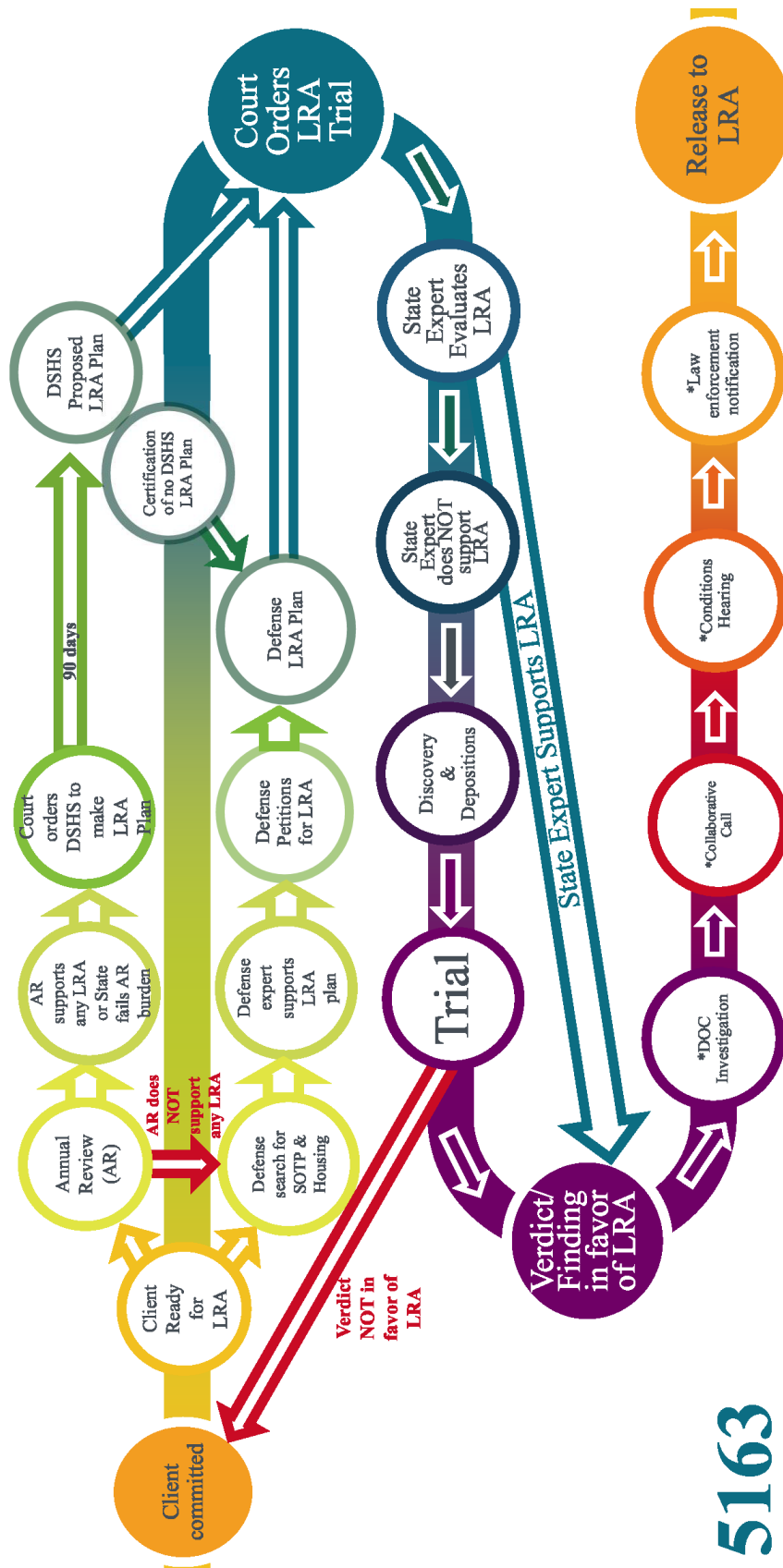
When this happens, civilly committed individuals remain committed at the SCC despite being ready for a less restrictive alternative or an unconditional release. Increasing funding now is necessary to ensure due process for those facing civil commitment. Because expert spending is decreasing overall, any changes to the Chapter 71.09 RCW rates are sustainable in the long term.

Continue the Practice of Defense Created LRA Housing

During the last two decades, OPD contracted defense attorneys and social workers have developed LRA housing throughout Washington State with community partners. LRA housing created by the defense has met the twin aims of providing community safety along with meeting the needs of the aging and special needs population at the Special Commitment Center. To date, no resident has been charged or convicted of a hands-on sexual offense while residing in LRA housing developed by the resident's defense counsel and social worker.

⁸ See RCW 71.09.055

Appendix A: SOPB 2023 Flowchart of 5163 LRA Process



* The timing and chronology of these steps varies with litigation.

5163
LRA Process

Sources

Sex Offender Policy Board. (2023). *RCW 71.09: Changes to Discharge Planning and Less Restrictive Alternative Placements in the Community*. Retrieved from https://sgc.wa.gov/sites/default/files/public/SOPB/documents/RCW%2071.09_changes_to_discharge_planning.pdf