



Washington State
**Office of
Public
Defense**

ANNUAL REPORT
Fiscal Year 2023

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MESSAGE FROM THE DIRECTOR

Fostering Growth, Innovation, and Meaningful Impacts to Our Justice System

As we reflect on OPD's progress in 2023, we take pride in the remarkable growth of our new staff, programs, partnerships with justice system stakeholders, and legislative accomplishments.

Unprecedented Growth

This year, our agency saw the addition of 12 new employees, ready to bolster our efforts to drive OPD's mission forward. Our team's expansion has added new talent, new experience, and new ideas to our agency, increasing our capacity to tackle complex challenges and amplify our positive influence on the public defense community.

Pioneering Programs

In Fiscal Year 2023, the Washington Legislature directed OPD to develop two innovative new programs that embody our agency's adaptability and determination to expand access to justice for all. In the coming fiscal year, the RCW 10.77 Program will equip individuals who are civilly committed as not guilty by reason of insanity with the legal help they need to move through the system in an equitable way. The Postconviction Program will provide individuals with legal help to navigate the complex process for filing a personal restraint petition. Each of these programs will close an access-to-counsel gap that has created disparate impacts for marginalized communities.

“Together, we will stride into the future, united in our mission to provide a legal system that works for everyone and ensures true justice for all.”

Dynamic Partnerships

Our agency focused on forming strategic partnerships in the public defense community and beyond, particularly with stakeholders who had a heavy impact on justice-system involvement. Through collaborating with community organizations, law schools, law enforcement agencies, and service providers, our agency has been able to find innovative solutions to the issues we often face in improving our legal system. By reaching out across organizational lines, we have bolstered our efforts to provide justice through service to our community, prioritizing equity and excellence in all we do.

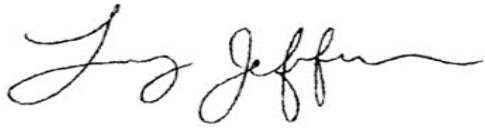
Legislative Achievements

A cornerstone of our year was our legislative achievement, including funding in the budget at around 86% of our total requested amount and the assignment of the RCW 10.77 and Post-

Conviction programs to OPD. We championed policy changes that fostered positive change in areas pivotal to our mission. We advocated for the continuation of programs and policies that have proven their ability to successfully target root-causes of involvement in the justice system. These accomplishments underscore our commitment to public defense improvement through a multidisciplinary team.

Toward a Bright Future

Looking ahead, OPD will harness 2023's momentum. We will continue to develop thoughtful solutions to issues facing the public defense community and clients, anchored in collaboration and an unwavering dedication to improvement. We want to extend our gratitude to our agency's staff, contractors, and partners in bettering the legal system. In the spirit of growth, innovation, and our collective endeavor to improve the public defense system, we express appreciation to all who've contributed to our successes this year. Together, we will stride into the future, united in our mission to provide a legal system that works for everyone and ensures true justice for all.

A handwritten signature in black ink, appearing to read "W. Larry Jefferson". The signature is fluid and cursive, with a long horizontal stroke at the end.

W. Larry Jefferson
Director
Washington State Office of Public Defense

APPELLATE PROGRAM

OPD contracts with attorneys across the state to represent indigent appellants in cases where federal and state constitutions, and state statutes, guarantee the right to counsel. Contract attorneys handle up to 36 appeals per year, weighted by transcript length. Oversight is provided by an OPD managing attorney who reviews attorney work product and client complaints, and organizes continuing legal education for contractors.

Appellate Program Case Types

Appellate Program contract attorneys represents indigent clients on appeal in the following case types:

- Criminal
- Juvenile Offender
- Dependency and Termination
- Mental Health Civil Commitment
- Sexually Violent Predator Civil Commitment

Appellate Program Facts

- 14 contracted public defense law firms
 - Firms range in size from sole practitioners to 15 attorneys
 - Firms are located across both Eastern and Western Washington
- Served approximately 983 clients
- Successfully brought 70 cases to the Washington State Supreme Court

Appellate Program Trainings

The Appellate Program conducted the following trainings for appellate contract attorneys:

Appellate Advocacy: Raising Race on Appeal

- In-person two-day conference in Chelan, WA
- Speakers from the Michigan State Appellate Defender Office, ACLU, American Equity and Justice Group, and Korematsu Center provided training on raising issues of race equity in appeals

Challenging Racial Bias and Disproportionality in Sentencing with Lila Silverstein

- Webinar training on using the precedent set by *State v. Gregory*, which overturned Washington's death penalty on racial disproportionality grounds, to challenge life sentences
- Recording available online for CLE credit at https://youtu.be/i_kk9XnD7qk

Getting to Zamora with Marie Trombley

- Webinar on the case of *State v. Zamora*, wherein the prosecutor introduced racial bias into voir dire by bringing up immigration and the political issue of a border wall, despite the Latino defendant being an American citizen.
- Recording available online for CLE credit at <https://youtu.be/k26lWux1k48>

Frequently Asked Questions on Personal Restraint Petitions with Suzanne Elliott

- Discussion of important, frequently recurring issues in personal restraint petition cases
- Recording available online for CLE credit at <https://youtu.be/q7bsG0aYGEo>

Important Appellate Cases

Appellate Program contract attorneys won many important decisions for clients, including but not limited to:

In re Personal Restraint of Rhone, 1 Wn.3d 572 (2023)

At Mr. Rhone’s criminal trial, prosecutors removed all Black jurors from the jury. In 2010, the Supreme Court upheld this practice. In 2023, the Supreme Court reversed its 2010 decision, recognizing that under current law, when a prosecutor removes the last juror from a cognizable racial group, this establishes an inference of racial discrimination which the prosecutor must disprove.

In re Dependency of A.C., 1 Wn.3d 186 (2023)

The juvenile court permitted the State to remove a newborn from the parents’ care based on hearsay evidence. This reliance on hearsay violated the parents’ fundamental constitutional right to care for their child.

State v. Meredith, 1 Wn.3d 262 (2023)

It was an unconstitutional search and seizure to have a uniformed police officer board a bus and demand that Mr. Meredith prove he had paid the fare, without any basis to suspect he had boarded the bus without paying.

State v. Bagby, 200 Wn.2d 777 (2023)

The prosecutor committed race-based misconduct by repeatedly questioning witnesses about Mr. Bagby’s “nationality,” referring to all witnesses except the sole Black witness as “Good Samaritans,” and questioning Mr. Bagby about whether he loved his dog, invoking stereotypes of Black men abusing dogs.

PARENTS REPRESENTATION PROGRAM

The Parents Representation Program provides defense services in every county to indigent parents, custodians, and legal guardians involved in dependency and termination of parental rights proceedings. The program contracts with public defender agencies, law firms, and solo practicing attorneys, and also with social work professionals to support the parent defense team. Key elements of the program include: caseload limits and professional attorney standards, access to funds for expert services, access to independent social workers and social service workers, OPD oversight, and ongoing training and technical assistance.

Program Facts

- Approximately 300 attorneys and social services workers
- About 8,000 open and active cases, with approximately 10,000 clients served per year
- Nationally recognized model program¹

Program Trainings

The following is a sampling of trainings for Parents Representation Program attorneys and social services workers during Fiscal Year 2023.

Defending Washington Families Conference

- Multiday in-person conference in Wenatchee, WA
- Training topics included:
 - Supporting incarcerated parents
 - The Indian Child Welfare Act
 - Statutory and case law changes

Parent and Mental Status Evaluations in Child Custody Cases

- Daylong in-person training in Olympia, WA
- Training topics included:
 - The importance of parents receiving evaluations for needed services
 - Current trends in and general knowledge of various diagnoses

Implementation of HB 1227 and HB 1747

- Three-hour online webinar
- Combined trial level attorney and appellate attorney training
- Training covered legislation impacting initial dependency removal (shelter care) hearings and relative placement

National Interdisciplinary Parent Representation Conference

- Two-day training in Denver, CO; OPD sent more than 30 Washington practitioners
- Interdisciplinary training for social workers, parents with lived experience, and attorneys
- Topics included:
 - Working Together to Help Families in Holistic Model
 - Bridging the Gap - From Early Defense to Early Dismissal

¹ <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>

- Keeping Families Together: Reforms to Alleviate the Impacts of Parental Incarceration
- Racism in Child Welfare Law

Trainings Provided for the greater Child Welfare Community

- Parents Representation Program staff served as faculty in Washington State and national trainings directed to audiences beyond OPD's contract attorneys and social workers
- OPD staff served as faculty at trainings including:
 - Washington State Children's Justice Conference
 - Multiple trainings offered by the Administrative Office of the Courts Family and Youth Justice Programs
 - ABA Center for Children National Interdisciplinary Parent Representation Conference

Other Initiatives

Voluntary Placement Legal Advice Phone Line

The Legislature directed OPD to create a legal advice telephone consultation line for parents who are being asked to agree to voluntary placements outside of the home, before any dependency case is filed against them. Because indigent parents only have an attorney appointed after a case is filed, they typically do not have access to legal advice before deciding whether to agree to a voluntary placement. This pre-filing legal advice phone line will bridge that gap for parents starting in Fiscal Year 2024.

Expanded Pre-Filing Legal Clinics

The Legislature provided funding to add pre-filing services modeled after the Family Intervention Response to Stop Trauma (FIRST) Legal Clinic that currently serves clients in Snohomish, Skagit, and King counties. FIRST provides pre-filing legal representation to pregnant parents and parents of newborns at risk of removal. Such legal representation can help remedy problems that might otherwise lead to babies being removed from their parents' care, keeping more infants with their parents from birth. This program was originally funded in Fiscal Year 2021, and its success has led to this year's expansion.

PUBLIC DEFENSE IMPROVEMENT PROGRAM

OPD's Public Defense Improvement Program disburses state Public Defense Improvement grants to counties and cities to enhance public defense services as provided in Chapter 10.101 RCW. OPD also provides technical support to public defenders and county and city governments to help them comply with public defense statutory requirements and applicable standards. OPD also conducts trainings on various aspects of criminal defense.

Public Defense Improvement Grants

Counties and cities that wish to receive public defense improvement grants must apply for the funding, providing extensive data on their public defense systems, which OPD collects and collates. All counties are eligible to receive grants, but there is a competitive process for cities. OPD requires periodic reports from the grantees to ensure ongoing improvement in their public defense programs. OPD further monitors public defense improvement through site visits with court staff, public defenders, and local government officials.

Regional Juvenile Defense Initiative (RJDI)

In 2019, OPD secured federal funding for four years to provide social work resources to attorneys representing youth facing criminal charges in juvenile court for Benton and Franklin counties. The social workers, on contract with OPD, conduct assessments and connect with youth and their families. Social workers make referrals to community resources to ensure improved results, such as diversion agreements to keep youth out of the criminal justice system, or mitigating sentences by ensuring the youth can access needed resources in the community. As the program enters its fourth year, there is a hope to secure local funding to sustain its continuation once the grant funds expire. This initiative aims to empower young individuals within the juvenile justice system and promote better futures.

Program Facts

- OPD disbursed \$5,821,678 in public defense improvement grants to counties
- OPD disbursed \$1,043,250 in public defense improvement grants to cities
- OPD conducted site visits with nine cities and two counties receiving public defense improvement grants
- RJDI social workers provided services to 28 youth in Benton and Franklin counties

Program Trainings

The Public Defense Improvement Program conducted the following trainings in Fiscal Year 2023:

Holistic Youth Defense Training Series

- Three-part virtual training
- Designed for Washington defenders working with youth in criminal, delinquency, or dependency proceedings

- Provided tips on how youth defenders can work together effectively across different legal systems and better understand the challenges clients face

Managing Public Defense Services

- Online, recorded training
- Trained non-attorney public defense administrators on the constitutional and statutory requirements in managing public defense services
- Available at https://www.youtube.com/watch?v=VEDaZ_CKVHk

Criminal Defense Training Academy 2022 (Spokane Community College) and 2023 (Central Washington University)

- Hybrid online and in-person training with interactive large and small group sessions
- In-person sessions at Spokane Community College and Central Washington University
- Intensive five-day program to strengthen the practical trial skills of new public defenders
- Equipped participants with proven, effective methods in crucial areas of trial advocacy, such as:
 - Voir dire
 - Opening statements
 - Cross-examination
 - Addressing racial disparities and stereotypes
- Learn more at: <https://opd.wa.gov/index.php/program/trial-defense/12-pd/226>

Defender Spring Training

- Virtual training
- Taught by renowned practitioners and esteemed law school faculty
- Wide array of topics around effective strategies to improve outcomes for defendants

Youth Defender Training Series: Effectively Working with Youth with Complex Trauma and Behavioral Health Needs

- Two-session training, virtual and in-person at the University of Washington Law School
- Focused on understanding the mental health programs serving youth clients and understanding trauma responses while analyzing Adverse Childhood Experiences (ACEs).

STATE v. BLAKE PROGRAM

OPD's *State v. Blake* Program supports the public defense response to the Washington Supreme Court decision in *State v. Blake*, 197 Wn.2d 170 (2021), which held that Washington's felony simple possession of controlled substances law was unconstitutional. Hundreds of thousands of people who had been unconstitutionally convicted of simple possession became eligible to be resentenced or to have their convictions vacated. They are further eligible for refunds of any legal financial obligations they paid on the unconstitutional convictions.

Although local public defense services typically handle resentencing and vacating of convictions, the *Blake* decision required a coordinated statewide response. The 2021 Legislature appropriated funding for OPD to help local public defenders respond to *Blake*. OPD disburses grant funds to counties for public defense costs related to *Blake*. In counties that do not wish to receive grant funds, the OPD Blake Team contracts directly with defense attorneys in those counties to help people get resentenced or have their convictions vacated.

Program Facts

- 31 County grant recipients in calendar year 2022
- 19 County grant recipients in calendar year 2023
- Nine contractors in eight counties in fiscal year 2022
- 20 contractors in 20 counties in fiscal year 2023
- 9,860 individuals served in fiscal year 2023 by grant recipients and contractors

Program Trainings

The Blake Program conducted nine trainings for attorneys handling *Blake* cases, including: [Sentencing Calculation Tips from Department of Corrections](#)

- DOC administrators presented to attorneys doing *Blake* work on common problems in resentencing orders with calculating new sentences.

[Blake 2.0: State v. Blake and Resentencing Hearings](#)

- Full-day training
- In collaboration with Washington Defender Association
- Faculty composed of *Blake* practitioners from across the state
- Topics included:
 - Investigating and Preparing for a *Blake* Resentencing Hearing
 - Resentencing Hearings - Preparing for Successful Reentry
 - Ethics and *Blake*

[DOC Tips for Communicating with Incarcerated Clients](#)

- Training by Department of Corrections (DOC) administrators and program managers

- Educated attorneys handling *Blake* cases on DOC policies around communication, common pitfalls, and ways to trouble-shoot access-to-client issues.

Engaging Community Support at a Resentencing Hearing

- Training by a public defender and community outreach specialist
- Shared lessons learned in, and the amazing power of, community support at resentencing hearings

Blake Commutations

In summer 2021, the *State v. Blake* Program helped launch *Blake* commutations in partnership with the Office of the Governor and the Department of Corrections (DOC). This program allows individuals on DOC community custody only for a felony drug possession conviction to petition the Governor to commute their sentences. It usually takes just a few weeks for eligible individuals to receive a commutation, so those with convictions eligible to be vacated can be freed from community custody while waiting for their court cases to be processed. The *State v. Blake* Program plays a critical administrative role in keeping petitions moving and coordinating between the Governor's Office, DOC, and the affected person. From inception to the end of Fiscal Year 2023, OPD helped process over 700 commutation orders.

Blake Triage Team

In summer 2022, the *State v. Blake* Program launched its Triage Team. The Triage Team includes a managing attorney, a paralegal, and a data analyst. The team reviews cases to determine what relief is available to a person with an unconstitutional conviction under *Blake*. Individualized case review is time-consuming but necessary, especially for incarcerated people. There is no way to automatically identify how *Blake* impacts an incarcerated person, because each case is unique, with its own set of facts. The Triage Team supports *Blake* hearings statewide by helping local public defenders prioritize eligible individuals, and coordinate across jurisdictions. The team also plays a critical role in providing information about *Blake* to incarcerated people. In Fiscal Year 2023, the Triage Team reviewed more than 1,500 individual cases.

Blake Community Outreach Specialist

In spring 2023, OPD hired a community outreach specialist to join the Blake Program. This role was designed for someone with lived experience in the criminal legal system, part of a larger effort to make sure people impacted by the justice system are at the table at OPD. Our Blake Community Outreach Specialist is formerly incarcerated. They bring invaluable perspective to OPD's work and the agency's connection to the community it serves.

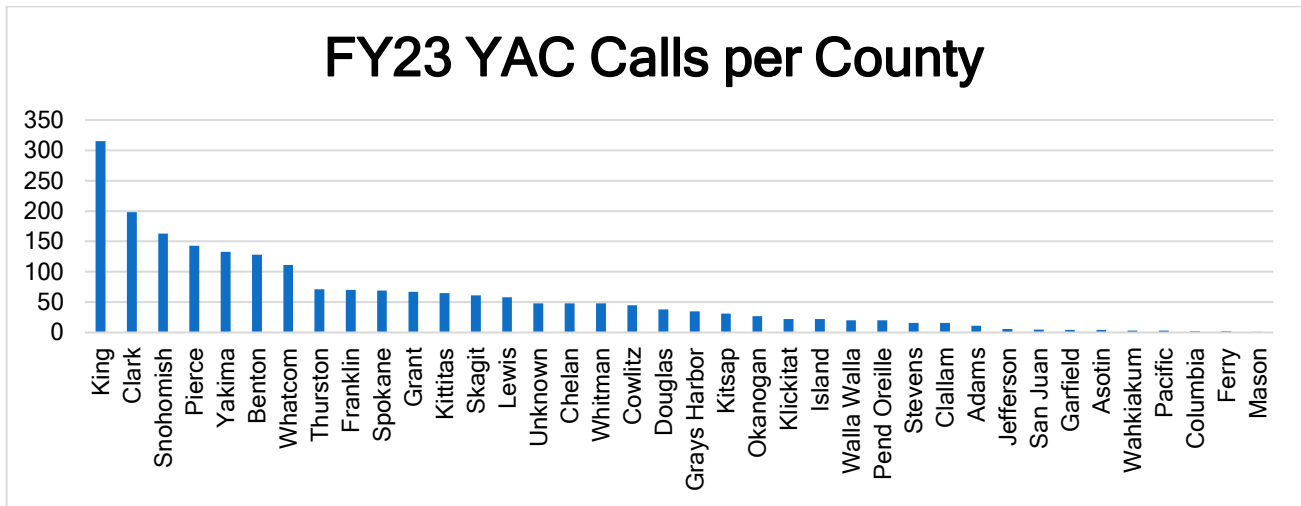
YOUTH ACCESS TO COUNSEL PROGRAM

The Youth Access to Counsel (YAC) Program provides legal advice to youth who are being investigated by law enforcement. Before police may interrogate a youth suspected of a crime, RCW 13.40.740 requires that the youth be allowed to speak with an attorney. OPD contracts with experienced juvenile defense attorneys to staff a legal advice telephone line where youth can consult with an attorney 24/7. The attorneys advise the youth on their legal rights related to speaking with the police, including their right to remain silent, and their right to have an attorney present at an interrogation. For youth suspected of serious crimes who decide to speak to the police, the YAC Program contract attorneys may also provide in-person legal assistance.

Program Facts

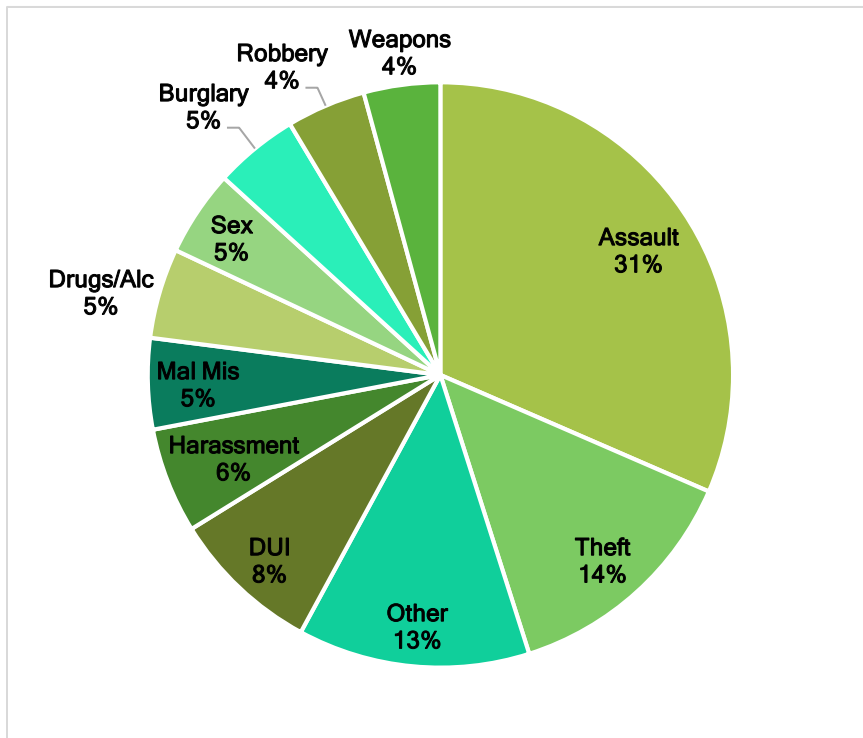
- Seven contract attorneys staff the phone line
- Contract attorneys take week-long, 24/7 on-call shifts
- Four contract attorneys are on-call at all times
- Clients served: 2,130
- Consultations average six per day, but can be as high as 16 in a single day
- More than 75% of callers reach an attorney in less than one minute

In Fiscal Year 2023, the YAC Program provided legal advice to youth in 37 out of 39 Washington counties.



Breakdown of Offenses Under Investigation

The YAC Program provided legal advice to youth for all levels of suspected criminal offense. YAC contract attorneys advised youth who were suspected of low-level crimes such as minor in possession of alcohol, and offenses as serious as homicide. YAC attorneys also often advise youth who are potential victims or witnesses to suspected crimes.



Program Trainings

YAC contract attorneys all have experience working in Juvenile Court prior to joining the program. OPD provides free legal trainings intended to encourage holistic and knowledgeable consultations. YAC attorneys are also encouraged to attend other OPD trainings on juvenile representation.

CHAPTER 71.09 RCW PROGRAM

Under Washington’s sexually violent predator civil commitment law, Chapter 71.09 RCW, individuals convicted of sex offenses who are alleged to be mentally ill and dangerous may be indefinitely committed at the Special Commitment Center on McNeil Island. Such individuals are entitled to a jury trial on whether they meet the legal criteria to be committed. Once committed, they are entitled to an annual review of their commitment status. OPD contracts with attorneys throughout Washington to represent these individuals facing indefinite civil commitment. The attorneys are assisted by OPD-contracted social workers who help with issues relating to psychological treatment and release planning.

Program Facts

- 23 contract attorneys
- Four contract social workers
- 263 clients

Program Results

- 14 initial commitment cases resolved
- Five initial commitment cases were dismissed
- 21 clients were conditionally released
- 14 clients were released unconditionally

Program Trainings

The 71.09 Program conducted or participated in the following trainings:

State OPD 71.09 Annual Program Training and Retreat

- Multiday in-person training
- Held in Leavenworth, WA
- Training topics included:
 - Ethics in jury selection related to personal bias
 - A conversation with 71.09 community treatment providers
 - Effective cross-examination of state expert use of the PCL-R risk instrument
 - Racial disproportionality in the 71.09 field and tools to mitigate it

Association for the Treatment of Sexual Abusers (ATSA)

- Multiday in-person conference put on by national advocacy group
- Held in Los Angeles, CA
- OPD contract attorneys and social workers attended and gave presentations
- Numerous stakeholders from North America gathered to share the latest developments and research in the treatment of individuals who commit sex offenses

Representing Transgender Clients in Institutions

- Training on the issues related to representing transgender clients housed in institutional settings

Relieving 71.09 Clients of Legal Financial Obligations (LFOs)

- Training on having legal fees forgiven for 71.09 clients who cannot hope to pay them

Ongoing Challenge—Less Restrictive Alternatives

As a civilly committed person undergoes treatment, they frequently make progress to the point where they no longer fit the criteria to be totally confined at the Special Commitment Center. In such cases, the court may order the individual released to a less restrictive treatment setting, known as a “less restrictive alternative,” or LRA. Or, the court may order unconditional release.

As more persons demonstrate eligibility for release from total confinement, the overriding challenge has become a lack of appropriate housing both for LRAs and unconditional release. Although an unconditionally released individual does not have to live in a treatment setting, many housing options ban those with sex offense convictions, so housing is a major challenge even for those who are released unconditionally.

Zoning restrictions enacted by the state Legislature have put scarce LRA housing at risk. Furthermore, a facility designated for respondents who are part of a class-action federal lawsuit brought by Disability Rights Washington recently closed. Communities face a housing shortfall.

In 2021, the Legislature passed SSB 5163, making the Special Commitment Center responsible for developing, creating, and maintaining Less Restrictive Alternatives in the community. The Sex Offender Policy Board (SOPB) continued to track the implementation of SSB 5163, identifying a number of challenges, but also fostering collaboration between the stakeholders. The SOPB monitoring of the implementation ended on June 30, 2023 with a final report due to the Legislature.