

Washington State Judicial Branch

2025-2027 Biennial Budget

Expert, Investigator, Litigation Costs for Parents Rep, 71.09 & Appeals

Agency: Office of Public Defense

Decision Package Code/Title: 1D – Expert, Investigator, Lit. Costs

Agency Recommendation Summary Text:

The Office of Public Defense (OPD) requests funding to cover litigation costs for indigent appeals, defense experts in dependency and termination of parental rights cases, and defense experts and investigators in civil commitment cases under Chapter 71.09 RCW.

Fiscal Summary: Funding is requested for litigation costs and defense experts and investigators.

	FY 2026	FY 2027	Biennial	FY 2028	FY 2029	Biennial
Staffing						
FTEs	0.00	0.00	0.00	0.00	0.00	0.00
Operating Expenditures						
Fund 001-1	\$2,408,000	\$2,408,000	\$4,816,000	\$2,608,000	\$2,608,000	\$5,216,000
4E Federal Reimbursement .1984	(\$198,000)	(\$198,000)	(\$396,000)	(\$238,000)	(\$238,000)	(\$476,000)
Total Expenditures						
	\$2,210,000	\$2,210,000	\$4,420,000	\$2,370,000	\$3,2,370,000	\$4,740,000

OPD is a subrecipient (DCYF) of federal Title IV-E funding. Certain child welfare-related expenditures, including legal services, are eligible for partial federal reimbursement. State funding appropriated to implement this decision package is projected to generate federal Title IV-E reimbursement as noted above.

Package Description:

Maintenance-level costs are increasing for litigation services, defense experts, and investigators in cases for which the Office of Public Defense (OPD) is required to provide public defense representation. OPD requests funding for the 2025-2027 biennium to cover costs for litigation services for indigent appeals, for defense experts in dependency and termination of parental rights cases, and for defense experts and investigators in RCW 71.09 civil commitment cases.

Litigation Costs for Indigent Appeals

Pursuant to Chapter 2.70 RCW and the Washington Rules of Appellate Procedure (RAP), OPD-contracted appellate attorneys represent indigent clients who have a constitutional or statutory right to counsel to pursue an appeal from Superior Court. Transcripts and clerk's papers from the trial court provide the legal record upon which an appeal is based. Transcripts reflect the official verbatim report of proceedings at trial, and clerk's papers comprise all trial exhibits as well as other documents filed in a case. OPD must pay for these documents for indigent appeals, in addition to appellate attorney contract fees.

[RAP 9.7](#) authorizes fees for clerk's papers, and [RAP 15.4](#) requires OPD to pay the costs of clerk's papers and transcripts for indigent persons on appeal. Supreme Court [Order 25700-B-582](#) directs OPD to pay \$3.65 per page for trial transcripts. The rates have not changed in recent years, but longer trial transcripts and more clerk's papers are driving up OPD expenditures.

From Fiscal Year 2023 to Fiscal Year 2024, costs for clerk's papers increased 70 percent and costs for transcripts increased 15 percent. OPD submitted a supplemental budget request to cover projected increases in Fiscal Year 2025. OPD presents this biennial decision package so the agency can continue to meet its obligation to pay for trial transcripts and clerk's papers for indigent appeals.

Expert Services for Parents Representation Program

Pursuant to Chapter 2.70 RCW and Chapter 13.34 RCW, OPD-contracted Parents Representation Program attorneys represent indigent parents who have a right to counsel when the state puts their children in foster care or seeks to permanently terminate parental rights. OPD's Parents Representation Program attorneys obtain independent medical, psychological, and social service experts to present relevant scientific information or other supportive information to the court in dependency and termination cases.

Effective parent representation requires attorneys to utilize experts as appropriate to a specific case. An attorney may be found ineffective partially due to their inability to obtain an expert. *Dependency of V.R.R. v. DSHS*, 134 Wn. App. 573 (2006). See also *In re Yarbrough Minors.*, 314 Mich.App. 111 (2016) (Overturning a termination of parental rights and finding that the parents had a due process right to funds for consultation with a medical expert regarding alternate causes for a child's injuries). [The ABA Practice for Parent Attorneys](#), [Family Justice Initiative Attorney Attributes](#), [Washington Supreme Court Standards on Indigent Defense](#), and [Washington State Bar Association Standards for Indigent Defense Services](#) all highlight the need for experts to ensure that attorney representation is effective. In particular, WSBA Standard Four directs public defense administrators to "provide reasonable compensation for expert witnesses necessary for preparation and presentation of the case," and establishes that attorneys "should be free to retain the expert of their choosing and shall not be required to select experts from a list pre-approved by either the jurisdiction, the court, or the prosecution." Washington Rules of Professional Conduct [1.8\(m\)](#) further provide that a lawyer should not bear the cost of expert services under a government contract for indigent defense representation, such as OPD's contract for parent representation.

OPD Parents Representation Program managers review contract attorney requests for experts and approve costs that are reasonable for the particular case and that qualify under agency policy. Approved expert services range from simple lab analysis such as DNA testing to confirm paternity or hair follicle testing to determine drug use, to more complex and individualized evaluative services such as home studies of parents or other relatives who may be suitable caregivers or assessing the parenting capacity of a developmentally delayed parent. Expert services may include comprehensive written reports and testimony at a hearing or trial, or could be limited to a brief professional consultation to help an attorney understand potential medical issues.

Cases involving complex medical issues are a major cost driver for Parents Representation Program expert services in recent years. These are cases where the Department of Children, Youth, and Families (DCYF) alleges that a parent purposely harmed a child involving, for example, Munchausen by Proxy/Factitious Disorder, failure to thrive, shaken baby syndrome/abusive head trauma, or mysterious child bruising and fractures. Without independent experts to evaluate the evidence, such allegations can result in wrongful termination of parental rights. In some cases, an independent expert demonstrates that a child's injuries are due to a previously undiagnosed/misdiagnosed or improperly treated medical condition, and are not the result of abuse.

Reflecting inflation as well as increasingly complex case issues, costs are up significantly for defense experts in dependency and termination cases. From Fiscal Year 2019 to Fiscal Year 2024, annual expenditures for expert services increased from \$937,609 to \$1,757,005. OPD has submitted a supplemental budget request to cover projected increases in Fiscal Year 2025. OPD presents this biennial decision package so the agency can continue to meet its obligation to pay for defense experts for parents in dependency and termination cases.

Expert and investigator Services for RCW 71.09 Civil Commitment Defense

Pursuant to Chapter 71.09 RCW, OPD provides the constitutional right to counsel to indigent respondents when the state petitions to civilly commit them for an indefinite period after completing their criminal sentence. The Legislature transferred responsibility for these legal services from the Department of Social and Health Services (DSHS) to OPD July 1, 2012.

RCW 2.70.025(4) directs OPD to “... establish procedures for the reimbursement of expert witness and other professional and investigative costs.” When it became responsible for RCW 71.09 defense in 2012, OPD adopted expert and professional services policies that largely mirrored those that had been used by DSHS since 2007. OPD’s policy, *Chapter 71.09 RCW Program Defense Expert Services and Litigation Costs Policy*, Section F (1), Payment Rate Schedule and Restrictions, caps expert fees at \$200 per hour for all services including record review, testing, client meetings, report writing, and \$250 an hour for testimony. Section F (2) of the policy sets investigator rates at \$46 per hour.

Payment rates for RCW 71.09 defense experts and investigators have remained substantially the same for 17 years and are no longer competitive. Qualified experts and investigators are increasingly drawn to opportunities in other jurisdictions that offer higher compensation for their specialized services. OPD-contracted attorneys report that low hourly payment rates for experts hinder their ability to secure the experts they need to effectively address issues in particular cases. In some instances, trial courts are rejecting defense experts’ opinions due to the diminishing quality of work and limited expertise that is available from the experts willing to accept OPD’s hourly rate. (See attached court orders for examples.)

Effective representation in the specialized RCW 71.09 practice area requires attorneys to utilize experts as needed in a specific case. Standard Four of the [Washington State Bar Association Standards for Indigent Defense Services](#) directs public defense administrators to “provide reasonable compensation for expert witnesses necessary for preparation and presentation of the case,” and establishes that attorneys “should be free to retain the expert of their choosing and shall not be required to select experts from a list pre-approved by either the jurisdiction, the court, or the prosecution.” Washington Rules of Professional Conduct [1.8\(m\)](#) further provide that a lawyer should not bear the cost of expert services under a government contract for indigent defense representation, such as OPD’s contract to represent clients facing civil commitment under Chapter 71.09 RCW.

To better serve both OPD-contracted attorneys and their clients, OPD requests funding to increase RCW 71.09 expert and investigator hourly rates consistent with inflation as measured by the Consumer Price Index (CPI). To bring the 2007-era rates into alignment with the 2024 cost of living, the Bureau of Labor Statistics [CPI Inflation Calculator](#) indicates that OPD should pay up to \$300 per hour for expert services, \$350 per hour for expert testimony, and \$70 per hour for investigator services.

Fully describe and quantify expected impacts on state residents.

This decision package directly impacts indigent clients by ensuring legal services to which they are entitled. This decision package indirectly impacts Washington taxpayers generally by reducing potential liability exposure that could arise if OPD failed to provide adequate litigation services and defense experts and investigators.

Explain what alternatives were explored by the agency and why this was the best option chosen.

OPD is obligated to pay for litigation costs and defense experts and investigators. In the short term, OPD used limited Judicial Stabilization Trust Account (JSTA) funding to cover expenditure overruns in Fiscal Year 2024 and submitted a supplemental budget request for Fiscal Year 2025. To meet its ongoing obligations to cover costs over the longer term, OPD has no alternative but to submit this biennial decision package.

What are the consequences of not funding this request?

Office of Public Defense
Policy Level – 1D – Expert, Investigator, Lit. Costs

Not funding this request will put OPD in the position of not being able to pay for litigation costs and expert and investigator services that are necessary to ensure effective assistance of counsel in indigent appeals, dependency/termination cases, and RCW 71.09 civil commitment cases.

Is this an expansion or alteration of a current program or service?

No. This request maintains existing service requirements.

Decision Package expenditure, FTE and revenue assumptions:

Staffing Assumptions

Job Title Classification	#s of FTE Round to Nearest Tenth				Workload Assumptions/Description
	FY 26	FY 27	FY 28	FY 29	
No FTEs					

If No, Explain Additional Costs	Round to Nearest \$1,000				Description/Assumptions
	FY 26	FY 27	FY 28	FY 29	
Contracts					
Goods and Services	\$2,210,000	\$2,210,000	\$2,370,000	\$2,370,000	Litigation costs in appeals, Expert costs for parent representation, and expert and investigator rates for RCW 71.09 civil commitment.

Agency-Wide Expert Funding Request	FY26	FY27	25-27 Bi	FY28	FY29	27-29 Bi
Appellate						
Court Reporters	\$718,975	\$718,975	\$1,437,950	\$718,975	\$718,975	\$1,437,950
County Clerks	\$144,884	\$144,884	\$289,768	\$144,884	\$144,884	\$289,768
Total	\$863,859	\$863,859	\$1,727,718	\$863,859	\$863,859	\$1,727,718
Parents Rep	\$1,000,000	\$1,000,000	\$2,000,000	\$1,200,000	\$1,200,000	\$2,400,000
4E Federal Reimbursement .1984	(\$198,400)	(\$198,400)	(\$396,800)	(\$238,080)	(\$238,080)	(\$476,160)
State Request	\$801,600	\$801,600	\$1,603,200	\$961,920	\$961,920	\$1,923,840
71.09						
Full Evaluations	\$355,000	\$355,000	\$710,000	\$355,000	\$355,000	\$710,000
Testimony/Trials	\$70,000	\$70,000	\$140,000	\$70,000	\$70,000	\$140,000
Partial Evaluations	\$33,000	\$33,000	\$66,000	\$33,000	\$33,000	\$66,000
Investigators	\$86,000	\$86,000	\$172,000	\$86,000	\$86,000	\$172,000
TOTAL	\$544,000	\$544,000	\$1,088,000	\$544,000	\$544,000	\$1,088,000
Agency-Wide Experts Total	\$2,209,459	\$2,209,459	\$4,418,918	\$2,369,779	\$2,369,779	\$4,739,558
Total Request	\$2,408,000	\$2,408,000	\$4,816,000	\$2,608,000	\$2,608,000	\$5,216,000
4E Federal Reimbursement	(\$198,000)	(\$198,000)	(\$396,000)	(\$238,000)	(\$238,000)	(\$476,000)
State Request	\$2,210,000	\$2,210,000	\$4,420,000	\$2,370,000	\$2,370,000	\$4,740,000
	\$2,210,000	\$2,170,000	\$4,380,000	\$2,350,000	\$2,330,000	\$4,680,000

Policy Level – 1D – Expert, Investigator, Lit. Costs

[illegible]

Office of Public Defense
Policy Level – 1D – Expert, Investigator, Lit. Costs

Parents Rep Expert Expenditure History								
Sum of trans_amt	Column Labels							
Row Labels	2018	2019	2020	2021	2022	2023	2024	Grand Total
COUNTY CLERKS	\$2,598	\$656	\$7,810	\$675	\$833	\$3,365	\$2,230	\$18,166
COURT REPORTERS	\$13,027	\$29,017	\$30,233	\$47,691	\$37,984	\$57,527	\$63,514	\$278,992
DEPOSITION	\$16,258	\$15,642	\$19,475	\$31,258	\$20,121	\$4,215	\$23,981	\$130,950
DRUG ALCOHOL RELATED	\$8,499	\$2,942	\$5,819	\$24,454	\$33,939	\$19,453	\$17,162	\$112,269
DV EVALUATION	\$4,230	\$7,757	\$4,220	\$6,040	\$36,846	\$56,872	\$34,054	\$150,018
HOMESTUDY	\$84,711	\$100,934	\$109,882	\$111,436	\$79,001	\$66,131	\$67,329	\$619,424
INTERPRETER SERVICES	\$42,269	\$36,825	\$53,451	\$52,443	\$72,048	\$272,262	\$154,699	\$683,998
INVESTIGATOR	\$9,718	\$1,280	\$5,293	\$2,222	\$3,429	\$420	\$14,234	\$36,595
MEDICAL FORENSIC REVIEW	\$191,350	\$254,417	\$339,505	\$293,675	\$442,383	\$438,150	\$721,542	\$2,681,022
MEDICAL RECORDS	\$5,195	\$8,570	\$5,114	\$7,741	\$3,568	\$2,811	\$13,730	\$46,729
OTHER	\$11,127	\$41,311	\$97,274	\$24,673	\$23,648	\$17,677	\$37,278	\$252,989
PARENTING EVAL/BONDING ATTACHMENT EVAL	\$81,238	\$101,491	\$147,872	\$237,281	\$251,772	\$175,925	\$156,245	\$1,151,823
PATERNITY TESTING	\$5,804	\$7,786	\$3,844	\$7,807	\$6,150	\$3,475	\$1,675	\$36,541
POLYGRAPH	\$7,846	\$9,475	\$12,050	\$8,800	\$9,950	\$9,750	\$5,050	\$62,921
PSYCHOLOGICAL/MENTAL HEALTH	\$109,028	\$166,455	\$187,954	\$245,491	\$124,727	\$103,154	\$157,404	\$1,094,215
PSYCHOSEXUAL	\$9,923	\$13,318	\$5,438	\$24,335	\$17,015	\$7,800	\$24,138	\$101,965
SW FORENSIC REVIEW	\$102,246	\$121,592	\$110,822	\$121,358	\$158,004	\$249,301	\$444,377	\$1,307,700
TRAINING/CLE	\$9,105	\$44,274	\$59,701	\$28,830	\$90,065	\$225		\$232,199
TRIAL TESTIMONY	\$57,032	\$31,867	\$40,058	\$27,769	\$20,659	\$15,947	\$83,993	\$277,325
Grand Total	\$771,203	\$995,609	\$1,245,815	\$1,303,980	\$1,432,141	\$1,504,459	\$2,022,635	\$9,275,843
Funding			\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	
Over budget			(\$45,815)	(\$103,980)	(\$232,141)	(\$304,459)	(\$822,635)	
Parents Rep was able to cover within its overall budget								
Parents Rep was not able to cover within its existing budget and agency-wide funding (from all other programs/non proviso'd) covered the overage								
While there was enough excess discretionary funding in FY24 to cover this overage from other programs, that will not always be the case and is a set up for a funding emergency as expenditures will not be decreasing in this program. Each program must be able to support its own expenditures via adequate funding levels.								
Parents Rep Managing attorneys have been promoting/campaigning for contract attorneys to use more experts due to the positive case outcomes.								

71.09 Expert Summary - Projected Rate increases										
	Ave number of years	Fiscal Year Average	Current	Total Hours	Annual Hours	New Rate				
Experts	11.08 FY	Ave per FY	Hourly	Annual Hours	Ave FY Hours	Proposed Rate	AveFY* PR Cost per FY	Inc per FY	Biennial	
Full Eval \$10K	\$7,871,714	\$710,444	\$200	39,359	3,552	\$300	\$1,065,665	\$355,222	\$710,444	
Testimony/Trial	\$322,845	\$29,138	\$250	1,291	117	\$350	\$40,793	\$69,930	\$139,861	
Parial Eval \$5.5K	\$741,113	\$66,887	\$200	3,706	334	\$300	\$100,331	\$33,444	\$66,887	
Apart From \$6K	\$2,733,236	\$246,682	\$200	13,666	1,233	\$300	\$370,023	\$123,341	\$246,682	
								\$581,937	\$1,163,874	
Travel							\$65,000	\$65,000	\$130,000	
Litigation	11.08 FY	Ave per FY	Hourly	Annual Hours	Ave FY Hours	Proposed Rate	AveFY* PR Cost per FY	Inc per FY	Biennial	
Invesitgators	\$1,817,627	\$164,046	\$46	39,514	3,566	\$60	\$70	\$75	\$80	
						\$213,973	\$249,635	\$267,466	\$285,297	
					Increase per FY	\$49,927	\$85,589	\$103,420	\$121,251	
					Biennial	\$99,854	\$171,178	\$206,840	\$242,502	

How does the package relate to the Judicial Branch principal policy objectives?

Fair and Effective Administration of Justice

This decision package supports fair and effective administration of justice by funding litigation services and defense experts and investigators – case-related services that are critical to ensuring effective assistance of counsel and due process.

Access to Necessary Representation

This decision package supports access to necessary representation by ensuring that indigent clients, through OPD’s contracted public defense attorneys, have trial transcripts, clerk’s papers, and expert and investigator services that are necessary for effective assistance of counsel.

How does the package impact equity in the state?

Address any target populations or communities that will benefit from this proposal.

Racial disproportionality is well-documented in the criminal legal and child welfare systems, significantly impacting BIPOC families. For instance, black children are nearly twice as likely as white children to end up in foster care after an initial dependency case is opened, and Indigenous children are approximately three times as likely as white children to end up in foster care. In addition, many system-involved persons experience a variety of disabilities. This decision package ensures equity in legal services provided for indigent clients involved in an appeal, a dependency/termination case, or an RCW 71.09 civil commitment case.

Describe how the agency conducted community outreach and engagement.

OPD received input from its contracted attorneys representing indigent clients involved in the case types addressed by this decision package.

Consider which target populations or communities would be disproportionately impacted by this proposal.

Explain why and how these equity impacts will be mitigated.

This proposal is not expected to result in any disproportionate impacts.

Are there impacts to other governmental entities?

Perhaps. If OPD is not funded to adequately cover litigation costs, defense experts, and investigators, then OPD-contracted attorneys may need to seek continuances in the trial courts or they may miss appellate court deadlines. Such delays could impact court efficiency. Additionally, in dependency cases, which are subject to state and federal timelines, procedural delays can cause children to remain longer in foster care at significant cost to the state.

Stakeholder response:

The OPD Advisory Committee voted at its September 12, 2024 meeting to approve this decision package. OPD anticipates that its contracted attorneys will support this request because it maintains their ability to access services they need in order to provide effective legal representation to indigent clients.

Are there legal or administrative mandates that require this package to be funded?

Yes. The U.S. and Washington Constitutions as well as Washington statutes guarantee the right to counsel for certain indigent appeals, for parents facing the loss of their children, and for respondents facing civil commitment under Chapter 71.09 RCW. Courts have established that the right to counsel means the right to effective counsel, which includes access to the services funded by this decision package.

Does current law need to be changed to successfully implement this package?

No.

Are there impacts to state facilities?

No.

Are there other supporting materials that strengthen the case for this request?

- Related to transcripts and clerk’s papers for indigent appeals:
 - [RAP 9.7](#) authorizes fees for clerk’s papers.

- [RAP 15.4](#) requires OPD to pay the costs of clerk's papers and transcripts for indigent persons on appeal.
- Supreme Court [Order 25700-B-582](#) directs OPD to pay \$3.65 per page for trial transcripts.
- Related to access to experts for parent representation in dependency/termination cases:
 - *Dependency of V.R.R. v. DSHS*, 134 Wn. App. 573 (2006), provides that an attorney may be found ineffective partially due to their inability to obtain an expert. See also *In re Yarbrough Minors.*, 314 Mich.App. 111 (2016) (Overturning a termination of parental rights and finding that the parents had a due process right to funds for consultation with a medical expert regarding alternate causes for a child's injuries).
 - [The ABA Practice for Parent Attorneys](#), [Family Justice Initiative Attorney Attributes](#), [Washington Supreme Court Standards on Indigent Defense](#), and [Washington State Bar Association Standards for Indigent Defense Services](#) all highlight the need for experts to assure attorney representation is effective.
 - RPC [1.8\(m\)](#) provides that a lawyer should not bear the cost of expert services under a government contract for indigent defense representation.
- Related to access to experts and investigators for RCW 71.09 Civil Commitment Defense:
 - Standard Four of the [Washington State Bar Association Standards for Indigent Defense Services](#) directs public defense administrators to "provide reasonable compensation for expert witnesses" and establishes that attorneys "should be free to retain the expert of their choosing."
 - RPC [1.8\(m\)](#) provides that a lawyer should not bear the cost of expert services under a government contract for indigent defense representation.
 - Examples of recent court orders that reject the quality of review presented by defense experts.
See Attachment A: 1D – Expert, Investigator, Lit. Costs – 20230728 Mulkins Order
See Attachment B: 1D – Expert, Investigator, Lit. Costs – 2024 Order

Are there information technology impacts?

No.

Agency Contact:

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Detention of)
CHRISTOPHER MULKINS,) NO. 03-2-12912-7 SEA
Respondent.)
ORDER TERMINATING 2022
ANNUAL REVIEW AND DENYING
RESPONDENT'S PETITION FOR AN
EVIDENTIARY HEARING

This matter came before the court on July 21, 2023, for an annual review show cause hearing under RCW 71.09.090, the Sexually Violent Predator (SVP) statute. The respondent, Christopher Mulkins, appeared remotely via Zoom from the Special Commitment Center. His attorney, Karen Denise Wilson, and the State's counsel, Nami Kim, also appeared remotely via Zoom. The court was physically present in the open court room.

The court considered the following written submissions from the parties:

1. Respondent's Petition for Conditional Release to Less Restrictive Alternative (RCW 71.09.090(2)(a), along with the following attached exhibits:
 - A. Psychosexual Evaluation by Joseph J. Plaud, Ph.D., M.A.T., K.H.S. dated June 5, 2023;
 - B. Dr. Plaud's Curriculum Vitae;
 - C. Declaration of Krishan Hansen, CSOTP;

ORDER TERMINATING ANNUAL REVIEW &
DENYING RESPONDENT'S PETITION FOR
EVIDENTIARY HEARING- 1

JUDGE MARY E. ROBERTS
King County Superior Court
516 Third Avenue E912
Seattle, Washington 98104
(206) 447-1349

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- D. Community Treatment Plan for Mr. Mulkins dated August 15, 2022;
- E. Declaration of Isabel Valle;
- F. Declaration of Christopher Mulkins Re: Proposed Less Restrictive Alternative (LRA);
- and
- G. Sexually Violent Predator/Less Restrictive Alternative Policy of the State of Washington Department of Corrections.

2. State’s Memorandum Opposing Petition for Community-Based LRA and Supporting Termination of 2022 Annual Review Without Further Proceedings, along with the following attached appendices:

- A. Special Commitment Center Annual Review for Christopher Mulkins, dated October 2, 2022 authored by Lorien J. Newsome, Ph.D.
- B. Stipulation to LRA Revocation Pursuant to RCW 71.09 and Order, dated March 26, 2020;

The court also considered oral argument on July 21, 2023, from Ms. Wilson on behalf of Mr. Mulkins, and from Ms. Kim on behalf of the state, and the entirety of the court file.¹

RCW Chapter 71.09 provides for indefinite commitments. Once Mr. Mulkins was found by a jury in December of 2008 to be a SVP, his commitment was required “until such time,” as his condition has “so changed,” that he no longer meets the definition of a SVP, or a less restrictive alternative (LRA) can adequately protect the community. RCW 71.09.060(1), .090(1), (2).

Mr. Mulkins was held in full confinement at the Special Commitment Center (SCC) until his conditional release on LRA to the residential transitional facility at the center of McNeil Island in August of 2018. Following notice of several violations of the terms of that LRA, Mr. Mulkins was returned to full confinement at the SCC in February of 2019. By stipulated agreement of the parties Mr. Mulkins’ conditional release on LRA was revoked in March of 2020. He remains in confinement at the SCC.

¹ This court was assigned this case at its inception, on December 29, 2003.

1 A committed person is entitled to annual reviews by a qualified professional to ensure he
2 continues to meet the commitment criteria. *St. v. McCuiston*, 174 Wn.2d 369, 379 (2012). The
3 above-referenced October 2, 2022, review authored by Dr. Newsome is Mr. Mulkins' most recent. It
4 concludes that Mr. Mulkins continues to meet commitment criteria.

5 RCW 71.09.090 sets forth two alternative procedures under which a committed person may
6 petition for release. *McCuiston*, at 379. First, if, in the course of its annual review, DSHS determines
7 the person's condition has "so changed," that either (1) he no longer meets the definition of a SVP,
8 or (2) conditional release can adequately protect the community, DSHS must authorize a petition for
9 release, and the court must, upon receiving the petition, order a trial to determine whether release is
10 warranted. RCW 71.09.090(1). Alternatively, without DSHS approval, a committed person may file
11 a petition for release, as did Mr. Mulkins on June 30, 2023, and the court will then conduct a show
12 cause hearing to determine whether release is warranted. It is that show cause hearing that was held
13 on July 21, 2023.

14 At the show cause hearing, the state bears the initial burden to show probable cause that the
15 person continues to meet the definition of a SVP and conditional release cannot adequately protect
16 the public. If the State meets its initial burden, the person can still obtain a release trial by showing
17 probable cause that his condition has so changed he no longer meets the definition of a SVP or
18 conditional release would be appropriate. RCW 71.09.090(2)(c). The court must order a release trial
19 if the State fails to show probable cause or the person shows probable cause otherwise.

20 Mr. Mulkins has petitioned for a community-based less restrictive alternative (LRA), arguing
21 that he is entitled to an evidentiary hearing on that issue. The State argues that an evidentiary hearing
22 is not legally warranted, and that Mr. Mulkins' petition should be summarily denied.

Here, Mr. Mulkins does not contest a determination that the State has met its burden to establish
a prima facie case that he continues to meet the definition of a sexually violent predator. His petition
argues that since the revocation of his prior LRA¹ he nonetheless has "so changed," through treatment
that conditional release to a LRA is now appropriate.

1 The State has established through the annual review authored by Dr. Newsome a prima facie case
2 that Mr. Mulkins continues to meet the definition of a sexually violent predator, and that a less
3 restrictive alternative is not in his best interest, and that conditions cannot be imposed that adequately
4 protect the community.

5 Mr. Mulkins submits Dr. Plaud's evaluation (and supporting declarations) to support his request
6 for an evidentiary hearing. Under the probable cause standard, the court must assume the truth of the
7 evidence presented; it may not 'weigh and measure asserted facts against potentially competing
8 ones.'" *McCuiston*, at 382, citing *Det. Of Petersen v. State*, 145 Wn.2d 789, 796 (2002). Even
9 accepting the evidence presented, the court finds that Mr. Mulkins has failed to establish probable
10 cause that since the revocation of his last LRA he has "so changed" through treatment under such that
11 he can be conditionally released to a less restrictive alternative (LRA). Using the probable cause
12 standard, the court must decide whether the facts, if believed, are sufficient to establish that Mr.
13 Mulkins has "so changed" through treatment such that an LRA is in his best interest and that
14 conditions can be imposed that can adequately protect the community. Dr. Plaud's assessment does
15 not present facts sufficient to meet this legal standard because it is based on conclusory statements
16 not tied to the facts. Dr. Plaud's assessment also uses the incorrect legal standard for establishing
17 probable cause that Mr. Mulkins has "so changed" through treatment such that an LRA is in his best
18 interest and conditions can be imposed that can adequately protect the community, because he opines
19 that the Respondent does not currently meet criteria as a sexually violent predator. Finally, Dr.
20 Plaud's assessment also impermissibly opines that the Respondent has likely never suffered from the
21 requisite mental abnormality or personality disorder to meet criteria as an SVP; that determination
22 was made by a jury over fourteen years ago.

The court concludes that at this time, facts have not been presented that would warrant a trial
addressing the Respondent's conditional release.

THE COURT ORDERS AS FOLLOWS

1. The Respondent's petition for an evidentiary hearing on conditional release is denied.

ORDER TERMINATING ANNUAL REVIEW &
DENYING RESPONDENT'S PETITION FOR
EVIDENTIARY HEARING- 4

JUDGE MARY E. ROBERTS
King County Superior Court
516 Third Avenue E912
Seattle, Washington 98104
(206) 447-1349

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- 2. The 2022 annual review is terminated without the need for further proceedings.
- 3. The order civilly committing Respondent shall continue until further order from this court.

DATED this 28th day of July, 2023.

See electronic signature
JUDGE MARY E. ROBERTS

King County Superior Court
Judicial Electronic Signature Page

Case Number: 03-2-12912-7
Case Title: IN DETENTION OF CHRISTOPHER MULKINS
Document Title: ORDER RE TERMINATING ANNUAL REVIEW

Signed By: Mary Roberts
Date: July 28, 2023



Judge: Mary Roberts

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 2EA181B3F7E622C10D8AF25D551354E733B27BE0
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Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Mary Roberts:
0jZg7C7w7RGc2CQP/CyjcQ=="

FILED
2024 MAR 25
KING COUNTY
SUPERIOR COURT CLERK

CASE #: 17-2-09074-3 SEA

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

Oliver
In re the detention of
Plaintiff/Petitioner,) NO. 17-2-09074-3 SEA³
v.) ORDER ON ~~CIVIL~~ MOTION
Defendant/Respondent.) ^{SVP}
(Clerk's Action Required)

The above-entitled Court, having heard a motion

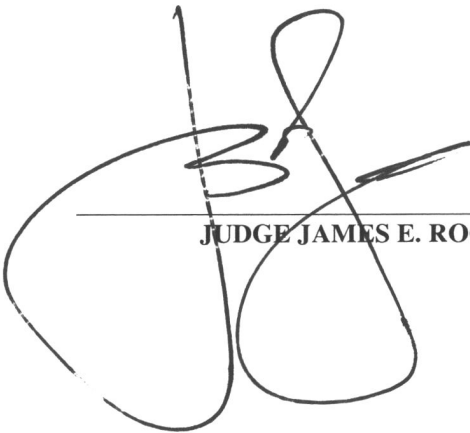
*For annual review show cause
for an LRA trial*

IT IS HEREBY ORDERED that

per the attached order

*The annual review is terminated
The motion for an LRA trial is denied.*

DATED: 3/28/2024


JUDGE JAMES E. ROGERS

1 In re Ollivier 17-2-09074-3 SEA

2
3 Motion to Grant Unconditional Release Trial/Failure of Annual Eval

- 4 1. The parties agree that through Dr. Shaw's report, the State has met its burden under
5 RCW 71.09.090(2).

6
7 Motion for LRA Trial Based Upon Evidence of Probable Cause

- 8 2. Ollivier presents his own evidence to establish probable cause under RCW
9 71.09.090(2)(d). In the last year's hearing, this Court found that Dr. Plaud's
10 opinion was conclusory. This year the issue is a bit different.
11 3. Mr. Ollivier is now (since October) in Cohort SOTP treatment.
12 4. Dr. Plaud's report is based in part upon SCC treatment records, but he only
13 reviewed January to (early) March of this last year. For whatever reason, he did not
14 review the remainder of the year's records. He discusses an employee who testified
15 about the inadequacy of Mr. Ollivier's treatment. She only worked with Ollivier
16 for a few months at the beginning of the year. But Mr. Ollivier is now in Cohort
17 treatment at the SCC, a substantial change. Dr. Plaud certainly does not consider
18 the records for over nine months including when Mr. Ollivier was in regular
19 treatment at the SCC.
20 5. One of Dr. Plaud's opinions is that Mr. Ollivier is not being properly treated for his
21 sexual deviancy. Dr. Plaud also generally criticizes the treatment at the SCC that
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1 Mr. Ollivier has been offered (at least as to March for records). Of course, that has
2 changed.

- 3 6. Dr. Plaud's opinions lack foundation, for the reason that he reviewed only a few
4 months of records at the beginning of the year before reaching his opinion. It is not
5 even clear to the Court whether he understood that Mr. Ollivier was in Cohort
6 treatment. Thus, his opinion is inadmissible.
- 7
- 8 7. Therefore the only expert evidence in front of the Court on this issue is Dr. Shaw's
9 report. She did review all records. She opines against release and a trial. Thus, the
10 evidence on this relevant time period is undisputed.
- 11
- 12 8. The Court is well aware that this is the second time Dr. Plaud's reports have been
13 inadequate. This Court can only assess what it receives.
- 14
- 15 9. Assuming that Dr. Plaud gets records for the time period for his next year's report
16 and thus has foundation for his next opinion, and Mr. Ollivier remains in treatment
17 with some progress, the parties should meet and confer before the next year's
18 hearing. A similar opinion by Dr. Plaud with foundation could lead to an Order for
19 an LRA trial. If the parties have difficulty with document production they should
20 consult this Court.
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1 It is ORDERED that

- 2 1. The DSHS Annual Report by Dr. Shaw provides prima facie evidence that a
3 less restrictive alternative is not in the best interests of the Respondent and
4 conditions cannot be imposed that would adequately protect the community.
5
6 2. Respondent's Motion for a trial on conditional release pursuant to RCW
7 71.09.090(2)(ii) is Denied.

8
9
10 IT IS SO ORDERED March 25, 2024

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14 Hon. James E. Rogers
15 King County Superior Court
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