

**Charles D. Baker**  
Governor

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Lieutenant Governor



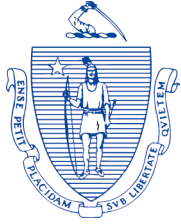
**Marylou Sudders**  
Secretary

**Linda S. Spears**  
Commissioner

# **Legislative Report on Fair Hearings in the Department of Children and Families**

**January 2017**





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**LEGISLATIVE REPORT ON FAIR HEARINGS IN THE  
 MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES**

This document fulfills the requirements of line item 4800-0015 of Chapter 133 of the Acts of 2016 that requires the Department of Children and Families to report on:

...provided further, that the department shall maintain a timely, independent and fair administrative hearing system; provided further, that the department shall report to the house and senate committees on ways and means and the joint committee on children, families and persons with disabilities on December 31, 2016 and March 31, 2017 on: (i) the fair hearing requests filed in fiscal year 2017, stating for each hearing request using non-identifying information: (a) the subject matter of the appeal; (b) the number of days between the hearing request and the first day of the hearing; (c) the number of days between the first day of the hearing and the hearing officer's decision; (d) the number of days between the hearing officer's decision and the agency's final decision; (e) the number of days of continuance granted at the appellant's request; (f) the number of days of continuance granted at the request of the department of children and families or the hearing officer's request, specifying which party made the request; and (g) whether the departmental decision that was the subject of the appeal was affirmed or reversed; and (ii) the fair hearing requests filed before fiscal year 2017, which are pending for more than 180 days, stating the number of those cases, how many of those cases have been heard but not decided and how many have been decided by the hearing officer but not yet issued as a final agency decision; ...

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Following an introduction to the Fair Hearing process is information responsive to the statutory request for information on particular statistics within the Fair Hearing Unit. Enclosed as an attachment following this report you will also find the FY2017 Docket through December 7, 2016 as required by line item 4800-0015.

- Part I. Introduction to Fair Hearings**
- Part II. Response to Legislative Request**

**Attachment 1: FY2017 Fair Hearing Docket July 1, 2016 to December 6, 2016**

## **Part I. Introduction to Fair Hearings**

As with administrative hearings in other agencies, Fair Hearings at the Department of Children and Families provide an opportunity for consumers to appeal certain decisions made by the agency. The process is governed by M.G.L. c.30A, similar to administrative appeals within other state agencies, and also by 110 CMR 10.00 et. seq. of the Department's regulations.

Matters subject to Fair Hearing include:

- Appeal of a Supported Abuse and/or Neglect Finding
- Appeal of a Supported Abuse and/or Neglect Finding in an Institution
- Denial of Foster Parent License Study
- Case Closing
- Removal of Child from Foster Parent
- Appeal of a Supported Abuse and/or Neglect Finding by a Foster Parent
- Foster Care Review Goal Determination
- Adoption Subsidy Reduction or Termination
- Alleged Perpetrator Listing
- Removal of Child from Pre-Adoptive Home
- Denial of Adoptive Parent License Study
- License Revocation of foster/pre-adoptive home
- Reduction of Services
- Daycare Denial
- Failure to Follow Regulations
- Any action or inaction involving the placement of children across state lines pursuant to the Interstate Compact on the Placement of Children (ICPC)
- Dispute as to the Sliding Fee for services calculated by the Department

Appellants are able to employ an attorney to assist them during this process if they would like, but it is not required as a function of a Fair Hearing and most individuals do not currently retain an attorney in the defense of their claim. These informal hearings do not follow the Massachusetts Rules of Evidence so the rules regarding what can/cannot be admitted are more flexible. The hearings are not as formal as a court proceeding.

Upon issuance of the Fair Hearing decision, the Appellants also have an additional right of appellate review to the Superior Court pursuant to M.G.L. c.30A.

It is important to note that often while the Fair Hearing process is occurring, there is a parallel but separate process occurring in the Juvenile or Probate and Family Court which relates to the custody of the child or children. While those same children may be the subject of the Fair Hearing, the two processes are separate and distinct. The Juvenile or Probate and Family Court Judge is the arbiter of all custody and placement decisions relative to a child, based upon a finding regarding the parental fitness of the child's parents, as well as a determination as to what is in the best interests of the child. The scope of a Fair Hearing decision is limited; it does not supersede the Court's authority in determining what placement is in the best interest of a child, whether that placement is at home with parents, or in a particular foster or adoptive home.

The number of Fair Hearing requests filed on an annual basis increased significantly from 2013 to 2014, and continues to remain elevated.

**Table 1: Number of Fair Hearing Requests by calendar year**

| <b>Annual filings by calendar year</b> |                          |
|--|--------------------------|
| <b>Year</b>                            | <b>Number of filings</b> |
| 2006                                   | 1739                     |
| 2007                                   | 1868                     |
| 2008                                   | 2156                     |
| 2009                                   | 1899                     |
| 2010                                   | 1398                     |
| 2011                                   | 1220                     |
| 2012                                   | 1188                     |
| 2013                                   | 1344                     |
| 2014                                   | 1947                     |
| 2015                                   | 1796                     |
| 2016                                   | 1984                     |

Since the last reporting period, the Fair Hearing Unit has established a general Fair Hearing unit email address, to allow for greater ease of communication between Appellants and the Fair Hearing Unit, DCFFairHearingUnit@state.ma.us. In addition, a consumer guide to the Fair Hearings is also in the final stages of approval, to be posted on the DCF website, which will assist Appellants in navigating the Fair Hearing process.

**Part II. Response to Legislative Request**

The information that follows provides a detailed response to the statutory request.

**(a) Subject matter of the appeal<sup>1</sup>**

Table 2 (below) shows that the vast majority of 737 requests for Fair Hearing filed thus far in Fiscal Year 2017 are appeals of supported abuse and/or neglect findings, (a combined 587 requests out of 594 Fair Hearing Requests that have gone to a hearing).<sup>2</sup>

These Fair Hearing requests on supported abuse and neglect findings represent a fraction of the total number of reports of abuse and/or neglect received over the course of a year. On average over the last twelve months, 7813 reports of abuse or neglect were filed each month and 2596 were substantiated each month.

The next most common subject matter for appeal is the denial of a foster parent license, (13 requests) followed by the case closing of a young adult (11 requests). A full listing of the allowable grounds for appeal can be found in 110 CMR 10.06.

<sup>1</sup> For cases that have gone to hearing (as opposed to being settled/withdrawn/dismissed pre-hearing).

<sup>2</sup> This is the total of Supported Abuse/Neglect Findings for a caretaker, an institution and foster parents.

**Table 2. Subject of DCF Fair Hearings Requested  
(FY17 to date, 7/1/2016 – 12/06/2016)**

| <b>Subject of Fair Hearing Requests</b>                               | <b>Definition of Subjects</b>   | <b>Count of Fair Hearing Requests</b> |
|---|---|---------------------------------------|
| Appeal of a Supported Abuse and/or Neglect Finding on a Caretaker     | Count of Appellant / Reasons of 51A Caretaker                         | 531                                   |
| Appeal of a Supported Abuse and/or Neglect Finding on a Foster Parent | Count of Appellant / Reasons of 51A Foster parent                     | 14                                    |
| Appeal of a Supported Abuse and/or Neglect Finding at an Institution  | Count of Appellant / Reasons of Institutional Abuse                   | 42                                    |
| Denial of Adoptive Parent License Study                               | Count of Appellant / Reasons of Adoptive Parent License Study Denial  | 0                                     |
| Removal of Child from Pre-Adoptive Home                               | Count of Appellant / Reasons of Adoptive Parent Removal of Child      | 0                                     |
| Alleged Perpetrator Listing   | Count of Appellant / Reasons of Alleged Perpetrator                   | 0                                     |
| Case Closing  | Count of Appellant / Reasons of Case Closing                          | 5                                     |
| Denial of Childcare Services  | Count of Appellant / Reasons of Denial of Child Care Services         | 0                                     |
| Adoption Subsidy  | Count of Appellant / Reasons of Denial of Adoption Subsidy            | 3                                     |
| Foster Care Review Goal Determination                                 | Count of Appellant / Reasons of Foster Care Review Goal Determination | 6                                     |
| Failure by Department to Follow Regulations                           | Count of Appellant / Reasons of Failure by Dept to Follow Regulations | 0                                     |
| Denial of Foster Parent License Study                                 | Count of Appellant / Reasons of Foster Parent License Study Denial    | 13                                    |
| Closing of Foster Home  | Count of Appellant / Reasons of Closing of Foster Home                | 0                                     |
| Removal of Child from Foster Parent                                   | Count of Appellant / Reasons of Foster Parent Removal of Child        | 10                                    |
| Interstate Compact Case   | Count of Appellant / Reasons of Interstate Compact                    | 0                                     |
| Reduction of Services   | Count of Appellant / Reasons of Reduction of Services                 | 0                                     |
| Appeal of Sliding Fee   | Count of Appellant / Reasons of Appeal of Sliding Fee                 | 0                                     |
| Case Closing Young Adult  | Count of Appellant / Reasons of Case Closing Young Adult              | 11                                    |
| License Revocation  | Count of Appellant / Reasons of License Revocation                    | 9                                     |

**(b) the number of days between the hearing request and the first day of the hearing**

The attached FY2017 Fair Hearing Docket July 1, 2016 to December 6, 2016 provides both the number of days between the Fair Hearing request and the first scheduled hearing (Column I, “#Days FH Req-1<sup>st</sup> Date Sch”) and the number of days between the hearing request and the date of the actual first hearing (column J, “#Days FH Req-1<sup>st</sup> Hear Date”).

Table 3 provides a summary view of this data requested in statute.

**Table 3: Number of Days between Fair Hearing Request and Fair Hearing  
(FY17 to date, 7/1/2016 – 12/6/2016)**

|   | Average Number of Business Days | Business Days Allowed under Regulations |
|---|---------------------------------|---|
| number of days between the Fair Hearing request and the first <i>scheduled</i> hearing          | 54                              | 65*                                     |
| number of days between the Fair Hearing request and the date of the <i>actual</i> first hearing | 55                              |   |

\* While a hearing is required to be scheduled within 65 business days, DCF regulations allow for continuances from Appellant, Fair Hearing Officer and/or Area Office which could increase a case’s timeline.

In FY2017, the Department averaged 54 business days for a Fair Hearing to be scheduled, and 55 business days for a hearing to take place once an appeal is filed. This is an improvement of an additional 3 days since March, 2016 and 13 days since 2014. Department regulations stipulate that hearings should be scheduled within 65 working days of receipt of the request for hearing. In contrast to years past, in 2005 the unit was averaging 418 days between receiving the request and the actual date of a hearing.

In addition to the cases represented above, there are also 143 cases that have either withdrawn, settled or closed for other reason before a first hearing was held.

**(c) the number of days between the first day of the hearing and the hearing officer's decision and**

**(d) the number of days between the hearing officer's decision and the agency's final decision;**

The attached FY2017 Fair Hearing Docket July 1, 2016 to December 6, 2016 provides both the number of days between the first day of the hearing (Column O, “#Days 1st Hear FH Off Dec “) and the hearing officer's decision and the number of days between the hearing officer's decision and the agency's final decision (Column Q, “#Days FHO Dec to Final Dec”). It also provides the

cumulative total of time between first day of the hearing and the agency’s final decision (Column P, #Days 1st Hear Final Dec)

The majority of the decisions filed in FY 2017 have not had a decision issued, as the FY 2017 cases have only recently come due. The attached docket reflects that of the cases where a hearing officer has submitted a decision, they have done so within a range of 3 days to 67 days from the date the hearing was held. (Column O) Of the cases where a final decision was issued, the decision issued within one day of its submission by the hearing officer. (Column Q) Because the unit’s primary focus is on the backlog, as explained in the next section of this report, closing out cases that predate FY2017 filings has been the priority.

The Department continues to work on the timely submission of hearing decisions by providing trainings to hearing officers to assist in streamlining the writing of their decisions. In addition, greater emphasis is being placed on the performance review system for each individual employee, to ensure that expectations relative to the submission of hearings are met consistently.

- (e) the number of days of continuance granted at the appellant's request;
- (f) the number of days of continuance granted at the request of the department of children and families or the hearing officer's request, specifying which party made the request;

The attached FY2017 Fair Hearing Docket July 1, 2016 to December 6, 2016 provides the number of days of continuances granted for each request as required in the statute.

- the appellant's request (Column L, “#Days Cont at Appell Req”);
- the number of days of continuance granted at the request of the Department of Children and Families (Column N, “#Days Cont at Area Req”); and
- the number of days of continuance granted at the request of the hearing officer (Column M, “#Days Cont at FH Off Req”).

Table 4 below provides a summary of the continuances granted on Fair Hearings that were requested thus far in FY 2017 based on who requested the continuances.

**Table 4: Number of Continuances Granted  
(FY17 to date, 7/1/2016 –12/6/2016)**

|  | <b>Number of Continuances Granted in FY2015</b> | <b>Average Length of Continuance (business days)</b> |
|--|---|--|
| Days Granted at Appellant’s Request            | 46  | 45   |
| Days Granted at Fair Hearing Officer’s Request | 19  | 14   |
| Days Granted at Area Office’s Request          | 2   | 49   |
| <b>Total continuances granted</b>              | <b>67</b>                                       |  |

In general, when a continuance is allowed the matter is then scheduled on the next available date. Currently, due to the higher volume of cases, combined with the logistics regarding available hearing space in each area office, the next available date is often 60 to 90 calendar days later.

**(g) whether the departmental decision that was the subject of the appeal was affirmed or reversed;**

The attached FY2017 Fair Hearing Docket July 1, 2016 to December 6, 2016 provides data on decisions of appeals; both those that are resolved prior to a Fair Hearing taking place (column R, “Reas for Dismiss(Prior to Hear)”) and after a Fair Hearing has occurred (columns S thru V).

Table 5 below summarizes that 143 Fair Hearings were resolved before a hearing took place.

**Table 5: Pre-Hearing Outcomes as of 3/15/16 for Fair Hearings Requested (FY16 to date, 7/1/2016 – 3/15/2016)**

| <b>Pre-Hearing Outcomes</b>  |            |
|--|------------|
| Settled<br>Cases where the underlying decision on appeal is overturned prior to hearing, after an administrative review by an area office manager  | 12         |
| Withdrawal<br>Withdrawn by the Appellant as documented in the Fair Hearing file via a written request by the Appellant   | 19         |
| Closed for Other Reason<br>Including but not limited to appellant failed to appear at the hearing, Fair Hearing request as filed was not a proper subject for appeal and therefore was dismissed at the outset, or that the Fair Hearing request as filed was well beyond the regulatory 30 day timeframe in which to file an appeal and therefore was dismissed | 112        |
| <b>Total resolved prior to hearing</b>   | <b>143</b> |

Of the cases where a final decision has issued from the FY 2017 cases, the matter was affirmed.



**(ii) the fair hearing requests filed prior to fiscal year 2017, which are pending for more than 180 days, stating the number of such cases, how many of such cases have been heard but not decided and how many have been decided by the hearing officer but not yet issued as a final agency decision.**

Resolving cases open for more than 180 days (“backlog”) continues to be a high priority for the Department and with an increase in both temporary and permanent staffing, significant progress has been made to decrease backlog.

In November, 2015 four temporary paralegals, a temporary administrative staff person, and two part time temporary supervisors were hired to assist in eradicating the backlog of cases where decisions had yet to be written, and to review cases where decisions had been written, but were awaiting supervisory review. With the sustained efforts utilizing the temporary staffing, from November 1, 2015 through November 30, 2016, a total of 3068 cases have been finalized and closed.

All cases from the years 2002 through 2014 are closed, with the exception of 31 cases in which a DA stay<sup>3</sup> is currently in place, or has recently expired allowing the matter to be scheduled and heard but not finalized. Significant progress continues to be made on the remaining cases; of the 1796 cases filed in Calendar Year 2015, 65%, or 1172 cases have been closed, and of the 1984 cases filed in Calendar Year 2016 (as of November 30), 33% or 661 cases have been closed.

As of December 31, 2016, there were 1376 Fair Hearing requests filed prior to FY2017 which are pending for more than 180 days without a final agency decision.

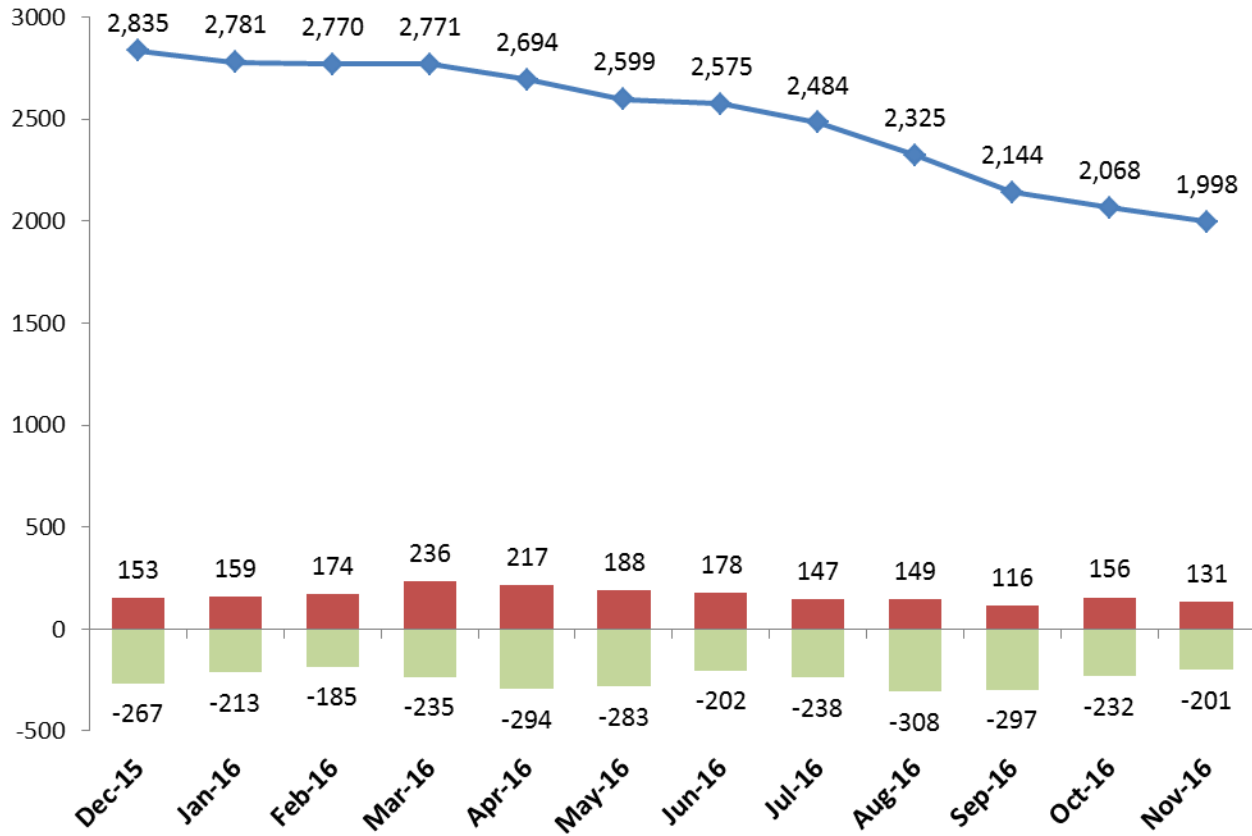
It is not possible from the Department’s database to provide a number for how many cases have been decided by the hearing officer and not yet issued as a final agency decision for cases in backlog as the temporary staff who have assisted in writing those decisions do not have the ability to enter those decisions into the workflow. However, a manual count was conducted on December 27, 2016 with the following results: for CY 2015, there are 18 cases with DA stays and 543 cases have been decided by the hearing officer but not yet issued as a final agency decision. For CY 2016, there are 23 DA Stays, and 303 cases have been decided by a hearing officer but not yet issued as a final agency decision.

Charts at the end of this section provide a visual guide relative to the progress made on this issue, as described above. The current level of temporary staffing is slated to remain through June 30, 2017, in order to continue working on the issuance of decisions in a timely manner.

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<sup>3</sup> A DA Stay issues for six months pursuant to 110 CMR 10.10 when the Department receives a written request from a District Attorney’s Office stating that there is an open criminal investigation pending or formal criminal charges have been instituted which relates to supported allegations of abuse on appeal. Often DA Stays are requested in succession, throughout the life of the criminal investigation and until the pending criminal charges are resolved.

**Graph 1: Pending Fair Hearings and Closings**

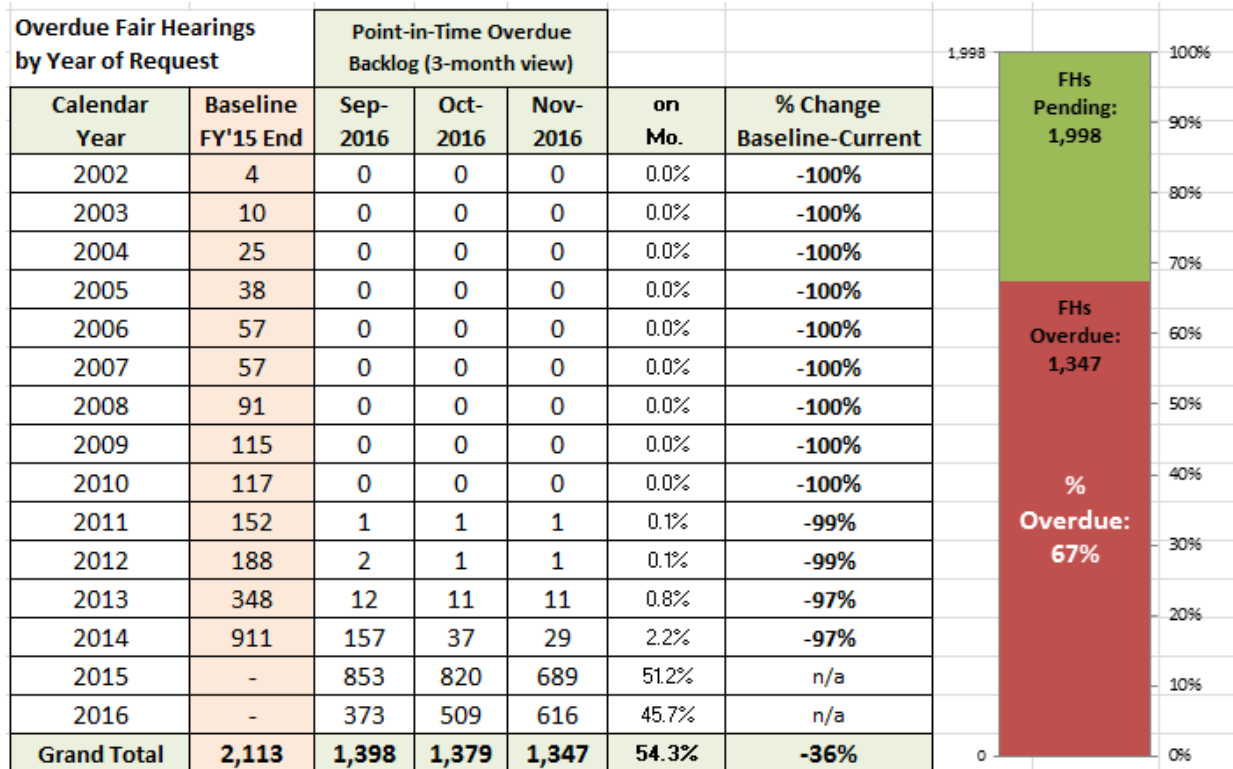


| Definitions                     |                |  |
|---------------------------------|----------------|--|
| <b>Fair Hearings Closed:</b>    | Shown in Green | Count of Fair Hearings closed (e.g., decision issued, hearing request withdrawn, hearing no-show) during the target month. |
| <b>Fair Hearings Requested:</b> | Shown in Red   | Count of new Fair Hearings requested during the target month   |
| <b>Fair Hearings Pending:</b>   | Shown in Blue  | Count of Fair Hearings remaining open at the end of the target month   |

Graph 1 above shows the currently pending Fair Hearings. With the y axis showing number of Fair Hearings, the blue line shows the total number of Fair Hearings pending. The bars at the bottom show how many cases were opened during the previous month (in red) and the how many cases were closed (in green).

Chart 7 below shows a monthly breakdown of the overdue Fair Hearing decisions based on the calendar year in which the Fair Hearing was requested. The column of data shaded in light red shows how many decisions from a particular calendar year were pending at the close of FY15. As of the end of November 2016, all cases through 2014 have been closed (with the exception of any cases where a DA stay is pending) with substantial progress made in 2015 as well. To contextualize these findings, also shown is a chart at the bottom which shows percent of overdue Fair Hearings from 2005 and 2006.

**Chart 7: Overdue Fair Hearings by Year of Request**



NOTE: Overdue counts only include hearings requested > 180 days prior to report run date.

| Historical Perspective |       |                       |       |
|------------------------|-------|-----------------------|-------|
| Feb-2005 FHS Pending:  | 4,794 | Sep-2006 FHS Pending: | 4,830 |
| Feb-2005 FHS Overdue:  | 4,220 | Sep-2006 FHS Overdue: | 4,544 |
| % Overdue:             | 88.0% | % Overdue:            | 94.1% |

For the years 2011, 2012, 2013 and 2014, the open cases are due to current DA stays which have prevented the Fair Hearing from going forward; the DA stay is either currently in place or has recently expired and a hearing has been scheduled but not convened.