

WASHINGTON STATE MINORITY AND JUSTICE COMMISSION



"In My Father's House There Are Many Roomers"

Barbara Earl Thomas

ANNUAL REPORT 2005

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WASHINGTON STATE MINORITY AND JUSTICE COMMISSION

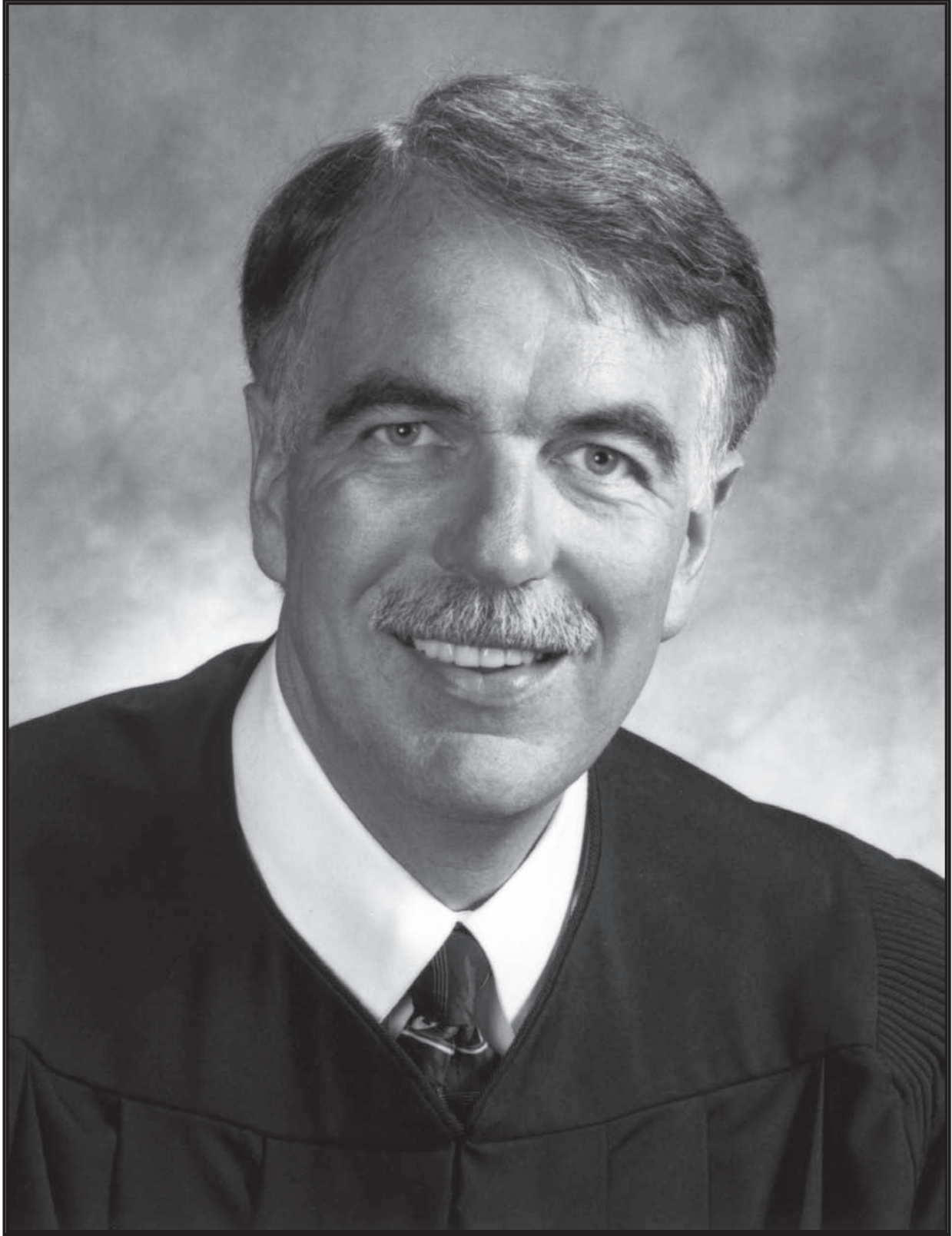


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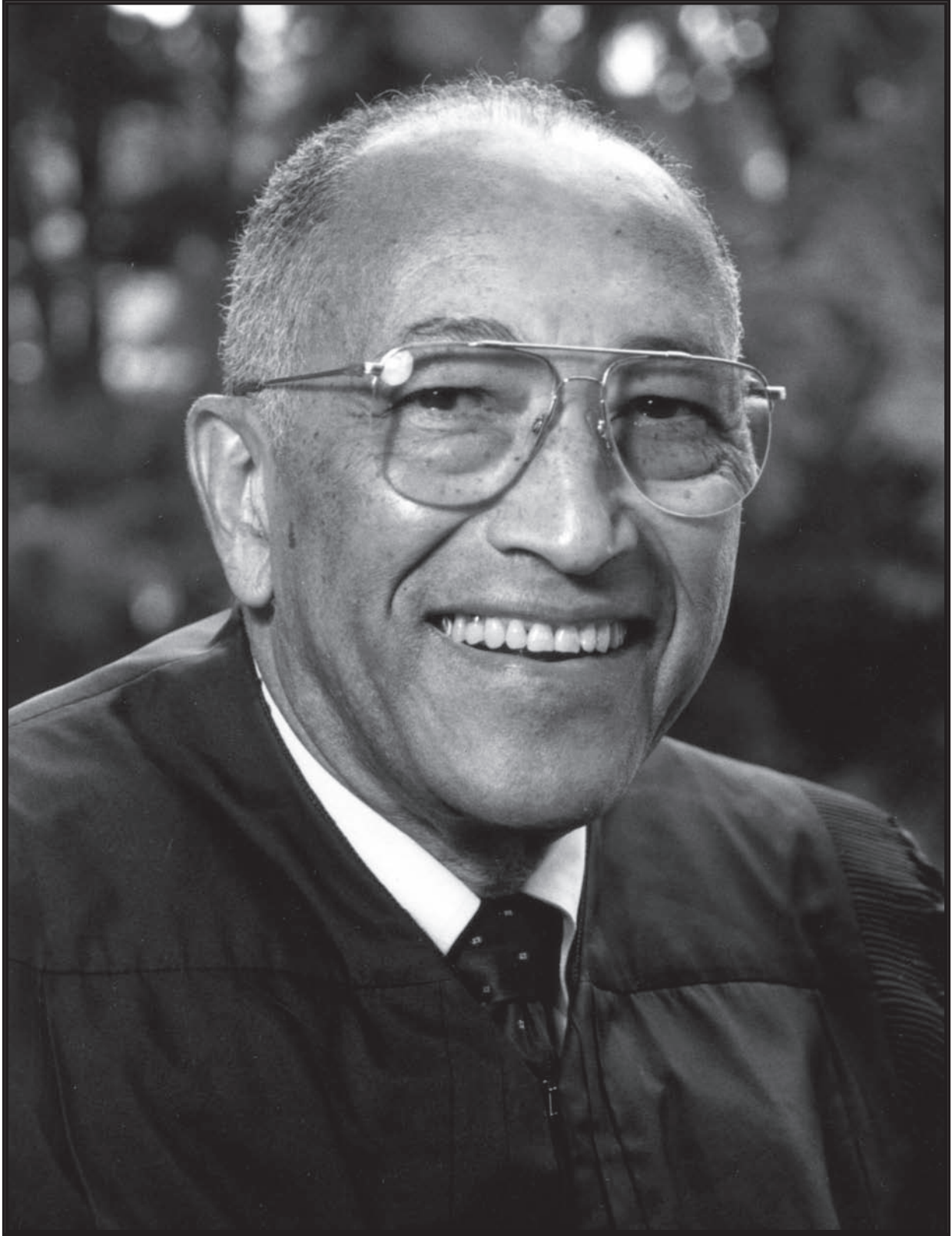
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REPORT 2005



JUSTICE CHARLES W. JOHNSON
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JUSTICE CHARLES Z. SMITH (RETIRED)
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COVER ARTWORK

The inspiration for this painting was the big house where I lived as a child in Seattle's Central District. That house was always full of people. In the late fifties it was common practice for families to take in roomers, especially in Seattle's small black enclave. Many of the blacks who settled in Seattle came in the mid-forties drawn by the bustling wartime economy. In the beginning we all lived together in an extended family of aunts, uncles, cousins all in the same house. When the relatives moved out to homes of their own, my parents let rooms to many of the young men who were stationed in Seattle after the Korean War. I always felt like our house was bursting at the seams with people coming and going. So when I painted "In My Fathers House There Are Many Roomers" that is exactly what I meant. But, I am also aware that in the heading there is a biblical reference, as well as, how news was passed in and around the neighborhood. For me it's about hospitality and sharing. In those days a big house was meant to be filled with people, food, and the sounds of life. That's how I remember it. ■■

Barbara Earl Thomas



ABOUT THE ARTIST

Barbara Earl Thomas, a Seattle native, is an accomplished artist of national reputation. Her paintings are displayed in public buildings, galleries and private collections. She paints and writes in Seattle. Her artwork has been exhibited regionally and nationally and she has contributed to a number of books and periodicals.

As a painter and writer of prodigious talent and remarkable visionary sensibility, Barbara Earl Thomas continues to spark increasing attention both regionally and nationally. The granddaughter of Southern sharecroppers who migrated to Seattle in the middle 1940s, she expresses in her art a dual heritage, translating her own vision of Southern roots and culture into a Northwestern landscape.

Among other sources, the Minority and Justice Commission reviewed the book *Storm Watch: The Art of Barbara Earl Thomas* published by the University of Washington Press (1998) in the Jacob Lawrence Series on American Artists. The great artist, Jacob Lawrence, and his wife, another great artist, Gwendolyn Knight, were personal friends and colleagues of Ms. Thomas. In the foreword to *Storm Watch* Mr. Lawrence stated “Knowing Barbara for a number of years as both a colleague and as a friend has been for me a most rewarding experience. Viewing her many exhibitions over a period of years and sharing and agreeing with her ideas pertaining to the creative process in general, one can appreciate Barbara’s overall commitment to her chosen field of art. Her technical skills as an artist in the handling of abstract elements of color, line, texture, shape, and value are inventive, dynamic, and exciting to view. In formalistic terms her works have scope and dimension. She continues to express with deep conviction and passion her perception of life. Her paintings are developed with insight and experience.”

The Minority and Justice Commission asked Ms. Thomas to give copyright permission for use of one of her many paintings for the cover of this 2005 Annual Report. We reviewed with her a wide range of her paintings and ultimately selected her 1986 tempera on paper “*In My Father’s House There Are Many Roomers.*” A statement in *Storm Watch* referring to the artwork on our cover is “*The cacophony of a house centered on a nuclear family but filled with boarders is called in Thomas’ painting ‘In My Father’s House There Are Many Roomers’ (1986).*” The artist herself refers to this painting as one based upon the memory of her parents—especially her father—who provided residential accommodations to anyone in need of shelter without regard to race, culture or ethnicity.

The painting alone, while of itself noteworthy, does not tell the full story of the life and work of the artist Barbara Earl Thomas. In addition to reference to *Storm Watch: The art of Barbara Earl Thomas*, one may learn more by review of books, articles and exhibits by and about the artist. Ms. Thomas currently serves as Curator for the Northwest African American Museum in Seattle. ■ ■

ACKNOWLEDGMENT

The Washington State Minority and Justice Commission thanks and acknowledges the following persons for their contribution, preparation, and layout of this report: Justice Charles Z. Smith, Judge LeRoy McCullough, Judge James M. Murphy, Judge Dennis D. Yule, Judge Kenneth H. Kato, Judge Deborah D. Fleck, Ms. Erica S. Chung and Monto S. Morton.

The Commission expresses gratitude to Co-chairpersons Justice Charles Z. Smith (retired) and Justice Charles W. Johnson for their leadership, inspiration, support and commitment in advancing the work of the Commission and in eliminating racial, ethnic and cultural bias in our State court system. The Commission also expresses gratitude to all our members for their continued support and work in advancing the mission and goals of the Commission.

With particular reference to this 2005 Report, the Commission acknowledges the courtesy of the Washington Defender Association for permission to publish substantially the text of its two publications, *Beyond the Conviction* and *Beyond Juvenile Court: Long-Term Impacts of a Juvenile Record*. Additionally, we acknowledge the work of Ms. Kim Ambrose and Ms. Ann E. Benson for their participation in developing the publications and for their presentations in our seminar “Beyond the Conviction: Collateral Consequences of Adult and Juvenile Criminal Convictions” presented at the 2005 Fall Judicial Conference. Also participating were Judge LeRoy McCullough, moderator, and Judges Dean S. Lum, Steven C. González, Richard A. Jones, and James M. Murphy; and Jeffrey C. Sullivan.

The Commission expresses its profound gratitude to the justices of the Washington State Supreme Court for their continued support of the Commission and their commitment to diversity by their periodic orders renewing the Commission; the Washington State Legislature for its continuing support of our education programs, research activities and other projects through budget allocations; and Ms. Janet L. McLane, Administrator for the Courts, for her participation on and support of the Commission. ■ ■



INTRODUCTION

The Washington State Minority and Justice Commission was created by the Washington State Supreme Court in 1990 as successor to the Washington State Minority and Justice Task Force created by the court in 1987 at the request of the Washington State Legislature. By order of the Supreme Court on September 13, 2005, the Commission was renewed for an additional period of five years until December 2010. In creating the Commission and subsequent Orders of Renewal, the Supreme Court acknowledges there is a continuing need to identify and to eradicate all racial, ethnic, and cultural bias in our state court system.

The purpose of the Minority and Justice Commission is to determine whether racial and ethnic bias exists in the courts of the State of Washington. To the extent that it exists, the Commission is charged with taking creative steps to overcome it. To the extent that such bias does not exist, the Commission is charged with taking creative steps to prevent it.

The primary functions of the Minority and Justice Commission in pursuit of its mandate are:

First, to improve the administration of justice by developing and presenting education programs designed to eliminate racial, ethnic and cultural bias in the judicial system;

Second, to eliminate racial and ethnic bias from the state court system through identification of problems and through implementation of recommendations ensuring fair and equal treatment for all;

Third, to engage in empirical research studies examining whether racial and ethnic disparities exist in the criminal justice system;

Fourth, to increase racial and ethnic diversity in the court workforce through development and implementation of recruitment and workforce diversity education programs; and

Fifth, to publish and distribute a regular newsletter, *Equal Justice*, and an annual report.

The Washington State Minority and Justice Commission is co-chaired by Supreme Court Justice Charles W. Johnson and Justice Charles Z. Smith (retired). The work of the Commission is carried out through its five sub-committees: Education, chaired by Judge LeRoy McCullough, King County Superior Court; Evaluation and Implementation, chaired by Judge James M. Murphy (retired), Spokane County Superior Court; Outreach, co-chaired by Judge Dennis D. Yule, Franklin and Benton County Superior Courts, and Brian A. Tsuchida, Federal Public Defender; Research, chaired by Judge Kenneth H. Kato, Court of Appeals, Division III; and Workforce Diversity, chaired by Judge Deborah D. Fleck, King County Superior Court. The Commission consists of not more than twenty-one members appointed by the Supreme Court and at least eighteen "technical support members" appointed by the Commission. ■ ■

SUPREME COURT ORDER RENEWING COMMISSION

SUPREME COURT OF WASHINGTON

ORDER RENEWING
WASHINGTON STATE
MINORITY AND JUSTICE
COMMISSION

Number 25700-B-457

PREAMBLE

FILED
SUPREME COURT
STATE OF WASHINGTON
2005 SEP 13 P.M. 2:20
BY C. MERRITT
CLERK

1.0 Equal Justice Before the Courts. The Washington State Supreme

Court recognizes the need for all persons to be treated equally before the courts of this state. The Court recognizes that for any system of justice to be responsible, it must be examined continuously to ensure it is meeting the needs of all persons who constitute the diverse populations we serve, with particular concern for the needs of persons of color who represent various racial, ethnic, cultural and language groups.

2.0 Establishment of Minority and Justice Commission. The Court on

October 4, 1990 established the Washington State Minority and Justice Commission to identify problems and make recommendations to ensure fair and equal treatment in the state courts for all parties, attorneys, court employees and other persons. The Commission was created to examine all levels of the State judicial system to particularly ensure judicial awareness of persons of color to achieve a better quality of justice and to make recommendations for improvement to the extent it is needed.

3.0 Renewal of Minority and Justice Commission. The Minority and Justice Commission was established in 1990 for a period of five (5) years, subject to renewal for additional years as may be determined by the Court. It was renewed for an additional period of five (5) years by an order of this Court in December 2, 1999 and July 15, 1995. Upon review of the activities of the Commission since its creation, the Court now determines that the Commission should be renewed for an additional period of five (5) years, subject to further renewal as may be determined by this court.

ORDER

4.0 Order Renewing Minority and Justice Commission. By this order the Washington State Supreme Court now renews and continues the Washington State Minority and Justice Commission for a period of five (5) years, subject to further renewal for additional years as may be determined by this Court. The Commission shall continue its operation without interruption and shall proceed according to its established organization and program.

5.0 Membership of Commission. The Washington State Minority and Justice Commission shall continue with twenty-one (21) members and shall include an appropriate mix of judges at all levels of court, members of the Washington State Bar Association, the Administrator for the Courts, trial court administrators, college or university professors, and private citizens. Appointments to the Commission shall be

made to assure racial; ethnic, gender, cultural and geographic diversity from the population of the State of Washington.

6.0 Terms of Appointment to Commission. All appointments to the Commission shall be for terms of four (4) years, staggered according to the tenure established under the October 4, 1990 Order, except that the chairperson or co-chairpersons may serve for an unlimited term at the pleasure of the Supreme Court. Vacancies on the Commission shall be filled by the Supreme Court upon recommendation of the Commission.

7.0 Technical Support Members. The chairperson or co-chairpersons may augment the Commission by appointment of Technical Support members, to serve without vote, when broader representation or specific expertise is needed. The terms of Technical Support members shall be for one (1) year, renewable for additional periods of one (1) year at the pleasure of the chairperson or co-chairpersons.

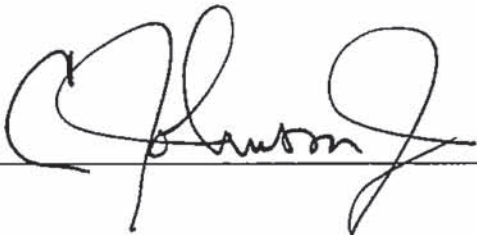
8.0 Budget of Commission. The budget of the Commission shall be provided in the Budget of the Supreme Court or the budget of the Administrative Office of the Courts.


9.0 Administrator for the Courts. The Administrator for the Courts, with the advice of the Commission and subject to budget considerations, shall provide staff and other resources for ongoing activities of the Commission. But the Executive Director of the Commission shall be employed by, and be directly responsible to, the Commission acting through its chairperson or co-chairpersons.


10.0 Annual Report. The Commission shall prepare and file an annual report with the Governor, Legislature, Supreme Court and the Administrator for the Courts concerning its activities and shall recommend appropriate action for further promotion of equal justice for racial, ethnic, cultural and language minorities in the state judicial system. This shall include continuing education on cultural diversity for judges and other court personnel on cultural diversity.

11.0 Authorization to Seek Funds. The Commission is authorized to seek funding from private and public sectors and is authorized to receive funds in its own name.

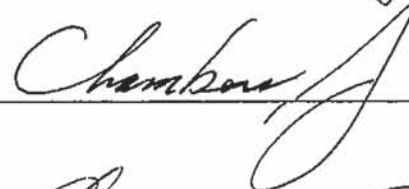
Signed at Olympia, Washington on September 13th, 2005.

















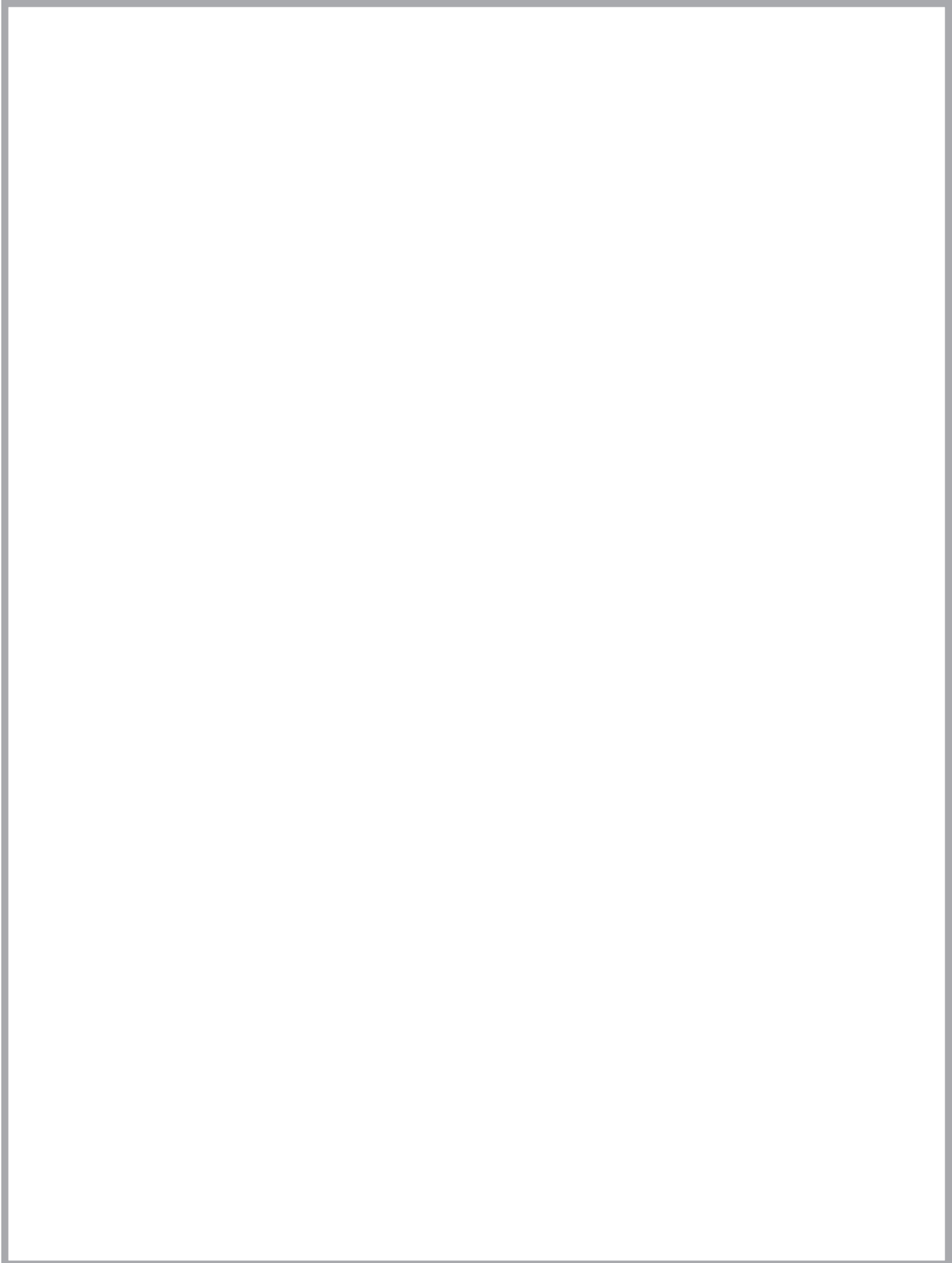


SUB-COMMITTEE REPORTS

The Washington State Minority and Justice Task Force, precursor to the Minority and Justice Commission, in its preliminary work discovered there were significant needs for cultural diversity education and for increasing diversity in the workforce within the court system of Washington State. The Task Force also illuminated the need for continuing objective research in the treatment of persons of color who enter the justice system, as well as those in the legal profession, and the need for developing liaisons with mainstream and ethnic bar organizations. The Task Force in 1989 recommended creation of Washington State Minority and Justice Commission with specific mandates.

The Washington State Supreme Court issued an Order creating the Commission and three subsequent Orders of Renewals. The Commission established five sub-committees to accomplish its mission:

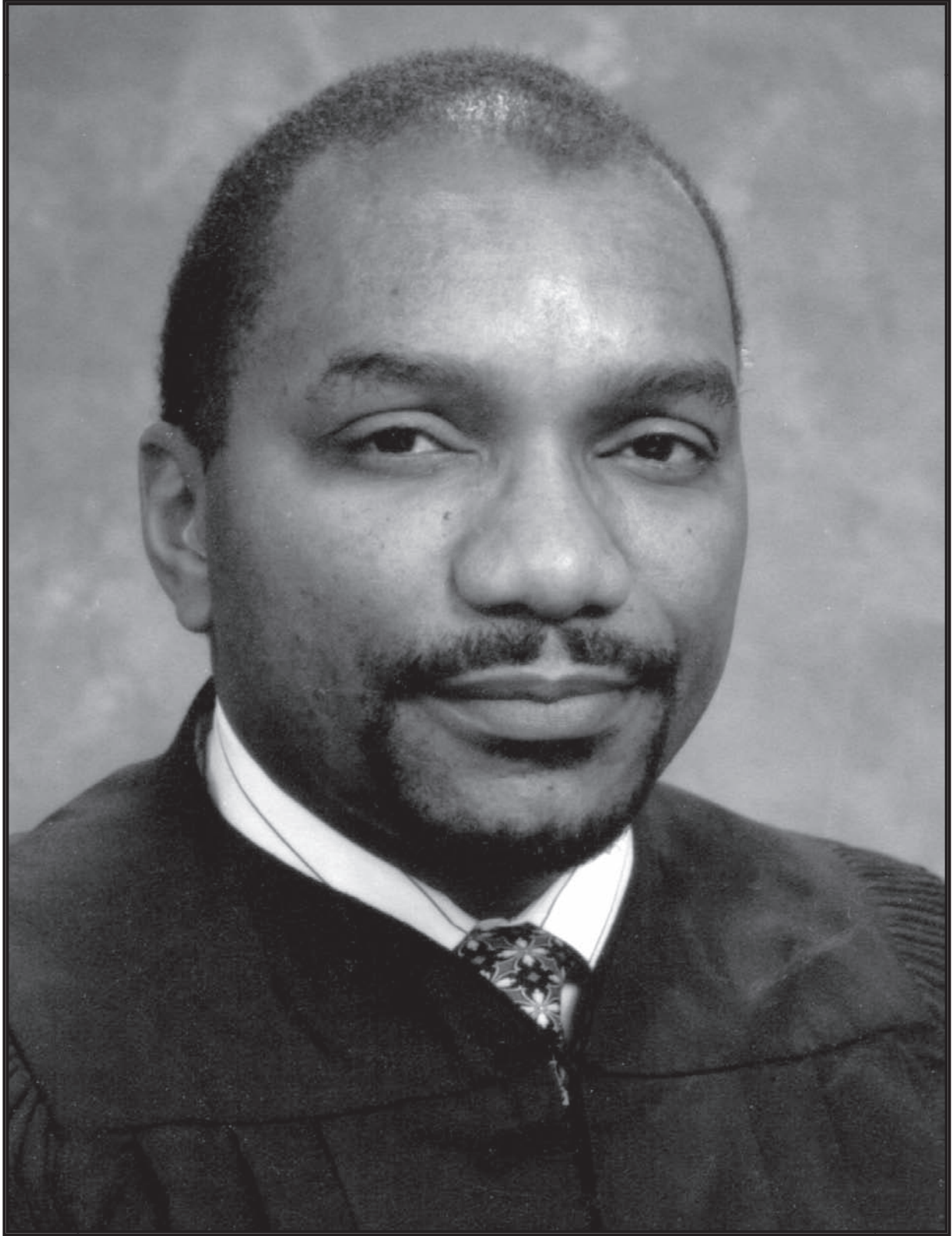
- The *Education Sub-Committee* focuses on development and implementation of educational seminars, panels, and workshops that imbue judges, court personnel, and persons in the justice system with greater awareness and appreciation of cultural diversity.
- The *Outreach Sub-Committee* reaches out to state, local and ethnic bar associations, in addition to non-legal entities, by disseminating information about the Commission and its activities.
- The *Research Sub-Committee* conducts research projects to examine whether race and ethnicity of participants in the justice system affects their treatment in the courts.
- The *Workforce Diversity Sub-Committee* strives to promote diversity in the workforce and to increase persons of color in non-judicial and quasi-judicial positions within the Washington State court system.
- The *Evaluation and Implementation Sub-Committee*, created in 1998, reviews Commission-sponsored research reports and develops implementation plans based on report findings.



EDUCATION SUB-COMMITTEE



CELEBRATING THE COURTS IN AN INCLUSIVE SOCIETY



JUDGE LEROY MCCULLOUGH
Chairperson
Education Sub-Committee

The mission of the Education Sub-committee is to improve the administration of justice by developing and presenting innovative and educational programs that will identify and eliminate racial, ethnic and cultural bias in the judicial system. In pursuit of this mission, we continue to promote cultural awareness and mutual respect by judicial officers and by others who deliver court services to the public.

Our specific objectives are:

- To provide leadership to all components of the State justice system in order to eliminate racial, cultural, and ethnic bias and disparate treatment;
- To ensure that cultural diversity training becomes a normal and continuous aspect of employment within the State justice system;
- To provide cultural diversity training skills to those within the justice system; and
- To provide the best educational services available to those within the justice system.

Consistent with our mission statement, we offered several programs, initiatives and activities in 2005.

TECHNOLOGY-AIDED INSTRUCTION AND GUIDANCE Cultivating Cultural Competency

In partnership with the Administrative Office of the Courts, the Education Sub-committee completed an on-line cultural diversity education course titled, *Cultivating Cultural Competency* (CCC). This is only one of two courses currently offered through the Virtual Institute for New Court Employees (VINCE), which is hosted by the Administrative Office of the Courts and available for use at www.courts.wa.gov/training/vince.

Initially, CCC was designed to replace the on-site course provided at the week-long training of the Institute for New Court Employees and Bailiffs (INCE/B) which was eliminated for budget reasons. INCE/B has since been revived. We are, therefore, encouraging court managers to utilize CCC as a complement to the on-site training offered at the INCE/B, fostering continuous learning opportunities for court staff on diversity. We are also recommending that court managers utilize the on-line course for court staff unable to attend the on-site training.

We have augmented the on-line course with "Follow-up Lessons to VINCE-CCC," developed by Ms. Margaret E. Fisher in the Administrative Office of the Courts. The six follow-up lessons and exercises are designed to reinforce the content of the on-line course and to conveniently fit within a 45-minute lunch period or other abbreviated period. While we expect the supervisor or manager to appropriately set up, lead and facilitate discussions, it is not necessary that the supervisor or manager be a formally certified trainer.

The VINCE-CCC, an on-line course, and the "Follow-up Lessons to VINCE-CCC" were unveiled at the District and Municipal Court Managers Conference on September 28, 2005 in Yakima, Washington. Ms. Erica S. Chung, Executive Director of the Washington State Minority and Justice Commission, set up a display table to demonstrate the VINCE-CCC course for court managers and Ms. Fisher presented the companion education session on "Follow-up Lessons to VINCE-CCC" to over 100 district and municipal court managers.

Web-Based Resource Annotated Bibliography

The Education Sub-committee continues its work of preparing an on-line annotated bibliography. The purpose is to offer computer-accessible diversity resources to judicial officers and others desiring to enhance their knowledge in an effort to continuously improve their services to the public. The Sub-committee developed a form for compiling entries and an internal maintenance website for reviewing submissions, a quality control mechanism. The official launch of the Web-based Annotated Bibliography will be delayed for further usability testing in order to insure website accuracy and functionality. However, we are encouraging Education Sub-committee members and others to submit entries and to test the usability of the program currently located at http://www.courts.wa.gov/programs_orgs/pos_mjc/?fa=pos_mjc.bibhome.

Adult offenders often face insurmountable barriers in obtaining housing, employment and transportation.

JUDICIAL EDUCATION

Fall Judicial Conference, September 19, 2005

The Education Sub-committee again sponsored an education session at the annual judicial conference. For the 48th Annual Washington Judicial Conference, the Sub-committee presented "Beyond the Conviction: Collateral Consequences of Adult and Juvenile Criminal Convictions" with an emphasis on adult and juveniles of color. The three hour session challenged judicial assumptions about the voluntariness of pleas. Attendees learned, for example, that juvenile pleas to certain offenses effectively foreclosed certain military and other employment options and that adult offenders often face insurmountable barriers in obtaining housing, employment and transportation. Furthermore, presenters described the collateral consequences extending beyond the offender and having a devastating impact on their families and communities of color. The session concluded with challenges to the judiciary to ensure that pleas by juveniles and others are done "knowingly and intelligently," and to consider the barriers presented by these indirect consequences to the rehabilitation of offenders and to find creative ways to respond.

The presenters utilized a variety of educational tools, including a pre-assessment quiz, video clips consisting

of personal experiences and challenges encountered in transitioning back into society by adult and juvenile felons, hypothetical scenario exercises, and a panel discussion. The education session revealed that there were many more collateral sanctions encountered by adult and juvenile offenders than are publicized in the media, as well as the indirect impact it has on families of felons and communities of colors.

Post session evaluations were very positive. On effectiveness of presentation judges rated the program 4.58, with 5 as the highest rating, and rated the quality of the presenters and materials (Communication Skills) at 4.56. Some typical comments included: "Excellent on all aspects" and "Best program of the conference. Presenters were well versed on topics and provided excellent suggestions that were practical and useful." The highly-rated session was convened by Education Sub-committee Chairperson Judge LeRoy McCullough, King County Superior Court.

2005 Judicial College: Training for Newly Elected and Appointed Judges

In 2005 the Minority and Justice Commission through its Education Sub-committee again accepted an invitation to present a cultural diversity education program to newly elected and appointed judges and commissioners. The program, "Towards a More Culturally Competent Courtroom," has become a standard presentation for the week-long Washington State Judicial College. While other Judicial College offerings related to criminal law, family law and other elements of a stan-

dard law school curriculum, the Minority and Justice Commission presentation challenged the new judicial officers to take a fresh, unbiased look at the vital, important role that fairness and cultural competence play in judicial discretion and other decision-making. In the synthesis of theoretical principles with practical skills, the judges gave personal credence to the reality of overt and covert bias in court processes while the consultants addressed the more general topics of intent, impact, and other communication skills that could militate against a bias-free courtroom.

COURT EDUCATION

The Education Sub-committee in 2005 presented two cultural diversity education sessions to court employees and to district and municipal court managers. The programs emphasized the importance of diversity and their impact on public trust and confidence in the courts. However, the two programs differed on substantive content and focus. The education session at the Institute for New Court Employees and Bailiffs on March 23 emphasized methods to bridge cultural competency between co-workers and with court users. The education session at the District and Municipal Court Managers Conference on September 28 focused on leadership and cross cultural communication—how to manage and communicate effectively in a diverse court environment.

Approximately 125 managers from courts of limited jurisdiction attended the conference. Engaged by the Minority and Justice Commission, Ms. Benita Horn and Greg Sadler of Achievement

Architects North presented the session titled “Cross-Cultural Communication in the Court Environment.” Ms. Horn and Mr. Sadler began by directing personal assessments of known diverse cultural norms and values. Then they guided the managers in developing skills needed to remove barriers to a bias-free courtroom. Attendees were also instructed on ways to shift the paradigm for effective cross-cultural communications, and on ways for managers to transfer into their respective courtrooms the knowledge they gained from the program.

CONCLUSION

As we celebrate our past accomplishments and eagerly anticipate the future, we will maintain the high standards expected of us by Commission Co-Chairpersons Justice Charles Z. Smith and Justice Charles W. Johnson. We will also maintain the respect due to the judiciary and to the public we are privileged to serve. ■ ■

EVALUATION AND IMPLEMENTATION SUB-COMMITTEE



CELEBRATING THE COURTS IN AN INCLUSIVE SOCIETY



JUDGE JAMES M. MURPHY (RETIRED)
Chairperson
Evaluation and Implementation Sub-Committee

The Evaluation and Implementation Sub-committee was created in September 1998 in response to suggestions that the Minority and Justice Commission become more active in implementing recommendations by authors of research reports published by the Commission. At that time, a principal study had been completed by Dr. George S. Bridges of the University of Washington. His conclusions and recommendations have served as the basis for projects undertaken by the sub-committee for the past several years.

The sub-committee is chaired by James M. Murphy, a retired Spokane County Superior Court judge. Other members of the sub-committee include Judge Deborah D. Fleck, King County Superior Court; Robert C. Boruchowitz, Director of the King County Defenders' Association; and Jeffrey C. Sullivan, Chief of the Criminal Division, United States Attorney's Office for the Western District of Washington.

As a result of a conclusion reached by Dr. Bridges in his report, "A Study on Racial and Ethnic Disparities in Superior Court Bail and Pre-Trial Detention Practices in Washington" (October 1997), the sub-committee proposed changes to Superior Court Criminal Court Rule 3.2 and Rules for Courts of Limited Jurisdiction 3.2, which focus on pre-trial release decisions by judges, in an effort to minimize racial disproportionality in the rate of incarceration of minorities in pre-trial circumstances. The proposed changes were adopted by the Supreme Court in September 2002. Since then, the sub-committee presented an education program on changes to criminal court rules 3.2 at the Spring 2004 Superior Court Judges Conference, developed a form "Order re Release of Accused for Non-Capital Offense" for use by judges when addressing release on all felonies, as well as adaptation for use in misdemeanor courts; in 2005 contributed to revision of the Criminal Benchbook, a resource manual for judges maintained by the Administrative Office of the Courts; and composed a "script" for application of criminal court rules 3.2 as a preamble to criminal court rules 3.2 in the Criminal Benchbook.

In 2004, the sub-committee proposed changes to Superior Court Criminal Rule 2.2 and Rules for Courts of Limited Jurisdiction 2.2 requiring issuance of a summons as an initial means of notifying a defendant to appear in court to answer charges and applicable only to non-violent felonies, drug possession and first time offenders. Research has shown that disproportionate incarceration of racial and ethnic minorities may be minimized by use of summonses for initial notification. However, the procedure commonly used is issuance of a warrant of arrest with a bond amount which might not be attainable by a defendant. The proposed changes were published by the Supreme Court for public comments in 2004. The Rules Committee requested the sub-committee to respond to comments received. The sub-committee responded to the request and is awaiting action by the Rules Committee.

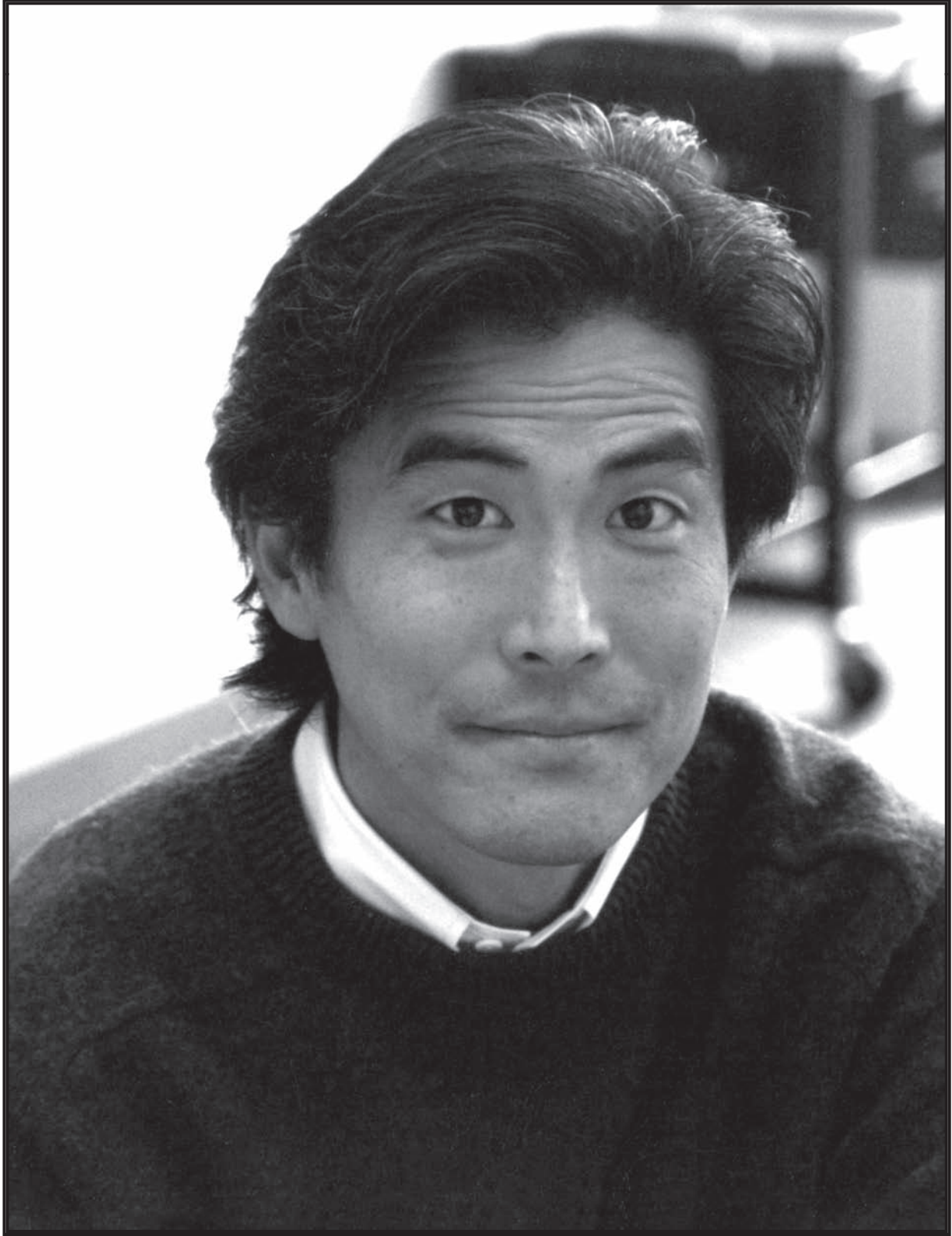
For the year 2006, the sub-committee plans to conduct a survey to determine the extent to which the new criminal court rules 3.2, procedures on pretrial release, are

being followed by judges. A checklist or survey form will be utilized for the survey for on-site visual documentation in one superior court and in two courts of limited jurisdiction. Another project the subcommittee hopes to embark on in 2006 is to determine whether offenders are denied counsel in administrative hearings relating to legal financial obligations and whether non-judicial officers are improperly modifying judicial orders during administrative hearings. ■■

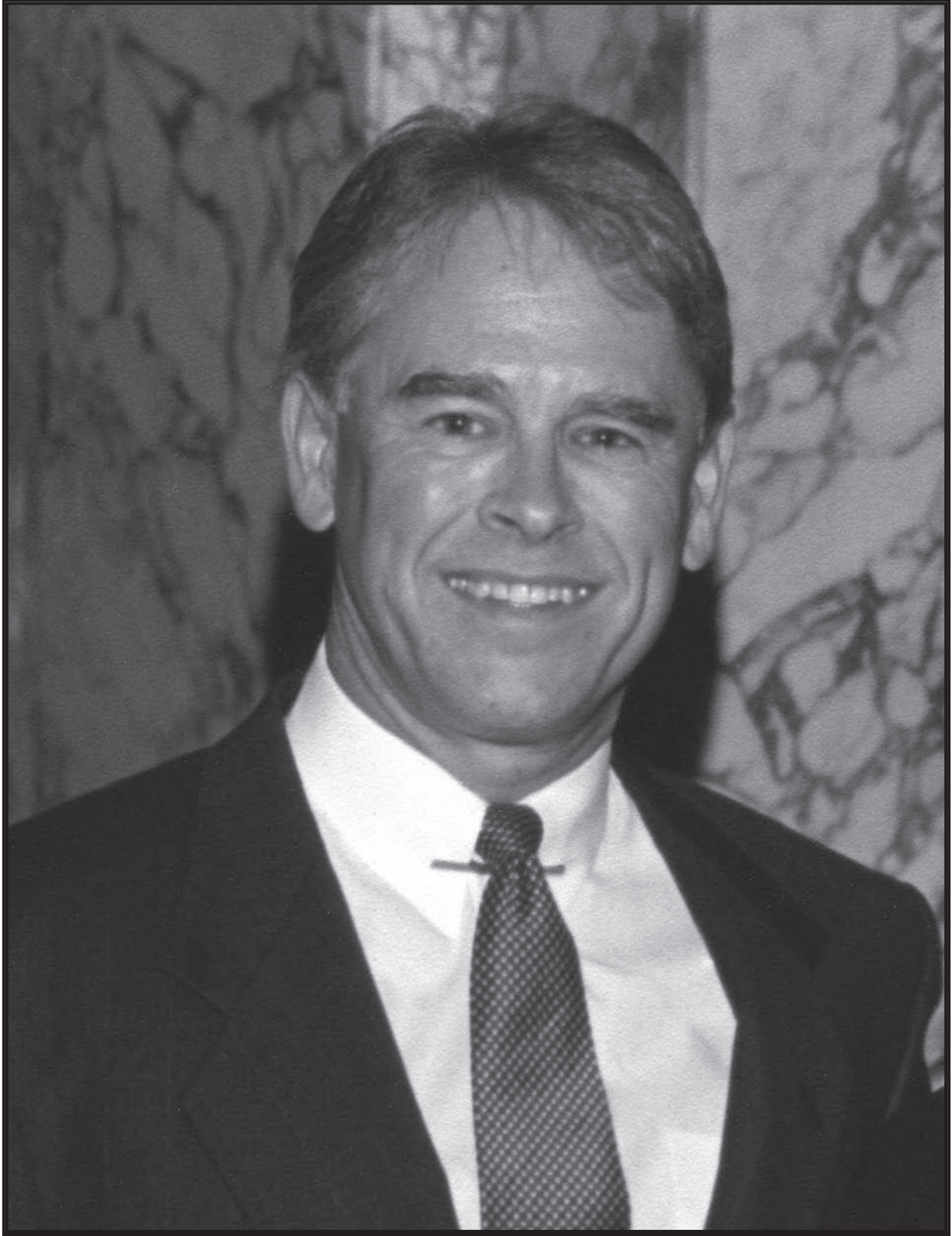
OUTREACH SUB-COMMITTEE



CELEBRATING THE COURTS IN AN INCLUSIVE SOCIETY



BRIAN A. TSUCHIDA
Co-chairperson
Outreach Sub-committee



JUDGE DENNIS D. YULE
Co-chairperson
Outreach Sub-committee



Judge Dennis D. Yule, Benton/Franklin Counties Superior Court, has been appointed co-chairperson of the Outreach Sub-committee, joining current co-chairperson, Brian A. Tsuchida, Assistant Federal Public Defender, Office of the Federal Public Defender for the Western District of Washington. Also serving on the sub-committee are Ms. Myrna I. Contreras, Attorney at Law, Contreras Law Offices; Judge Douglas W. Luna, Associate Judge, Central Council Tlingit and Haida Indian Tribes of Alaska; Ms. Amalia C. Maestas, Office of Legal Counsel, Muckleshoot Tribal Court; Ms. Rosa Melendez, Regional Director, Community Relations Service, United States Department of Justice; and Magistrate Judge Mary Alice Theiler, United States District Court for the Western District of Washington;

Over the past several years much of the work of the Outreach Sub-committee has focused upon production, publication and distribution of the Commission's newsletter, *Equal Justice*. In each issue, the sub-committee seeks to provide pertinent and current information to expand awareness, and encourage greater understanding, of issues relating to diversity and elimination of bias in our state's justice system. The purpose of the newsletter is to assist the Minority and Justice Commission in advancing its mission to determine whether racial, ethnic and cultural bias exists in our State court system and, to the extent that it exists, to recommend appropriate action to overcome it.

Two issues of *Equal Justice* were published in 2005. The first issue reported on information presented at two community forums sponsored by the Commission during 2004, one in Seattle and one in Spokane. The forums were designed to enable citizens of host communities to express their views concerning issues of bias and diversity in the Washington State justice system and to assist the Commission in identifying current and emerging issues affecting persons of color in Seattle and Spokane and to formulate future Commission programs and projects. These forums were similar to those sponsored by its predecessor, Washington State Minority and Justice Task Force. In 1988 the Task Force made recommendations to the Washington State Supreme Court and the Washington State Legislature based on forum findings. Two issues highlighted in the 1988 forums were language barriers in the courts and a general perception of bias in the justice system. These issues again emerged in the 2004 forums.

The first issue of *Equal Justice* reported on efforts by the Washington State Bar Association to address bias and promote diversity within its ranks, and highlighted Listening Sessions held by the Washington State Bar Association on February 27, 2004 and March 10, 2005. The sessions focused on ways to increase diversity in the legal profession and issues facing racial and ethnic minorities, women, and other groups historically underrepresented in the justice system.

The second issue of *Equal Justice*, inspired by the decision of the Washington State Bar Association to include a section on Indian Law in the bar examination, focused

upon Indian Law and Tribal Courts. In addition to the lead article on that fundamental change, other articles reported on the transfer of state child support cases to tribal courts, establishment of a tribal drug court, enhancement of the curriculum for tribal judicial education of the National Tribal Judicial Center at the National Judicial College, and adoption of the "Teague Protocol," an agreement between Wisconsin and Native American tribes that provides a mechanism for resolving issues of overlapping jurisdiction between state and tribal courts.

Although publication of *Equal Justice* represents a major part of the sub-committee's work, the sub-committee continues to engage in other activities and programs in the discharge of its mission "to facilitate communication between the commission and the legal community in order to share information, address concerns of minorities or persons of color in the legal profession, and implement programs to improve the status of minority members of the state bar association." Direct and regular communication and contact by sub-committee members with organizations and individuals in the community is also crucial to identifying and exploring diversity and bias issues, and to facilitate open and ongoing communication between the Commission and the community. Efforts are continuing to develop permanent "liaison" relationships between sub-committee members and various state ethnic and racial affairs commissions and agencies and

minority bar associations to enhance and sustain effective communication between the Commission and those constituencies.

In March 2006, the Outreach sub-committee will participate as one of the sponsors of a Youth and Justice Forum, which has been held for the last three years in the Tri-Cities area. One of the principal objectives of the forums, which have attracted each year more than 150 middle and high school students, is to encourage students, particularly those from communities or demographic groups that have historically been under-represented in the justice system workforce, to consider career opportunities within the justice system.

The Outreach sub-committee will participate as one of the sponsors of a Youth and Justice Forum.

Past issues of the newsletters, transcripts of the 2004 Community Forums, and the Task Force's Final Report based upon the 1988 Public Forums, are available on the Commission's website at: <http://www.courts.wa.gov>, under Boards and Commissions, then under the Minority and Justice Commission. ■■

RESEARCH SUB-COMMITTEE



CELEBRATING THE COURTS IN AN INCLUSIVE SOCIETY



JUDGE KENNETH H. KATO
Chairperson
Research Sub-committee

The mission of the Research Sub-committee is to design, fund and conduct research projects relating to problems experienced by racial and ethnic minorities in our justice system.

An issue of significant concern is collateral consequences of convictions. As a result of legislation enacted by the United States Congress in 1996 and 1998, many persons convicted of a drug offense lack essential support services necessary to re-establish them as contributing members of society. They are barred from receiving public assistance, suspended from qualifying for student loans, and denied access to public housing. In addition to federal legal barriers, many ex-felons encounter state collateral consequences, including incarceration for failing to pay their legal financial obligations.

One collateral consequence of particular concern is the disenfranchisement of ex-offenders from exercising their civil rights, in particular the right to vote. Some states restore voting rights once prison terms and probation have been completed, some upon release from prison, and two (Maine and Vermont) do not deny felons the right to vote. In Washington State, ex-felons are barred from exercising their civil rights until they have completed their court-ordered terms and probation, including fulfillment of their legal financial obligations, which include docket and filing fees, court costs, restitution, and costs of incarceration. In order to restore their right to vote, ex-felons in this State must qualify for and obtain a "certificate of discharge." It is believed that this barrier results in a disproportionate impact upon persons of color, especially African-Americans and Latinos. This is a matter of concern to the Washington State Minority and Justice Commission.

In an effort to determine whether persons of color are disproportionately impacted in the criminal justice system, the Research Sub-committee is issuing a Request for Proposals from qualified professionals to conduct empirical research to determine the impact of legal financial obligations upon ex-felons as a follow-up to our education sessions on collateral consequences presented at the Fall 2005 Judicial Conference and explored extensively in treatises included in this Annual Report.

WORKFORCE DIVERSITY SUB-COMMITTEE



CELEBRATING THE COURTS IN AN INCLUSIVE SOCIETY



JUDGE DEBORAH D. FLECK
Chairperson
Workforce Diversity Sub-committee

The purpose and scope of the Workforce Diversity Sub-committee has its origins in the initial efforts of the Minority and Justice Task Force. Based on the findings of the Task Force (reported in the 1990 Final Report) concerning the under-representation of minorities or persons of color in the court system, the Task Force recommended that a work force diversity program be developed and implemented immediately. As a direct result, the sub-committee was created with a defined mission and stated goals.

The mission of the Workforce Diversity Sub-committee is to promote equal employment opportunities and to increase the number of racial and ethnic minority employees at all levels of the courts. The primary goals to advance the mission are: to provide workforce diversity education for existing court personnel; to promote recruitment and retention of minority court personnel; to develop resource materials to educate and to promote diverse recruitment and retention within each county's court system; and to obtain adequate funding to continue these efforts.

Thanks to the dedication and work of its members, the sub-committee has accomplished the following since its last report:

- Keynote Speaker at the Fall 2005 Judicial Conference
- Youth and Justice Forums
- Diversifying the Bench

KEYNOTE SPEAKER AT THE FALL 2005 JUDICIAL CONFERENCE

The sub-committee is committed to sponsoring a keynote speaker for the Fall Judicial Conference every other year to highlight the impact of diversity in the justice system and the importance of diversity in the courts. Once again the sub-committee, along with the Chief Justice of the Washington State Supreme Court, invited a speaker of national stature to give the keynote address at the 48th Annual Washington Judicial Conference in Tacoma, Washington on September 19, 2005. Justice John Charles Thomas, formerly of the Virginia Supreme Court and a member of the Richmond, Virginia firm of Hunton and Williams, gave a commanding speech addressing the jury initiatives of the American Bar Association and Washington State and methods for improving jury participation, especially by persons of color. He also opined on the health of the jury system compared to when he was on the Virginia Supreme Court. Justice Thomas stated that many of the reports reiterate similar observations made twenty years earlier and that it is time to take action to implement the recommendations and rectify the deficiencies.

YOUTH AND JUSTICE FORUMS

In cooperation with the Washington State Bar Association's Young Lawyers Division and the Educational Service District 123, the Sub-committee participated in a Youth

and Justice Forum in Pasco, Washington on March 4, 2005 and collaborated with many local groups in a Youth and Law Forum in Seattle, Washington on April 2, 2005. The goals of the Youth and Justice Forum projects include exposing judges to youth, including youth of color, in a positive setting divorced from the juvenile offender and dependency framework in which many judicial officers encounter youth. The Youth and Justice Forums expose students traditionally underrepresented in the workforce of the justice system to employment opportunities—to spark their interest in seeking careers as lawyers, court clerks, court reporters, interpreters, probation officers and judges, as well as employment opportunities in other fields that interact with the judicial system such as the career of a police officer. Through exposure to people who have dedicated their life's work to the justice system, this project also has the potential of increasing the trust and confidence of young people in our American system of justice. In Pasco approximately 200 students attended in grades 8 through 12 and in Seattle approximately 100 students attended in grades 6 through 12.

At the June 2005 meeting of the Minority and Justice Commission, the Youth and Justice Forum concept developed by the Workforce Diversity Sub-committee was assigned to the Outreach Sub-committee.

DIVERSIFYING THE BENCH

The Workforce Diversity Sub-committee members this year have worked towards developing a manual, "Diversifying the Bench," to provide critical information to lawyers interested in becoming judicial officers. The Seattle University School of Law and the University of Washington School of Law are taking the lead in developing and publishing this manual. Members of the Latino/Latina Association at the University of Washington School of Law and the Black Law Students Association at both University of Washington School of Law and the Seattle University School of Law, recruited by Sub-committee members Brenda Williams and Bonnie Glenn, have devoted time and effort to collecting some of the information for the manual. It will include information relating to the positions of court commissioners and administrative law judges as well. ■■

This project has the potential of increasing the trust and confidence of young people in our American system of justice.



TREATISES

COLLATERAL CONSEQUENCES

In the administration of justice, Washington State judges are confronted with many decisions affecting the lives of persons coming before them, their families and general members of the public.

Of particular concern is “collateral consequences” of decisions in civil and criminal cases which impact the lives of all persons—but especially those persons of racial, ethnic, nationality and language groups. One of the acclaimed programs presented by the Washington State Minority and Justice Commission in 2005 was a program “Beyond the Conviction: Collateral Consequences of Adult and Juvenile Criminal Convictions” at the 2005 Washington Judicial Conference. It was moderated by Commission member Judge LeRoy McCullough with Judges Dean S. Lum, Steven C. González, and Commission members Judges Richard A. Jones and James M. Murphy; Commission members Jeffrey C. Sullivan and Ms. Ann E. Benson; and Ms. Kim Ambrose, participating.

Although “Collateral Consequences” may be self-defining in general, we are impressed with the definition of “collateral sanctions” declared by the Criminal Justice Standards Committee of the American Bar Association which states *“The term ‘collateral sanction’ means a legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.” (Standard 19-1.1(a)).* The Committee also defines the term “discretionary disqualification” as *“a penalty, disability or disadvantage, however denominated, that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction.” (Standard 19-1.1 (b)).* We adopt both definitions as “collateral consequences” used in this report. Commission member Jeffrey C. Sullivan has served as chairperson of the American Bar Association Criminal Justice Standards Committee.

The Commission as a treatise for this 2005 Annual Report chooses the subject “Collateral Consequences” to assist judges at all levels in the State of Washington to better understand the effect of their decisions which are not necessarily evident upon the record before them. As part of this treatise we include with permission the text of American Bar Association Criminal Justice Standard 19 (*Collateral Sanctions and Discretionary Disqualification of Convicted Persons*); and substantial adaptations of articles *Beyond the Conviction: Collateral and Other Non-confinement Consequences of Criminal Convictions* and *Beyond the Juvenile Court: Long-Term Impact of a Juvenile Record* published in another form by the Washington Defender Association. ■ ■

COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS

American Bar Association Standards for Criminal Justice

PART I. DEFINITIONS AND OBJECTIVES

<u>Standard 19-1.1</u>	Definitions
<u>Standard 19-1.2</u>	Objectives

PART II. COLLATERAL SANCTIONS

<u>Standard 19-2.1</u>	Codification of collateral sanctions
<u>Standard 19-2.2</u>	Limitation on collateral sanctions
<u>Standard 19-2.3</u>	Notification of collateral sanctions before plea of guilty
<u>Standard 19-2.4</u>	Consideration of collateral sanctions at sentencing
<u>Standard 19-2.5</u>	Waiver, modification, relief
<u>Standard 19-2.6</u>	Prohibited collateral sanctions

PART III. DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS

<u>Standard 19-3.1</u>	Prohibited discretionary disqualification
<u>Standard 19-3.2</u>	Relief from discretionary disqualification
<u>Standard 19-3.3</u>	Unreasonable discrimination

PART I. DEFINITIONS AND OBJECTIVES

Standard 19-1.1 Definitions

For purposes of this chapter:

(a) The term “collateral sanction” means a legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.

(b) The term “discretionary disqualification” means a penalty, disability or disadvantage, however denominated, that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense on grounds related to the conviction.

Standard 19-1.2 Objectives

(a) With respect to collateral sanctions, the objectives of this chapter are to:

(i) limit collateral sanctions imposed upon conviction to those that are specifically

Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualifications of Convicted Persons, American Bar Association Section of Criminal Justice. Copyright © 2004 by the American Bar Association. Reprinted with permission.

warranted by the conduct constituting a particular offense;

(ii) prohibit certain collateral sanctions that, without justification, infringe on fundamental rights, or frustrate a convicted person's chances of successfully reentering society;

(iii) provide the means by which information concerning the collateral sanctions that are applicable to a particular offense is readily available;

(iv) require that the defendant is fully informed, before pleading guilty and at sentencing, of the collateral sanctions applicable to the offense(s) charged;

(v) include collateral sanctions as a factor in determining the appropriate sentence; and

(vi) provide a judicial or administrative mechanism for obtaining relief from collateral sanctions.

(b) With respect to discretionary disqualification of a convicted person, the objectives of this chapter are to:

(i) facilitate reentry into society, and reduce recidivism, by limiting situations in which a convicted person may be disqualified from otherwise available benefits or opportunities;

(ii) provide that a convicted person not be disqualified from benefits or opportunities because of the conviction unless the basis for disqualification is particularly related to the offense for which the person is convicted; and

(iii) create a mechanism for obtaining review of, and relief from, discretionary disqualification.

PART II. COLLATERAL SANCTIONS

Standard 19-2.1 Codification of collateral sanctions

The legislature should collect, set out or reference all collateral sanctions in a single chapter or section of the jurisdiction's criminal code. The chapter or section should identify with particularity the type, severity and duration of collateral sanctions applicable to each offense, or to a group of offenses specifically identified by name, section number, severity level, or other easily determinable means.

The legislature should collect, set out or reference all collateral sanctions in a single chapter or section of the jurisdiction's criminal code.

Standard 19-2.2 Limitation on collateral sanctions

The legislature should not impose a collateral sanction on a person convicted of an offense unless it determines that the conduct constituting that particular offense provides so substantial a basis for imposing the sanction that the legislature cannot reasonably contemplate any circumstances in which imposing the sanction would not be justified.

Standard 19-2.3 Notification of collateral sanctions before plea of guilty

(a) The rules of procedure should require a court to ensure, before accepting a plea of guilty, that the defendant has been informed of collateral sanctions made applicable to the offense or offenses of conviction under the law of the state or territory

where the prosecution is pending, and under federal law. Except where notification by the court itself is otherwise required by law or rules of procedure, this requirement may be satisfied by confirming on the record that defense counsel's duty of advisement under Standard 14-3.2(f) has been discharged.

(b) Failure of the court or counsel to inform the defendant of applicable collateral sanctions shall not be a basis for withdrawing the plea of guilty, except where otherwise provided by law or rules of procedure, or where the failure renders the plea constitutionally invalid.

Standard 19-2.4 Consideration of collateral sanctions at sentencing

(a) The legislature should authorize the sentencing court to take into account, and the court should consider, applicable collateral sanctions in determining an offender's overall sentence.

(b) The rules of procedure should require the court to ensure at the time of sentencing that the defendant has been informed of collateral sanctions made applicable to the offense or offenses of conviction under the law of the state or territory where the prosecution is pending, and under federal law. Except where notification by the court itself is otherwise required by law or rules of procedure, this requirement may be satisfied by confirming on the record that defense counsel has so advised the defendant.

(c) Failure of the court or counsel to inform the defendant of applicable collateral sanctions shall not be a basis for challenging the sentence, except where otherwise

provided by law or rules of procedure.

Standard 19-2.5 Waiver, modification, relief

(a) The legislature should authorize a court, a specified administrative body, or both, to enter an order waiving, modifying, or granting timely and effective relief from any collateral sanction imposed by the law of that jurisdiction.

(b) Where the collateral sanction is imposed by one jurisdiction based upon a conviction in another jurisdiction, the legislature in the jurisdiction imposing the collateral sanction should authorize a court, a specified administrative body, or both, to enter an order waiving, modifying, or granting timely and effective relief from the collateral sanction.

(c) The legislature should establish a process by which a convicted person may obtain an order relieving the person of all collateral sanctions imposed by the law of that jurisdiction.

(d) An order entered under this Standard should:

(i) have only prospective operation and not require the restoration of the convicted person to any office, employment or position forfeited or lost because of the conviction;

(ii) be in writing, and a copy provided to the convicted person;

(iii) be subject to review in the same manner as other orders entered by that court or administrative body.

Standard 19-2.6 Prohibited collateral sanctions

Jurisdictions should not impose the following collateral sanctions:

(a) deprivation of the right to vote, except during actual confinement;

(b) deprivation of judicial rights, including the rights to:

(i) initiate or defend a suit in any court under one's own name under procedures applicable to the general public;

(ii) be eligible for jury service except during actual confinement or while on probation, parole, or other court supervision; and

(iii) execute judicially enforceable documents and agreements;

(c) deprivation of legally recognized domestic relationships and rights other than in accordance with rules applicable to the general public. Accordingly, conviction or confinement alone:

(i) should be insufficient to deprive a person of the right to contract or dissolve a marriage; parental rights, including the right to direct the rearing of children and to live with children except during actual confinement; the right to grant or withhold consent to the adoption of children; and the right to adopt children; and

(ii) should not constitute neglect or abandonment of a spouse or child, and confined persons should be assisted in making appropriate arrangements for their spouses or children;

(d) deprivation of the right to acquire, inherit, sell or otherwise dispose of real or personal property, except insofar as is necessary to preclude a person from profiting from his or her own wrong; and, for persons unable to manage or preserve their property by reason of confinement, deprivation of the right to appoint someone of their own choosing to act on their behalf;

(e) ineligibility to participate in government programs providing necessities of life, including food, clothing, housing, medical care, disability pay, and Social Security; provided, however, that a person may be suspended from participation in such a program to the extent that the purposes of the

program are reasonably being served by an alternative program; and

(f) ineligibility for governmental benefits relevant to successful reentry into society, such as educational and job training programs.

The legislature should prohibit discretionary disqualification of a convicted person from benefits or opportunities.

Part III. DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS

Standard 19-3.1 Prohibited discretionary disqualification

The legislature should prohibit discretionary disqualification of a convicted person from benefits or opportunities, including housing, employment, insurance, and occupational and professional licenses, permits and certifications, on grounds related to the

conviction, unless engaging in the conduct underlying the conviction would provide a substantial basis for disqualification even if the person had not been convicted.

Standard 19-3.2 Relief from discretionary disqualification

The legislature should establish a process for obtaining review of, and relief from, any discretionary disqualification.

Standard 19-3.3 Unreasonable discrimination

Each jurisdiction should encourage the employment of convicted persons by leg-

islative and executive mandate, through financial incentives and otherwise. In addition, each jurisdiction should enact legislation prohibiting the denial of insurance, or a private professional or occupational license, permit or certification, to a convicted person on grounds related to the conviction, unless engaging in the conduct underlying the conviction would provide a substantial basis for denial even if the person had not been convicted. ■■



BEYOND THE CONVICTION: COLLATERAL AND OTHER NON-CONFINEMENT CONSEQUENCES OF CRIMINAL CONVICTIONS

This article is intended for use by criminal justice professionals in Washington State. It is not comprehensive. It is meant as a starting point to understand the hidden penalties people may face after conviction. Defendants should understand potential civil and other consequences of a criminal conviction before they plead guilty.

This article is also for social service providers, community members or anyone who is concerned about the vast array of non-confinement penalties which follow persons with criminal convictions.

Criminal History Records

Criminal history, which is easily accessible to the general public, is a significant consequence of a criminal conviction. Criminal history record information is maintained centrally in Washington State through the Washington State Patrol, Identification and Criminal History Section, 3000 Pacific Avenue, Post Office Box 42633, Olympia, Washington 98504-2633, (360) 705-5100.

Accessible: Criminal conviction and arrest information is readily available to the public via the internet: <https://watch.wsp.wa.gov/>. For a small fee, anyone—employers, landlords, potential love interests, etc.—may access any individual’s criminal conviction record, including arrests under one year old and pending charges. Certain agencies have free access to criminal history information, e.g., criminal justice agencies and DSHS.¹

Correctible: Washington State Patrol (WSP) has a process for correcting criminal history which may be inaccurately recorded/reported through filing forms with the Washington State Patrol Identification and Criminal History Section in Olympia, Washington.²

Sealable: Certain convictions may be sealed by filing a Motion to Vacate/Seal with the court that entered the conviction:

Adult Felony convictions after July 1, 1984, may be sealed if the following criteria are met:³ Nonviolent, non-sex offenses only; A Felonies cannot be sealed; B Felonies: crime

This article has been adapted from *Beyond the Conviction* published by the Washington Defender Association (April 2004, rev. July 2005). The document was written by Kim Ambrose, edited by Christie Hedman, and Sarah Yatsko provided editorial assistance. Other participating in the project were Tracy Sarich, Legal Intern; Hong Tran, Northwest Justice Project; McGregor Smyth, *Civil Action Project*, Bronx Defenders; Debbie Mukamal, National H.I.R.E. Network; Mark Dalton, Department of Social and Health Services; and ACLU of Washington.

free for 10 years after completion of all sentencing requirements and certificate of discharge has been issued; and C Felonies: crime-free for 5 years after completion of all sentencing requirements and certificate of discharge has been issued.

Adult Misdemeanor convictions may be sealed if the following criteria are met:⁴

No other convictions have been previously vacated; No restraining orders of any kind within the last 5 years; No sealing for DUI's, sex offenses, obscenity or pornography under RCW 9.68, sexual exploitation of children under RCW 9.68A, or violent offense or attempt to commit violent offense under RCW 9.94A.030; and Non-DV: crime free for 3 years since completion of all sentencing requirements; DV: crime free for 5 years since completion of all sentencing requirements.

Juvenile Criminal History Data: Is accessible similar to adult data; however, the rules for sealing/vacating and destroying are different.⁵ As of June 10, 2004, a juvenile conviction may be sealed if the following criteria are met:⁶ Non-sex offense; A Felonies cannot be sealed; B Felonies: crime-free for 5 years from the last date of release from confinement; C Felonies: crime-free for 2 years from the last date of release from confinement; Misdemeanors and Gross Misdemeanors: crime-free for 2 years from the last date of release from confinement.

Destructible: Only non-conviction data⁷ can be destroyed or expunged from a person's criminal history record if the person has no prior convictions or subsequent arrests or charges and the following criteria are met:⁸ Favorable dispositions (e.g., acquittals and dismissals, but not dismissals after a successful period of probation, suspension or deferral of sentence) may be deleted from a person's criminal history record information 2 years after entry

Perhaps the most severe collateral consequences of criminal convictions are those faced by non-citizen defendants.

of the disposition favorable to the defendant. Arrest information not leading to conviction may be deleted after 3 years from the date of arrest or issuance of citation or warrant. Fingerprint and identifying data also may be destroyed if eligibility requirements are met.

Immigration

Perhaps the most severe collateral consequences of criminal convictions are those faced by non-citizen defendants. Removal (formally known as deportation) and inadmissibility will be triggered by certain criminal dispositions. The law is complex. Nevertheless, a non-citizen defendant should never enter a plea without understanding the immigration consequences.

Legal Financial Obligations

Legal financial obligations⁹ (LFOs) include restitution; fines; crime victim penalty assessments; court costs; county or inter-local drug funds; court-appointed attorney fees and costs of defense; and

any other financial obligation assessed to the offender as a result of a conviction.

LFOs begin accruing interest from the date of entry of judgment at the rate applicable to civil judgments (12%).¹⁰ Beginning June 10, 2004, courts may reduce or waive the interest portion of certain LFOs under limited circumstances upon motion by the offender after release from total confinement.¹¹

The full effect of these penalties on indigent clients' lives cannot be overstated. Until these obligations are fulfilled, an offender will be unable to seal or vacate a conviction or obtain a certificate of discharge necessary for the restoration of civil rights. For felony offenses committed after July 1, 2000, an offender may remain under the court's jurisdiction for purposes of enforcing LFOs "until the obligation is completely satisfied, regardless of the statutory maximum for the crime."¹² For felony offenses committed before July 1, 2000, courts may enforce LFOs for an initial period of 10 years after the offender's release from total confinement or entry of the judgment and sentence (whichever is longer) which may be extended for an additional 10 years (20 years total). LFOs imposed in misdemeanor proceedings do not remain under the jurisdiction of the court for longer than one year, but remain civilly enforceable.

Employment

Criminal convictions can result in ineligibility for a variety of jobs and occupational licenses in Washington. Although the Restoration of Employment Rights Act,

RCW 9.96A, prohibits government entities from denying employment or occupational licenses to persons solely based on their felony convictions, there are numerous exceptions to this general rule.¹³

Employment Related to Vulnerable Adults and Children: Criminal background checks are required for persons who are employed by contract with or are licensed by the Department of Social and Health Services to provide services to children or vulnerable adults.¹⁴ School districts and their contractors who have employees who will have regular unsupervised access to children are also required to do criminal background checks on their employees.¹⁵

Nursing Homes, Childcare: "Crimes against children or other persons"¹⁶ will prohibit persons from working in nursing homes, adult family homes, boarding homes, and child care facilities.¹⁷ This includes, among others, assault in the fourth degree. "Crimes of financial exploitation,"¹⁸ including theft in the third degree, will also make a person ineligible to work with vulnerable adults, e.g., in nursing homes. The time limits for ineligibility for such jobs may vary depending on the crime committed.

Persons who have felony convictions for crimes against children, "spousal abuse," and violent crimes will be permanently prohibited from contracting with or being licensed by DSHS to provide any type of care to children or individuals with a developmental disability.¹⁹ Convictions for assault or sex offenses not included in the permanent bar, any felony drug conviction, or any other felony will disqualify individuals from licensing, contracting,

certification, or from having unsupervised access to children or to individuals with a developmental disability for 5 years.²⁰

Schools: Crimes against children will disqualify persons from being school employees, contractors with schools or being school bus drivers.²¹ Certified school employees, e.g., teachers, are also required to have “good moral character” which means no convictions in the last ten years, including motor vehicle violations, which “would materially and substantially impair the individual’s worthiness and ability to serve as a professional within the public and private schools of the state.”²² Volunteers in schools may also be requested to provide criminal background checks; however, it is not statutorily required.²³

Federal Laws Affecting Employment Opportunities: Federal law prohibits financial institutions from employing a person who has been convicted of a crime of dishonesty, breach of trust, or money unless he or she has received written consent from the Federal Deposit Insurance Corporation (FDIC).²⁴ For purposes of this law, pre-trial diversion or similar programs are considered to be convictions. Federal law also bars certain classes of felons from the following jobs: working in the insurance industry without having received permission from an insurance regulatory official;²⁵ holding any of several positions in a union or other organization that manages an employee benefit plan;²⁶ providing healthcare services for which they will receive payment from Medicare;²⁷ working for the generic drug industry;²⁸ providing prisoner transportation;²⁹ and employment in aviation security.³⁰

Other Jobs Affected: Other examples of jobs affected by certain types of convictions include (this list does not purport to include all jobs affected by criminal history): law enforcement;³¹ tow truck operators contracting with Washington State Patrol;³² Washington State Patrol assistance van drivers;³³ and JRA employment or volunteer positions.³⁴

Jobs Requiring a Driver’s License or Ability to Possess a Firearm: Since many jobs require the ability to drive, the penalty of losing a driver’s license (see Section VIII) may prohibit many defendants from future employment, at least for a period of time. Similarly, the consequence of losing the right to possess a firearm will disqualify defendants from certain types of employment (e.g., security guards, federal park rangers, etc.).

Employment Discrimination

Permissible Pre-employment Inquiries: Although some states ban the practice, in Washington employers and occupational licensing authorities are permitted to ask job applicants about and consider arrests not leading to conviction.³⁵ However, there is some limit. Because statistical studies regarding arrests have shown a disparate impact on racial minorities, it is an unfair practice to ask about arrests older than 10 years and inquiries must include whether the charges are still pending, have been dismissed or led to conviction of a crime involving behavior that would adversely affect job performance.³⁶ Certain organizations, such as law enforcement, state agencies and organizations

that have direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults are exempt from these restrictions.³⁷

Similarly, for inquiries concerning convictions to be considered “fair” under Washington’s discrimination law they must concern convictions less than ten years old (from the date of release from prison) and relating reasonably to the job duties.³⁸ Certain agencies and organizations, e.g., schools and DSHS, are exempt from this requirement.

Racial Discrimination Claims Based on “Disparate Impact”: Federal courts have found that a policy of asking about criminal records has a “disparate impact” on African Americans and Hispanics. Therefore, African Americans and Hispanics who have been denied employment based on their criminal history may have a basis for a Title VII claim with the Equal Employment Opportunity Commission.

Housing

Private Housing: In Washington, landlords are permitted to screen and deny housing to individuals based on criminal history. A private landlord is not permitted to deny housing for discriminatory reasons, e.g., solely based on a history of domestic violence without inquiring as to whether applicant was a victim or perpetrator;³⁹ or solely because of past drug addiction.⁴⁰ A private landlord may deny housing based

on a reasonable belief that an applicant is currently engaged in illegal drug use.⁴¹ A landlord also may deny housing based on a conviction for manufacture or distribution of a controlled substance.⁴²

The statutes governing eviction from residential property⁴³ allow landlords to evict a person who has been arrested (whether or not convicted) for assault occurring on the premises or unlawful use of a firearm or other deadly weapon on the premises.⁴⁴ A landlord also may evict a tenant for engaging in gang or drug related activity or allowing another to engage in such activity on the premises.⁴⁵ Different laws apply to mobile home parks and allow for eviction for criminal activity which threatens the health, safety or welfare of the tenants.⁴⁶

Public Housing: Federal law regulates admission and eviction from housing programs funded through the U.S. Department of Housing and Urban Development (HUD). There are different types of HUD funded housing programs which are generally administered through local Public Housing Authorities like the Seattle Housing Authority (PHA). These programs include, among others, public housing projects, Section 8 voucher programs and multi-family housing programs (a.k.a. project-based assistance). Different housing providers receiving the same type of HUD funding may have different admission and eviction requirements; however, HUD requires landlords to deny

Federal courts have found that a policy of asking about criminal records has a “disparate impact” on African Americans and Hispanics.

housing to applicants who have committed certain crimes.

Mandatory Lifetime Bans on Admission to Public Housing: Households which include a registered sex offender.⁴⁷ Households which include a person convicted of the manufacture or production of methamphetamines on the premises of a federally assisted housing program.⁴⁸

Other Mandatory Bans on Admission: 3 year ban from the date of eviction against any household which includes an individual who was evicted from federal assisted housing for drug related activity, unless the housing provider determines the evicted household member has successfully completed a supervised drug rehabilitation program approved by the PHA or the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).⁴⁹ Households which include a member who the housing provider has a reasonable belief is currently engaged in illegal use of a controlled substance or whose pattern of illegal drug use may threaten the health, safety or right to peaceful enjoyment of the premises by other residents.⁵⁰ Households which include those whom the housing provider believes is engaging in a pattern of alcohol abuse that threatens the health, safety or right to peaceful enjoyment of the premises by other residents.⁵¹

Permissible Exclusion: A HUD housing provider is permitted to exclude any household which includes a member currently engaging in, or has engaged in dur-

ing a reasonable time before the admissions decision, violent criminal activity or other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or staff.⁵²

Mandatory Eviction from Federally Funded Housing Programs: Manufacture or production of methamphetamines in any HUD funded housing program, with the exception of project-based multi-family housing, will result in mandatory eviction.⁵³ Reasonable cause to believe there is current drug use or reasonable cause to believe that illegal drug use or pattern of illegal drug use may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents also will result in a mandatory eviction from federally funded public housing.⁵⁴ Households which include a member who engages in a pattern of alcohol abuse that interferes with other tenants rights also must be evicted by federally funded housing programs.

Discretionary Eviction from Federally Funded Housing Programs: Drug related criminal activity “on or off” the premises of a public housing project is grounds for eviction from the public housing complex and allows PHAs authority to evict family members for the drug related activity of other household members or guests.⁵⁵ There may be an “innocent tenant” defense under Washington law⁵⁶ or some municipal codes. Drug related criminal activity “on or near” the premises of other HUD funded projects is grounds for eviction.⁵⁷

Public housing providers may evict persons for other criminal activity which threatens the health, safety or right to peaceful enjoyment of the premises by other residents, persons residing in the immediate vicinity or on-site property management staff. The housing provider has broad discretion to consider all relevant circumstances. A federally funded housing provider may also evict tenants who are fleeing felons or probation or parole violators.⁵⁸

Public Benefits

In 1996, Congress passed the welfare reform act⁵⁹ creating Temporary Assistance for Needy Families (TANF), and imposing a lifetime ban on receiving cash assistance and food stamps to persons convicted of a state or federal felony drug offense. Washington has modified the ban; however, significant eligibility restrictions remain.⁶⁰

There are four ways criminal matters can affect a person's eligibility for public assistance:

1. **Felony Drug Convictions:** As of September 1, 2005, a felony drug conviction no longer makes a person ineligible for TANF benefits. See E2SSB 5213, 2005 Washington Legislature, amending RCW 74.08.025(4). Prior to that, any felony drug conviction (possession, use, delivery, conspiracy to or attempt to possess or deliver), adult or

There are four ways criminal matters can affect a person's eligibility for public assistance.

juvenile, committed after August 21, 1996 made a person ineligible for cash assistance through TANF/State Family Assistance (SFA) and, until June 10, 2004, food assistance⁶¹ unless certain criteria were met. Under pre-September 2005 law, pregnant drug felons received SFA during pregnancy, if they met other TANF/SFA eligibility requirements; however, they became ineligible as soon as their pregnancy ended.⁶⁴ Drug convictions do not affect an individual's ability to receive General Assistance Unemployable (GAU).⁶⁵

2. **Fleeing Felons:** A felony warrant will make a person ineligible for cash assistance and food assistance, including TANF, SFA, and GAU. In order to be "fleeing" the person must be acting with intent to avoid prosecution or confinement—the person must have knowledge of the warrant to be considered "fleeing."⁶⁶

3. **Probation or Parole Violators:** Currently violating a condition of probation or parole will make a person ineligible for cash assistance and food assistance (TANF, SFA, and GAU).⁶⁷ A person is violating probation or parole when a court has issued an arrest warrant for the person after being notified by the corrections officer that the person failed to comply with a requirement of probation or parole.

4. Convictions for Welfare Fraud:

A conviction for unlawful practices in obtaining cash assistance will render a person ineligible for cash assistance under TANF as determined by the sentencing court, but in no event less than 6 months.⁶⁸

Incarceration, SSI and Other Federal Benefits: Although a person will remain eligible for many federal benefits despite criminal convictions, periods of incarceration may affect a person's receipt of benefits such as Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and veteran's benefits. For example, SSI payments will continue until a person has been in jail or prison for a full calendar month. SSDI payments will continue until a person is convicted and has spent 30 days in jail or prison. If an SSI recipient is incarcerated for more than 12 consecutive months, benefits will be terminated entirely and the person will have to reapply. SSDI recipients may remain on the rolls no matter how long a period of incarceration; however, they will need to request reinstatement of cash benefits prior to or upon release.

Periods of incarceration may affect a person's receipt of benefits such as SSI, SSDI and veretan's benefits.

Family Issues

Collateral Proceedings: Parents who are involved in criminal proceedings may also be involved in collateral proceedings with the Department of Social and Health Services, i.e., dependency and/or termi-

nation of parental rights proceedings, in family law proceedings or in child support enforcement proceedings. Criminal justice professionals should be aware of the following: Clients may be making both in and out of court statements in the context of these civil collateral proceedings; Evidence may be obtained from these collateral proceedings which might affect the criminal case; Criminal history, conviction and non-conviction, may be admissible in dependency proceedings insofar as it is relevant to parental fitness; Certain felony convictions are considered "aggravated circumstances" and may result in the "fast-track" termination of parental rights;⁶⁹ and Child support obligations continue to accrue when a person is incarcerated unless a modification is requested.

Foster Parents: Before issuing a foster care license, DSHS must do a criminal background check on the applicant and all household members 16 years and older who are not already foster children.⁷⁰ Certain criminal convictions⁷¹ of an applicant or an applicant's household member may preclude licensing, at least for a period of time; however, DSHS has discretion to administratively approve individuals with criminal convictions under "extraordinarily rare circumstances."⁷²

Adoptive Parents: Adoptive parents must submit to a criminal background check which is included in the "pre-placement report" setting forth all relevant

information relating to the fitness of the person as an adoptive parent.⁷³ Criminal history information, which includes convictions, pending charges and arrests less than a year old, may be included in the report, but do not create any automatic bars to adoption. The same convictions which prohibit a person from becoming a licensed foster parent (e.g., crimes against children, violent crimes) will bar a person from adopting a child through the Department of Social and Health Services (i.e., children who are in court ordered out of home placement).

Driving

Convictions for the following offenses require suspension, revocation or disqualification of driving privileges for various statutorily mandated periods of time:

- DUI⁷⁴ or Physical Control;⁷⁵
- DWLS/R 1st or 2nd degree;⁷⁶
- Vehicular Assault;⁷⁷
- Vehicular Homicide;⁷⁸
- Racing or Reckless Driving;⁷⁹
- Attempting to Elude;⁸⁰
- Hit and Run Attended;⁸¹
- Taking a Motor Vehicle (driver only);⁸²
- Any felony involving a Motor Vehicle;⁸³
- Unattended Child in Running Vehicle (2nd and subsequent offenses);⁸⁴
- Reckless Endangerment in a Construction Zone;⁸⁵
- Minor in Possession of Alcohol (MIP) OR Drugs (VUCSA) (includes diversions);⁸⁶ and Minor in Possession of a Firearm.⁸⁷

Some of these offenses require longer periods of suspension depending on the number of prior convictions (e.g., DUI) and some have criteria for early reinstatement (e.g., MIP). Certain convictions and serious traffic violations will disqualify persons from holding commercial driver's licenses for various periods.⁸⁸ Temporary restricted driver's licenses may be issued by the Department of Licensing under certain circumstances to individuals engaged in occupations or trades that make motor vehicle operation essential.⁸⁹

Right to Possess Firearms

Persons convicted of felonies, crimes of domestic violence or who have been involuntarily committed under RCW 71.05.320, 71.34.090, 10.77, or equivalent statutes of another jurisdiction are prohibited from owning or possessing firearms until their right to do so has been reinstated.⁹⁰

Reinstatement: A person who is prohibited from possessing a firearm because of a criminal conviction may petition the court for reinstatement of this right under the following circumstances:⁹¹

Felony offense: After 5 years crime free in the community, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of his or her offender score.

Non-felony offense: After 3 years crime free in the community, if the individual has no prior felony convictions that prohibit the possession of a firearm count-

ed as part of the offender score and the individual has completed all conditions of the sentence.

Federal Law: Persons convicted of felonies or DV misdemeanors are also prohibited from possessing firearms under federal law.⁹² Federal law also prohibits fugitives, drug addicts, illegal aliens, persons dishonorably discharged from the military and persons subject to domestic violence protection orders from possessing firearms.⁹³ In addition, persons who have been charged with a felony, but not yet convicted, are prohibited by federal law from acquiring a firearm.⁹⁴ What constitutes a conviction is determined in accordance with the law of the jurisdiction in which the proceedings were held and “any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored” shall not be considered a conviction unless “such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.”⁹⁵ Persons with federal convictions must seek restoration of the firearm rights through the Bureau of Alcohol, Tobacco and Firearms; however, currently there is no process for doing so.⁹⁶

(A person may have his right to possess firearms restored under Washington law before being eligible to possess firearms under federal law. Restoration under Washington law is triggered by the period of time one spends in the community crime-free, not by the restoration of one’s civil rights.⁹⁷ Restoration of one’s civil rights under Washington law requires

a certificate of discharge⁹⁸ which may be more difficult to obtain.)

Voting and Jury Duty

Under Washington law, a person with a felony conviction is prohibited from voting and serving on a jury until all sentencing requirements are fulfilled, including payment of all legal financial obligations.⁹⁹ If a convicted felon receives a suspended sentence, his or her civil rights may be restored upon completion of the suspended sentence.¹⁰⁰ Otherwise, a certificate of discharge¹⁰¹ or a pardon¹⁰² is required in order to restore a convicted felon’s right to vote or serve on a jury. Since a certificate of discharge is conditioned upon payment of all legal financial obligations, if a convicted felon fails to pay them off, he or she may permanently lose the right to vote or serve on a jury.¹⁰³

Federal Student Loans

Since 1998, a person convicted of any drug offense, including possession of marijuana, is not eligible for any federal higher education grant, loan or work study assistance for the following time periods:¹⁰⁴

1. Convictions for possession of a controlled substance:

- 1st Offense – 1 year from date of conviction.
- 2nd Offense – 2 years from date of conviction.
- 3rd Offense – indefinite period of suspension.

2. Convictions for delivery:

1st Offense – 2 years from date of conviction.

2nd Offense – indefinite period of suspension.

The student may receive a waiver, if the student successfully completes an approved drug rehabilitation program.¹⁰⁵

(Since 2001, bills have been introduced in Congress to repeal the 1998 amendment to the Higher Education Act restricting student loans based on drug convictions. As of January, 2004, the most recent of these bills, H.R. 685, had 64 co-sponsors.¹⁰⁶)

Military Service

Felony convictions generally will preclude military service; however, each branch has the authority to make exceptions.¹⁰⁷ For example, the Army may grant a waiver for certain felony convictions that are over 1 year old (from date of completion of sentencing requirements) and for juvenile felonies that are over 5 years old. The Navy, however, considers all felonies disqualifying and will grant waivers only for misdemeanor convictions (2 or 3 at the most).

Traveling to Canada

Canadian border officials at the Washington border have the ability to run criminal history checks and may deny entry to individuals based on “inadmissible” crimi-

nal history. Under Canadian law, a foreign national may be inadmissible to Canada for, among other reasons, “committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.”¹⁰⁸ A conviction is not required, so admission may be denied to those who received dismissals after deferred prosecution or stipulated orders of continuance. Canada’s “indictable” offenses include many offenses which are misdemeanors in the U.S., for example, DUIs.¹⁰⁹ In addition, two or more convictions for offenses which are not “indictable” will be the basis for inadmissibility.¹¹⁰

Canada’s “indictable” offenses include many offenses which are misdemeanors in the U.S.

A person may overcome criminal inadmissibility by either being “deemed rehabilitated” because the offense is over 10 years old or by paying a fee and applying for “rehabilitation” through the Canadian consulate for convictions which are between 5 and 10 years old.¹¹¹ For convictions less than 5 years old, a person may apply for a “temporary resident’s permit.”¹¹²

End Notes

1. RCW 10.97.050; RCW 10.97, 100.
2. RCW 43.43.730; RCW 10.97.080.
3. RCW 9.94A.640.
4. RCW 9.96.060.
5. RCW 13.50.50.
6. ESHB 3078, Chapter 42, 2004 Washington Laws,

- signed by Governor March 22, 2004.
7. RCW 10.97.030(2).
 8. RCW 10.97.060; WAC 446-16-025.
 9. RCW 9.94A.030(27).
 10. RCW 10.82.090, amended by SSB 5168, effective 6/10/04; RCW 4.56.110, amended by HB 2485 effective 6/10/04.
 11. SSB 5168, amending RCW 10.82.0090(2), allows the court to reduce or waive interest on LFOs “as an incentive for the offender to meet his or her legal financial obligations” and if the offender has shown that he or she has “personally made a good faith effort to pay, that the interest accrual is causing a significant hardship, and that he or she will be unable to pay the principal and interest in full” without a reduction or waiver. A “good faith effort” means payment of the principal in full or 24 consecutive monthly payments, excluding payments mandatorily deducted by DOC. The court may not waive interest on the restitution portion of the LFO and may only reduce it if the principal of the restitution has been paid in full.
 12. RCW 9.94A.760(4).
 13. RCW 9.96A.020.
 14. RCW 43.43.832.
 15. RCW 28A.400.303.
 16. RCW 43.43.830(5).
 17. RCW 43.43.842; WAC 388-97-203 (nursing homes); WAC 388-76-685 (adult family homes); WAC 388-06-0170 (access to children).
 18. RCW 43.43.830(7).
 19. WAC 388-06-0170.
 20. WAC 388-06-0180.
 21. RCW 28A.400.320 (school employees); RCW 28A.400.330 (school contractors); WAC 180-20-101 (school bus drivers).
 22. WAC 180-86-013.
 23. RCW 28A.320.155.
 24. 12 U.S.C. § 1829.
 25. 18 U.S.C. § 1033(e) (2).
 26. 29 U.S.C. §§ 504, 1111.
 27. 42 U.S.C. § 1320a-7.
 28. 21 U.S.C. § 335a.
 29. 42 U.S.C. § 13726b.
 30. 49 U.S.C. § 44935; 49 U.S.C. § 44936.
 31. See WAC 139-05-220.
 32. WAC 204-91A-060.
 33. WAC 204-93-040.
 34. RCW 72.05.440.
 35. But see RCW 46.20.391 (occupational licenses).
 36. WAC 162-12-140(3).
 37. *Id.*
 38. RCW 49.60 et seq.; WAC 162-12-140(3).
 39. See *Alvera v. C.B.M. Group et al.*, No. CV 01-857-PA, Consent Decree (D. Or. 2001)(denying housing to victims of domestic violence has disparate impact on women and as such constitutes unlawful sex discrimination), 42 U.S.C. § 3604 et seq. (prohibiting discrimination based on sex).
 40. 24 C.F.R. § 100.201(a) (2).
 41. 42 U.S.C. § 3602(h) (3); 24 C.F.R. § 100.201(a) (2).
 42. 42 U.S.C. § 3607; 24 C.F.R. § 100.10(a) (4).
 43. RCW 59.16 et seq. (Unlawful Detainer Statute), RCW 59.18 et seq. (Residential Landlord-Tenant Act).
 44. RCW 59.18.130(8)(a) and (b).
 45. RCW 59.18.130(6) and (9).
 46. RCW 59.20 et seq. (Mobile Home Landlord-Tenant Act).
 47. Quality Housing and Work Responsibility Act of 1998 (QHWRA) § 578, 112 Stat. 2461, P.L. 105-276; see also 66 Fed. Reg. 28,776 (May 24, 2001).
 48. See 66 Fed. Reg. 28, 776 (May 24, 2001).
 49. *Id.*
 50. *Id.*
 51. *Id.*
 52. *Id.*
 53. *Id.*
 54. *Id.*
 55. *U.S. Dept. of Housing and Urban Development v. Rucker*, 122 S.Ct. 1230, 152 L.Ed.2d 258 (2002); see also QHWRA § 512, P.L. 105-276 (1998); 66 Fed. Reg. 28,776 (May 24, 2001).
 56. RCW 59.18.130(6).
 57. QHWRA §§ 576(d), 577 and 579; see also 66 Fed. Reg. 28,776 (May 24, 2001).
 58. QHWRA § 512(b); 42 U.S.C. § 1437f(d)(1)(B)(v); 66 Fed. Reg. 28,784 (HUD comments).
 59. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.

60. 21 U.S.C. § 862a.
61. ESB 6411, passed by the 2004 Washington legislature, effective 6/10/04, amends RCW 74.08.025 by restoring felons' rights to food assistance.
62. RCW 74.08.025(4); WAC 388-442-0010.
63. Persons assessed as dependent but not in treatment because there are no spaces available are not meeting the treatment requirement. Eligibility begins when the client enters treatment.
64. WAC 388-442-0010(3).
65. RCW 74.04.005(6).
66. WAC 388-442-0010(1)(a).
67. WAC 388-442-0010(1)(b).
68. RCW 74.08.290.
69. RCW 13.34.132.
70. WAC 388-06-0110.
71. WAC 388-06-0170; 388-06-0180.
72. Children's Administration Policy 01-07, Reissued January 29, 2004.
73. RCW 26.33.190.
74. RCW 46.61.502.
75. RCW 46.61.504.
76. RCW 46.20.342.
77. RCW 46.20.285.
78. Id.
79. RCW 46.61.500,530; RCW 46.20.285.
80. RCW 46.61.024.
81. RCW 46.52.020.
82. RCW 9A.56.070; RCW 46.20.285
83. RCW 46.20.285.
84. RCW 46.61.685.
85. RCW 46.61.527.
86. RCW 46.20.265.
87. RCW 13.40.265.
88. RCW 46.25.090.
89. RCW 46.20.391.
90. RCW 9.41.040, 045, 047.
91. RCW 9.41.041(b).
92. 18 U.S.C. § 922(g).
93. Id.
94. 18 U.S.C. § 922(n).
95. 18 U.S.C. § 921(a)(20).
96. 18 U.S.C. §925(c) But see United States v. Bean, 123 S.Ct 584 (2002)(The federal district court had no authority to restore petitioner's right to possess firearms even where Congress has refused to provide a process through the ATF for restoration of rights.)
97. RCW 9.41.041(b).
98. RCW 9.94A.637.
99. RCW 29A.08.520 (voting), RCW 2.36.070 (jury duty), RCW 9.94A.637 (certificates of discharge).
100. RCW 9.92.066.
101. RCW 9.94A.637.
102. See RCW 9.94.885 (governor's clemency and pardon board), RCW 9.95.260 (indeterminate sentence review board).
103. RCW 9.94A.637, amended by SSB 5168, effective 6/10/04.
104. See Federal benefits found under 20 U.S.C. §1070 et seq. and 42 U.S.C. §2751 et seq.; Higher Education Act, 20 U.S.C. §1091(r)(1).
105. 20 U.S.C. §1091(r) (2).
106. For information on H.R. 685 and the reform movement, go to www.raiseyourvoice.com.
107. 10 U.S.C. §504, 32 C.F.R. §96.1 et seq.
108. Immigrant and Refugee Protection Act [Canada], 36(2)(c).
109. Criminal Code [Canada], 253-255.
110. Immigration and Refugee Protection Act, 36(2)(b).
111. Immigration and Protection Regulations [Canada], 18(2).
112. Immigration and Protection Regulations, 179.



BEYOND JUVENILE COURT: LONG-TERM IMPACT OF A JUVENILE RECORD

The information in this article is intended for use by criminal justice professionals, juvenile respondents, and their parents in Washington State. It is not comprehensive. It is meant as a starting point for professionals and juveniles to understand the hidden penalties that may occur after juvenile court adjudications and can follow juveniles into adulthood. Juvenile respondents and their parents should understand the potential civil and other consequences of an adjudication and always should consult with an attorney before they plead guilty in juvenile court.

This article is also for social service providers, community members or anyone concerned about the vast array of non-incarcerative penalties which follow juveniles with criminal adjudications or convictions.

Is a Juvenile Adjudication a “Conviction”?

Although it may depend on the context, for the most part under Washington law the answer is “yes.” Since 1961, the Basic Juvenile Court Act has provided that “an order of the court adjudging a child delinquent . . . shall in no case be deemed conviction of a crime”;¹ however, in 1997 the Act was amended to state that an adjudication has the same meaning as “conviction” in RCW 9.94A.030 (the Sentencing Reform Act), and “the terms must be construed identically and used interchangeably.”² Similarly, the Sentencing Reform Act (SRA) was also amended in 1997 to define “conviction” to include juvenile adjudications.³

Nevertheless, depending on the context, there are some purposes for which a juvenile adjudication is not treated as a “conviction.” E.g., see Immigration and Voting. There are two important contexts where juvenile adjudications are treated as convictions:

- 1. Public access to juvenile criminal history; and**
- 2. Adult sentencing under the SRA.**

1. Public Access to Juvenile Criminal History: No matter what you call it, conviction or adjudication, a juvenile’s criminal history is accessible to the public through public court records and the Washington State Patrol database.⁴ When responding to criminal background checks, the Washington State Patrol reports all adult and juvenile convictions without distinction.

This article has been adapted from *Beyond Juvenile Court: Long-Term Impacts of a Juvenile Record* published by the Washington Defender Association (2005). The document was written by Kim Ambrose and Alison Millikan, and edited by Stacy Chen and Christie Hedman, and Sarah Yatsko provided editorial assistance. Others participating in the project were Hong Tran, Northwest Justice Project; Ann Benson, WDA Immigration Project; and Jonathan Moore, WDA Immigration Project; and Mark Dalton, Department of Social and Health Services.

2. Effect of Juvenile Adjudications on Adult Sentencing: For adult felony offenses committed on or after June 13, 2002, juvenile felony adjudications will be included in calculating an adult's offender score for purposes of sentencing under the SRA.⁵ In other words, juvenile adjudications "count" for purposes of adult sentencing and will increase an adult's offender score which can result in a longer sentence.

Juvenile Criminal History Records

Criminal history, which is easily accessible to the general public, includes juvenile adjudications that were committed in Washington after 1977. Juvenile criminal history does not "go away" when a person turns 18. Washington is one of nine states which allows the public release of juvenile records without any restrictions.⁶ Criminal history record information is maintained centrally in Washington State through the Washington State Patrol Identification and Criminal History Section, 3000 Pacific Avenue, Post Office Box 42633, Olympia, Washington 98504-2633, (360) 705-5100.

Access to Juvenile Records: Juvenile adjudication and arrest information is readily available to the public at the courthouse, the Washington State Patrol, and via the internet. For a small fee, anyone -- employers, landlords, potential love interests, etc. -- may access any individual's juvenile and adult criminal

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conviction records, arrests less than one year old, and pending charges through the Washington State Patrol website, <https://watch.wsp.wa.gov>. More complete criminal history records, including juvenile non-conviction data (dismissals, findings of not guilty et al.) are also available to the public at superior court clerk's offices and through the Washington State Courts Judicial Information System (JIS) on-line service.⁷ Certain agencies have free

access to criminal history information, e.g., criminal justice agencies and the Department of Social and Human Services (DSHS), while others may subscribe to the on-line service for a fee.⁸ Juvenile criminal records are available to the public unless and until they are sealed by a court order.

Correcting Juvenile Records: Requests to correct juvenile criminal history records held by a "juvenile justice care agency"⁹ may be submitted by filing a motion in the juvenile court where the adjudication was entered. Forms from the Washington State Court's website can be found at <http://www.courts.wa.gov/forms/> or by calling the Administrative Office of the Courts at (360) 705-5328.¹⁰

Vacating, Sealing and Destroying Juvenile Records:

To vacate means "to annul, set aside, cancel or rescind; to render an act void."¹¹ Juvenile adjudications may be vacated only after completion of a deferred disposition

or after prevailing on appeal or through other post-conviction relief. Vacated juvenile adjudications are still accessible to the public and must be sealed in order to remove them from public view.

Sealing a court record means to shield it from public view, but the record still exists.¹² Certain adjudications (described below) may be sealed by filing a Motion to Seal with the juvenile court that entered the adjudication.¹³ If the court grants the Motion to Seal, any agency receiving a request for the juvenile's record must reply that the record is confidential, and no information about its existence or nonexistence may be given. The subject of the sealed record may respond that they have never been convicted on job, housing or other applications.¹⁴ Subsequent juvenile adjudications or adult convictions will result in "unsealing" a previously sealed juvenile adjudication.¹⁵

A diversion agreement, misdemeanor, and Class C Felony can be sealed if the juvenile:

- has been crime-free for 2 years since the last date of release from confinement;
- has no current adjudication or diversion charges in either juvenile or adult court;
- has paid off all restitution; and
- has not been convicted of a sex offense or a class A felony.

Class B felonies can be sealed if the juvenile:

- has been crime-free for 5 years since the last date of release from confinement;
- has no current adjudication or diversion charges in either juvenile or adult court;
- has paid off all restitution; and
- has not been convicted of a sex offense or a class A felony.

Class A felonies and sex offenses committed after 1997 cannot be sealed.¹⁶

Destruction or Deletion of juvenile court records is only possible for non-conviction data¹⁷ and diversions.¹⁸

Diversion records may be destroyed if either of the following criteria are met:

- The person is 18 years or older and
 - o 2 years have elapsed since completion of the diversion agreement;
 - o criminal history includes only one referral for a diversion, no prior convictions/adjudications and no subsequent arrests or charges.¹⁹
- or-
- The person is 23 years or older and
 - o has completed the diversion agreement and has no pending criminal charges;
 - o criminal history includes only referrals for diversion (may be more than one).

Courts are permitted to "routinely destroy" juvenile records where the former juvenile is 23 years or older or the juvenile

is 18 years or older and he or she only has 1 diversion agreement and 2 years have passed since that agreement was completed.²⁰

Favorable dispositions (e.g., acquittals and dismissals, but not dismissals after a successful period of probation, suspension or deferral of sentence) may be deleted from a person’s criminal history record information 2 years after entry of the disposition favorable to the defendant.²¹

Arrest information not leading to adjudication may be deleted 3 years after the date of arrest or issuance of citation or warrant.²²

Federal juvenile adjudications. Records relating to federal juvenile adjudications are not released to the public and specifically are prohibited from release “when the request for information is related to an application for employment, license, bonding, or any civil right or privilege.”²³ Federal juvenile adjudications may only be released to law enforcement, courts, treatment programs, the victim of the crime and to agencies considering the person for employment which directly affects national security.²⁴

[At the time of this writing, the FBI does not remove sealed Washington juvenile records from its database because they are not “expunged” under Washington law. (Washington law does not have a procedure for “expungement.”) The FBI receives juvenile adjudication and arrest information from the Washington State Patrol. The FBI does not release records directly to the public; however, federal agen-

cies and law enforcement have access to those records.]

Immigration

A juvenile adjudication and disposition will not generally trigger removal (formally known as deportation) or inadmissibility for non-citizens because under the federal immigration laws juvenile dispositions are not considered convictions.²⁵ Nevertheless, there still may be immigration consequences. Determining these consequences can be challenging and complex.

Determine the Juvenile’s Immigration Status: If a juvenile respondent was not born in the United States and is not otherwise a United States citizen, the first step is determining the juvenile’s *immigration status*. The immigration consequences of a juvenile adjudication will depend on the juvenile’s immigration status—whether the non-citizen juvenile respondent is living in the United States legally (e.g., as a permanent resident with a “green card”) or whether the juvenile respondent is living in the United States without legal immigration status (i.e., undocumented).

Non-citizen Juvenile Respondents Residing in U.S. Legally: If a non-citizen juvenile is legally residing in the United States (e.g., has lawful permanent residence), a juvenile adjudication will not automatically trigger removal proceedings as an adult conviction might. Nevertheless, not all of the criminal provisions under immigration law require convictions, and a juvenile disposition will be sufficient to trigger deportation/removal under those provisions. For example, a juvenile disposition for

the offense of delivery of a controlled substance will likely fall under the INA's "reason to believe" provision that the non-citizen is a drug trafficker.²⁶ Additionally, a finding by a juvenile court that the youth has violated a domestic violence restraining, protective, or no contact order can trigger deportation under INA's "violation of a family protective order" ground.²⁷

Additionally, for those juveniles who are in the United States legally but have not yet obtained permanent legal residence (a green card) or citizenship, the Department of Homeland Security (DHS formally known as INS) can and will consider juvenile dispositions in making the decision whether to grant their applications. Since these decisions are discretionary it is difficult to predict with any certainty the effect of juvenile dispositions.

Juvenile Respondents Residing in the U.S. Illegally: Juveniles residing in this country who are undocumented may be put into removal/deportation proceedings at any time regardless of their criminal history. If an undocumented juvenile is placed into removal proceedings he or she may still be able to remain in the country legally if eligible for some type of immigration relief such as Asylum²⁸ or Special Immigrant Juvenile Status.²⁹ However, non-citizens do not have a right to counsel in removal proceedings and indigent clients are rarely represented and/or made aware of possible avenues of relief. A juvenile

Juveniles residing in this country who are undocumented may be put into removal/deportation proceedings regardless of their criminal history.

adjudication will not automatically bar admissibility under immigration laws as an adult conviction might but it can and will be considered by DHS and Immigration Courts for discretionary determinations such as requests for relief from removal and applications for permanent legal residence.

Whether juveniles are put into removal proceedings depends largely on whether DHS, acting through Immigration and Customs Enforcement (ICE), finds them and wants to remove them. The Juvenile Rehabilitation Administration (JRA) and some juvenile detention facilities report juveniles who are foreign nationals and in their custody to ICE.³⁰ JRA's policy requires foreign nationals to stay in the institution for the duration of their disposition and makes them ineligible for authorized leave or community placement until "(1) he or she is placed in ICE custody; (2) the ICE confirms that they have no interest in the youth or does not respond within 90 days of sending the Notice of Alien Incarceration; or (3) the youth reaches his or her release date."³¹

Drug Abuse or Drug Addiction: Drug abuse and drug addiction are both grounds for inadmissibility³² and deportability.³³ Since these provisions do not require a conviction they may be applied against a non-citizen juvenile. This consequence is of critical importance in pleas or dispositions for purposes of Juvenile Drug or Juvenile Treatment Courts.

Financial Obligations

Juvenile respondents are required to pay legal financial obligations similar to adult defendants. These legal financial obligations include restitution,³⁴ fines, crime victim penalty assessments,³⁵ court costs, and court appointed attorneys fees and costs of defense.³⁶ As of this writing, the one difference between adult and juvenile legal financial obligations is that interest does not accrue on juvenile obligations; however, collection fees may be assessed.³⁷ Legal financial obligations imposed on juveniles do not “go away” when the juvenile becomes an adult.

Restitution is the money owed by the respondent to the victim for damages for injury or loss of property. Restitution must be “easily ascertainable”³⁸ and a “foreseeable consequence” of the crime committed.³⁹ Restitution must be ordered and cannot be waived, reduced or converted, with only one exception: restitution ordered to an insurance company may be reduced or waived if the respondent can show that he or she could not reasonably acquire the means to pay the insurance company over a ten-year period.⁴⁰ All co-respondents are liable for restitution jointly and severally.⁴¹ Restitution may be enforced for 10 years after the respondent’s 18th birthday and then jurisdiction to enforce restitution may be extended an additional 10 years.⁴²

Fines may be ordered by the court pursuant to the juvenile offender sentenc-

ing standards.⁴³ Fines may be converted into “community restitution” (which is similar to community service hours) if, due to a change in circumstances after the fine has been ordered, the juvenile cannot pay.⁴⁴ Fines may be enforced for up to 20 years after the respondents 18th birthday.⁴⁵

Victim penalty assessments cannot be waived and must be ordered in every juvenile disposition, regardless whether there is a “victim.”⁴⁶ Like other financial obligations, victim penalty assessments can be enforced for a total of 20 years after the respondent’s 18th birthday.⁴⁷

Court-appointed attorney fees and costs of appeal may be ordered against a juvenile, a parent or another person legally obligated to support the juvenile if the state prevails on an appeal of a juvenile disposition, if the court finds an ability to pay.⁴⁸ This obligation is enforceable for 10 years after the respondent’s 18th birthday or 10 years from the date juvenile court jurisdiction expires.⁴⁹

Driving

A juvenile’s ability to keep or obtain a driver’s license will be affected by adjudications for offenses related to drugs, alcohol, firearms and driving. The juvenile court is required to notify the Department of Licensing (DOL) when juveniles are adjudicated of certain offenses or when they enter into diversion agreements for certain offenses.

Juvenile respondents are required to pay legal financial obligations similar to adult defendants.

Minors in Possession of Alcohol, Drugs or Firearms: Juveniles adjudicated of Minor in Possession of Alcohol (MIP);⁵⁰ possession, sale or use of controlled substances (VUCSA);⁵¹ illegal possession, sale or use of prescription drugs⁵² or imitation controlled substances;⁵³ or possession of a firearm⁵⁴ will have their right to drive revoked for a period of 1 year or until the juvenile turns 17 (whichever is longer) for a first offense. For a second offense the revocation is for two years or until the juvenile is 18 (whichever is longer). The revocation periods for multiple MIP's are treated consecutively but they cannot last beyond a juvenile's 21st birthday.⁵⁵

For both adults and juveniles, there are consequences for DUI's and driving with a "lack of physical control." The consequences depend on whether this is a first offense, the level of intoxication or impaired ability⁵⁶, and the resulting offense.⁵⁷

Reinstatement: A juvenile convicted of a first offense involving drugs, alcohol or a firearm can petition the court for reinstatement ninety days after the date the juvenile turns 16 or ninety days after the incident date (whichever was later). If it is a second offense, the juvenile cannot petition until the age of 17 or until one year has passed (whichever is longer). Where a juvenile's license has been suspended because of consecutive MIP revocations the license is automatically reinstated when the juvenile reaches the age of 21.

Other Offenses Involving Motor Vehicles: For all juveniles driving during the offense, adjudications for the following crimes require suspension, revocation or disqualifi-

cation of driving privileges for varying time periods depending upon whether it is the first or subsequent offense:

- Taking a Motor Vehicle (drivers only) and any felony involving a motor vehicle (1 year revocation);⁶⁰
- Vehicular Assault (1 year revocation);⁶¹
- Vehicular Homicide (2 year revocation);⁶²
- Racing or Reckless Driving (potential 1 year revocation);⁶³
- Hit and Run Attended (potential 1 year);⁶⁴
- DWLS/R 1st or 2nd degree;⁶⁵
- Attempting to Elude;⁶⁶
- Unattended Child in Running Vehicle;⁶⁷
- Reckless Endangerment in a Construction Zone (60+ day suspension).⁶⁸

Juveniles convicted of these offenses may not petition DOL for early reinstatement.

Diversion Agreements: Juveniles entering into diversion agreements for drug or alcohol offenses will have their licenses suspended or revoked by the Department of Licensing (DOL) in the same manner as if they were adjudicated guilty in court.⁶⁹

- **Counsel and Release Agreements:** Under certain circumstances, a

diversion unit is permitted to “counsel and release” a juvenile rather than enter into a diversion agreement.⁷⁰ Counsel and release agreements are not sent to the DOL and so do not affect a juveniles’ ability to drive.⁷¹

- **Reinstatement After Diversion:** DOL will reinstate driving privileges of juveniles upon receiving notice of completion of a diversion agreement; however, not before 90 days after their 16th birthday or 90 days after they entered into the diversion agreement, whichever is longer, if it was their first offense. If it is their second or subsequent offense, DOL will not reinstate juvenile driving privileges until their 17th birthday or 1 year after they entered the diversion agreement, whichever is longer.⁷²

Intermediate Licenses for 16 and 17 Year Olds: New drivers under the age of 18 must obtain an “intermediate license.”⁷³ A juvenile will not be eligible for the intermediate license if he or she has received any traffic violations for the previous six months or been adjudicated for any offenses related to alcohol or drugs during the time the applicant had an instruction permit.⁷⁴ A MIP or other driving offense will affect an intermediate license in the same way as a standard license.

Driving Without a License or Driving While Suspended or Revoked: It is a misdemeanor to drive without a valid driver’s license if the person’s license has been suspended or revoked or if the

person is not carrying valid identifying documentation.⁷⁵ Otherwise, driving without a valid driver’s license is an infraction.

Anyone over the age of 13 driving without a valid license can have their license revoked or suspended by the DOL for the same amount of time as a licensed driver.⁷⁶ A juvenile driving with a suspended or revoked driver’s license or privilege faces several possible consequences ranging from additional revocation to imprisonment and fines, depending on the status of the driving privilege.⁷⁷

Temporary Restricted Licenses: Under certain circumstances, a juvenile whose driver’s license has been revoked or suspended as a result of criminal adjudications may obtain a “temporary restricted license” by demonstrating that driving a vehicle is necessary for travel to school, work, medical appointments or for other reasons enumerated by statute.⁷⁸

Insurance Rates: Most juveniles who drive are covered by their parents’ or guardians’ insurance policy. The cost of insurance depends on multiple variables, including the kind of car, the residence location, the car the parents or legal guardians drive, the juvenile’s driving record and whether the guardians own or rent their house. The result of having an adjudication which has been reported to DOL could increase insurance costs.

School Issues

School Notification: After any arrest or decision to arrest, the police or prose-

cuting attorney may give to a school any information “pertaining to the investigation, diversion and prosecution of a juvenile attending the school,” including any incident reports.⁷⁹

Adjudication of the following offenses requires notification to the principal of the school the juvenile attends:⁸⁰

- a violent offense as defined in RCW 9.94A.030;
- a sex offense as defined in RCW 9.94A.030;
- toxic fumes under chapter 9.47A RCW;
- a controlled substance violation under chapter 69.50 RCW;
- a liquor violation under RCW 66.44.270; or
- any crime under RCW’s 9.41 (Firearms), 9A.36 (Assault), 9A.40 (Kidnapping), 9A.46 (Harassment), and 9A.48 (Arson).

The principal must give information received pursuant to the above notification to the student’s teachers, persons who supervise the student and anyone else the principal considers necessary for security purposes.⁸¹

Discipline, Suspension or Expulsion:

All juveniles in Washington have a constitutional right to education. Nevertheless, a student may be disciplined, suspended or expelled from school for violating school rules as defined by the school district.⁸² Suspension or expulsion from school may

result from criminal or non-criminal misconduct. For the offenses listed above which require school notification (violent offenses, sex offenses, etc.) the principal is required to “consider” imposing a long-term suspension or expulsion.⁸³

- **Firearms:** A mandatory one year expulsion will be imposed on a student who is “determined to have” carried a firearm onto, or to have possessed a firearm on, public elementary or secondary school premises, public school-provided transportation, or areas of facilities while being used exclusively by public schools.⁸⁴
- **Crimes Against Teachers and Other Students:** By statute, if a juvenile commits assault, kidnapping, harassment or arson directed toward a teacher, that student cannot be assigned to that teacher’s classroom again.⁸⁵ If a juvenile commits any of those offenses against another student, the juvenile may be removed from the classroom of the victim for the duration of their school attendance.⁸⁶ Commission of any of those offenses is grounds for suspension or expulsion.⁸⁷
- **Gang Activity:** A student enrolled in a public school may be suspended or expelled if the student is a member of a gang and knowingly engages in “gang activity” on school grounds.⁸⁸ A student found to have committed the offense of “criminal gang intimidation”⁸⁹ must also be considered for long term suspension or ex-

pulsion where there have been two or more violations in three years.⁹⁰

Sports Eligibility: Eligibility to participate in school athletic programs in Washington is governed by the rules of the Washington Interscholastic Activities Association (WIAA), individual school districts and individual schools.

- **Drugs:** Student athletes found to have violated the laws of prescription drugs (RCW 69.41) or controlled substances (RCW 69.50), either by illegal possession, use or sale, will be immediately ineligible for participation in an interscholastic sports program pursuant to WIAA rules.⁹¹

The ineligibility continues for the remainder of the year for the first violation.⁹² In order to be eligible the following year, the student must meet with a “sports eligibility board.” A second violation requires ineligibility for 1 calendar year and a third violation results in permanent ineligibility.⁹³ School Districts and schools may have their own eligibility policies which are not inconsistent with the WIAA rules.⁹⁴

- **Other Criminal Activity:** WIAA rules do not specifically address other criminal activity; however, the rules do require eligible athletes to meet academic and attendance

requirements. School districts generally have codes of conduct which, if violated, may preclude sports eligibility. For example, school districts may have ineligibility rules regarding the possession or use of alcohol or unsportsmanlike conduct.⁹⁵

Applying to College

College and University Admissions:

As of the date of this article, Washington community and technical colleges and major state universities do not use an applicant’s criminal history in making their admissions decisions.⁹⁶ However, a student’s criminal history may affect his or her ability to complete a practicum in fields with restrictions on participation. For example,

early childhood education, teaching and health care practicums are limited to students who are not legally banned from having contact with people from vulnerable populations and require criminal background checks for participation.⁹⁷

The “Common Application” used by many private schools around the country does not ask about prior convictions/adjudications. However, it requires a teacher evaluation and school report, which may disclose conviction/adjudication information. In Washington, each private college or university treats an applicant’s criminal history differently. Some ask the applicant about his or her criminal history directly. Others do not ask the student but expect

A student’s criminal history may affect his or her ability to complete a practicum in fields with restrictions on participation.

the information to come from teachers and/or counselors.⁹⁸

Federal Student Loans

Juveniles convicted of drug offenses do not fall under the Higher Education Act's ban on federal financial aid.⁹⁹ Since 1998, a person convicted as an adult of any drug offense, including possession of marijuana, is not eligible for any federal higher education grant, loan or work study assistance for the following time periods:¹⁰⁰

1. Convictions for possession of a controlled substance:

- 1st Offense – 1 year from date of conviction
- 2nd Offense – 2 years from date of conviction
- 3rd Offense – indefinite period of suspension

2. Convictions for delivery:

- 1st Offense – 2 years from date of conviction
- 2nd Offense – indefinite period of suspension

The student may receive a waiver if the student successfully completes an approved drug rehabilitation program.¹⁰¹

[Since 2001, bills have been introduced in Congress to repeal the 1998 amendment to the Higher Education Act ("HEA") restricting student loans based on drug convictions (20 U.S.C.1091(r)). Recently, in March, 2005, H.R. 1184 was introduced.¹⁰²]

Right to Possess Firearms

Possession of Firearms Generally Prohibited for Minors:

A person under the age of 18 years may not lawfully own or be in possession of a gun in Washington except under statutorily limited circumstances.¹⁰³ Federal law also has restrictions on gun ownership by persons under 21¹⁰⁴ and prohibits possession of firearms by fugitives, drug addicts, illegal aliens, persons dishonorably discharged from the military and persons subject to domestic violence protection orders.¹⁰⁵

Revocation of the Right to Possess Firearms:

The following crimes, upon adjudication, a finding of not-guilty by reason of insanity, or a dismissal after a period of deferral, will take away a juvenile's right to possess firearms even after they reach the age of 18, until their right is restored by a court of record:

- any felony;
- the following crimes of domestic violence:
 - o assault in the fourth degree;
 - o coercion;
 - o stalking;
 - o reckless endangerment;
 - o criminal trespass in the first degree;
 - o violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

Possessing a firearm after the right has been revoked is a felony.¹⁰⁷

Reinstatement: In Washington, an adult or juvenile who is prohibited from possessing a firearm because of a criminal adjudication may petition the court for reinstatement of this right under the following circumstances:¹⁰⁸

- The person has not been convicted of a sex offense or a Class A felony; and
- Felony offense:** after 5 years crime free if the individual has no prior felony convictions/adjudications that prohibit the possession of a firearm counted as part of his or her offender score;
- Non-felony offense:** after 3 years crime free, if the individual has no prior felony convictions/adjudications that prohibit the possession of a firearm counted as part of the offender score and the individual has completed all conditions of the sentence.

Class A felons and sex offenders can only have their rights to possess firearms reinstated in Washington by obtaining a pardon, annulment, or a certificate of rehabilitation (which is not available for Washington convictions¹⁰⁹). These are also the only means available for reinstating firearm rights before the requisite time periods have expired.¹¹⁰

Federal Law: Persons convicted of felonies or DV misdemeanors are also prohibited from possessing firearms under federal law.¹¹¹ Whether a juvenile

adjudication is a “conviction” for purposes of the federal law of unlawful possession of a firearm is determined by the state law where the person was “convicted.”¹¹² Although there are no federal decisions specifically addressing this issue, state juvenile adjudications in Washington have been found to be “convictions” for purposes of Washington’s law prohibiting felons from possessing firearms.¹¹³ Ambiguities still may exist; however, there are statutes and cases which weigh in favor of a Washington state juvenile adjudication being considered a conviction for federal firearms prohibitions.¹¹⁴ Conversely, a federal juvenile adjudication will not remove the right to possess a firearm under federal law because under the Federal Juvenile Delinquency Act, a juvenile is not “convicted” but “adjudicated.”¹¹⁵

Reinstatement under Washington law of firearm rights lost pursuant to a Washington state juvenile adjudication should prevent prosecution under federal law.¹¹⁶

Voting and Jury Service

Voting: At the time of this publication, juvenile adjudications do not result in the loss of the right to vote.¹¹⁷ Adult felony convictions will prohibit persons from voting until their civil rights have been restored.¹¹⁸

Jury Service: Juvenile adjudications should not affect a person’s ability to serve on a jury. Like voting, only adult felons who have had their civil rights restored may serve on juries.¹¹⁹

Military Service

All branches of the military service are required to do criminal background checks on applicants which include juvenile criminal histories (citations, arrests and adjudications).¹²⁰ An applicant's full and complete criminal history must be given to the Armed Forces, including disclosure of convictions/adjudications that have been expunged or sealed.¹²¹

A juvenile felony adjudication will generally preclude military service; however, each branch has discretion to make exceptions by granting waivers.¹²² According to the Department of Defense, the waiver procedure is not automatic and approval is based on each individual case. "One of the considerations in determining whether a waiver will be granted is the individual's ability to adjust successfully to civilian life for a period of time following his or her release from judicial control."¹²³ Even sealed juvenile adjudications may require a waiver.¹²⁴

Other Barriers to Enlistment: The Armed Forces will test applicants for drug and alcohol use and dependency. Anyone found to be dependant on drugs or alcohol will be denied entrance.¹²⁵ Also, ineligibility to possess a firearm as a result of a conviction may preclude service until the right has been restored.¹²⁶

Employment

Juvenile adjudications, like adult con-

victions, can result in ineligibility for a variety of jobs and occupational licenses in Washington State. Although the Restoration of Employment Rights Act, RCW 9.96A, prohibits government entities from denying employment or occupational licenses to persons based solely on their felony convictions, there are numerous exceptions to this general rule.¹²⁷ Unless they have been sealed, juvenile adjudications are accessible to employers through the Washington

State Patrol, the courts, and private companies which collect information from public databases.

Background Checks

Required: Criminal background checks are required for all persons and organizations licensed to provide services to children or vulnerable adults.¹²⁸ For people

applying for licenses to provide child care, foster care or care for persons with developmental disabilities, DSHS must do background checks on all household members 16 years and older who are not already foster children.¹²⁹ School districts and their contractors with employees who will have regular unsupervised access to children are also required to do criminal background checks on their employees.¹³⁰ Juvenile adjudications will be disclosed just like adult convictions on criminal background checks.

Nursing Homes, Childcare, etc:

"Crimes against children or other persons"¹³¹ will prohibit persons from working in nursing homes, adult family homes, boarding homes, and child care facilities.¹³²

A juvenile felony adjudication will generally preclude military service.

This includes, among other offenses, assault in the fourth degree. “Crimes of financial exploitation,”¹³³ including theft in the third degree, will also make a person ineligible to work with vulnerable adults, e.g., in nursing homes. The time limits for ineligibility for such jobs may vary depending on the crime committed.

Persons who have felony convictions for crimes against children, “spousal abuse,” and violent crimes will be permanently prohibited from contracting with or being licensed by DSHS to provide any type of care to children or individuals with a developmental disability.¹³⁴ Convictions for assault or sex offenses not included in the permanent bar, any felony drug conviction or any other felony will disqualify individuals from licensing, contracting, certification, or from having unsupervised access to children or to individuals with a developmental disability for 5 years.¹³⁵

Schools: Crimes against children will disqualify persons from being school employees, contractors with schools or school bus drivers.¹³⁶ Volunteers may also be disqualified because of criminal history. Certified school employees, e.g., teachers, are also required to have “good moral character” which means no convictions in the last ten years, including motor vehicle violations, which “would materially and substantially impair the individual’s worthiness and ability to serve as a professional within the public and private schools of the state.”¹³⁷

Professional Licenses: Many jobs require a person to be licensed by the

Washington State Department of Licensing. Examples include, among others, massage therapists, midwives, chiropractors, cosmetologists, nursing assistants, dental assistants, and mental health counselors.¹³⁸ Some jobs also require licensing by specific boards, such as the optometry board and board of pharmacy.¹³⁹ Juvenile adjudications can interfere with a person’s ability to obtain these licenses from the Department of Licensing. Violating drug laws is specifically listed as “unprofessional conduct” to be considered in licensing determinations.¹⁴⁰

Federal Laws Affecting Employment

Opportunities:¹⁴¹ Federal law prohibits financial institutions from employing a person who has been convicted of a crime of dishonesty, breach of trust, or money unless he or she has received written consent from the Federal Deposit Insurance Corporation (FDIC).¹⁴² For purposes of this law, pre-trial diversion or similar programs are considered convictions. Federal law also bars certain classes of felons from the following jobs:

- working in the insurance industry without having received permission from an insurance regulatory official;¹⁴³
- holding any of several positions in a union or other organization that manages an employee benefit plan;¹⁴⁴
- providing healthcare services for which they will receive payment from Medicare;¹⁴⁵

- working for the generic drug industry;¹⁴⁶
- providing prisoner transportation;¹⁴⁷ and
- employment in airport security.¹⁴⁸

Other Jobs Affected: Other examples of jobs affected by certain types of convictions include (this list does not purport to include all jobs impacted by criminal history):

- Law enforcement;¹⁴⁹
- Tow truck operators contracting with Washington State Patrol;¹⁵⁰
- Washington State Patrol assistance van drivers;¹⁵¹
- JRA employment or volunteer positions.¹⁵²

Jobs Requiring a Driver's License or Ability to Possess a Firearm: Since many jobs require the ability to drive, the penalty of losing a driver's license may prohibit some individuals from future employment, at least for a period of time.¹⁵³ Similarly, the consequence of losing the right to possess a firearm will disqualify a person from certain types of employment (e.g., security guards, federal park rangers, etc.).

Employment Discrimination:

- Permissible Pre-employment Inquiries: Although some states ban the practice, in Washington employers and occupational licensing authorities are permitted to ask job appli-

cants about and consider arrests not leading to conviction. However, there is some limit. Because statistical studies regarding arrests have shown a disparate impact on racial minorities, it is an unfair practice to ask about arrests older than 10 years and inquiries must include whether the charges are still pending, have been dismissed or led to conviction of a crime involving behavior that would adversely affect job performance.¹⁵⁴ Certain organizations, such as law enforcement, state agencies and organizations that have direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults are exempt from these restrictions.¹⁵⁵

Similarly, for inquiries concerning convictions to be considered "fair" under Washington's discrimination law, they must concern convictions less than ten years old (from the date of release from prison) and relating reasonably to the job duties.¹⁵⁶ Certain agencies and organizations, e.g., schools and DSHS, are exempt from this requirement.

Housing

Residential Screening: Both public and private housing landlords may look at an individual's criminal history, including juvenile criminal history, before or during their tenancy. A juvenile's criminal history can discredit their entire household from housing. Many landlords rely on tenant

screening services which obtain their information from public records.¹⁵⁷ If a public housing authority wants to terminate a tenant's lease based on information from their criminal history they must first notify the tenant and allow the tenant to dispute the accuracy or relevance of the record.¹⁵⁸

Private Housing: In Washington, landlords are permitted to screen and deny housing to individuals based on criminal history. A private landlord is not permitted to deny housing for discriminatory reasons, e.g., solely because of past drug addiction.¹⁵⁹ But a private landlord may deny housing based on conviction for the manufacture or distribution of a controlled substance¹⁶⁰ or a reasonable belief that an applicant is currently engaged in illegal drug use.¹⁶¹ Also a tenant who is aware of a subtenant, sublessee, resident or anyone else engaging in drug, criminal or gang activity at the rental premise may be evicted from private residential property.¹⁶²

The statutes governing eviction from residential property¹⁶³ allow landlords to evict a person who has been arrested for assault occurring on the premises or unlawful use of a firearm or other deadly weapon on the premises.¹⁶⁴ A landlord also may evict a tenant for engaging in gang or drug related activity or allowing another to engage in such activity on the premises.¹⁶⁵ Different laws apply to mobile home parks and allow eviction for criminal activity which threatens the health, safety or welfare of the tenants.

In Washington, landlords are permitted to screen and deny housing to individuals based on criminal history.

Public Housing: Federal law regulates admission and eviction from housing programs funded through the U.S. Department of Housing and Urban Development (HUD). There are different types of HUD programs¹⁶⁷ generally administered through local Public Housing Authorities (PHAs) like the Seattle Housing Authority. Different housing providers receiving the same HUD funding may have different admission and eviction requirements; however, HUD requires landlords to deny housing for certain crimes. For federal housing laws, juvenile adjudications will be treated as convictions.

Mandatory Lifetime Bans on Admission

- Households which include a registered sex offender, adult or juvenile;¹⁶⁸ and
- Households where a member has been convicted, as an adult or juvenile, of manufacturing or otherwise producing methamphetamine on the premises of a federally assisted housing program.¹⁶⁹

Other Mandatory Bans on Admission

- 3 year ban from the date of eviction against any household which includes an individual who was evicted from federal assisted housing for drug related activity, unless the housing provider determines that the evicted household member has successfully completed a supervised drug rehabilitation program ap-

proved by the PHA or the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).¹⁷⁰

- Households which include a member, adult or juvenile, who the housing provider determines is currently engaged in illegal use of a controlled substance or who the housing provider has a reasonable belief that the household member's pattern of illegal drug use may threaten the health safety or right to peaceful enjoyment of the premises by other residents. For the latter, the housing provider may consider the household member's rehabilitation as evidenced by completing or participating in treatment.¹⁷¹

Discretionary Ban on Admission: A HUD housing provider may exclude any household which includes a member currently engaging in, or has engaged in during a reasonable time before the admissions decision, any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees.¹⁷²

Discretionary Evictions:¹⁷³ Drug related criminal activity by juvenile household members, "on or off" the premises of a public housing project may result in the entire family being evicted since family members may be evicted

for the drug related activity of other household members or guests.¹⁷⁴ There may be an "innocent tenant" defense under Washington law¹⁷⁵ or some municipal codes. For other HUD funded projects, drug related criminal activity "on or near" the premises or any criminal activity that threatens the health, safety, or right to peaceful enjoyment of residents living in the immediate vicinity may result in eviction.¹⁷⁶ Illegal drug use or a pattern of illegal drug use or alcohol abuse that interferes with the health, safety or right to peaceful enjoyment of the premises may result in eviction, although evidence of rehabilitation may be considered.¹⁷⁷

Fleeing felons (people with felony warrants) and probation or parole violators may also be evicted from federally funded housing.¹⁷⁸

Public Benefits

Temporary Assistance for Needy Families (TANF): TANF provides cash benefits and food assistance to families with at least one minor child residing at home, or to an individual who is pregnant.¹⁷⁹ Each family receives cash assistance and food stamps according to a calculation based on income and number of eligible family members.¹⁸⁰

Although state and federal law previously banned both adult and juvenile drug felons from receiving cash assistance under TANF¹⁸¹, as of September 1, 2005, neither juvenile nor adult felony drug convictions affect TANF eligibility in Washington State.¹⁸² Food stamps are also no longer affected by drug convictions.¹⁸³

Detention/Institution Time and TANF:

If a juvenile is detained for longer than 90 days, the family will not receive TANF assistance for them.¹⁸⁴ Treatment in a substance abuse facility does not trigger ineligibility and is treated as a “temporary absence” for less than 90 days.¹⁸⁵ If the caretaker fails to report the child’s absence within five calendar days from the date caretaker first learns the child will be absent for more than 90 days, they will be ineligible for cash benefits for one calendar month.¹⁸⁶

Fleeing Felons: Juveniles with outstanding felony warrants or outstanding warrants issued as a result of parole or probation violations are ineligible to receive cash or food assistance.¹⁸⁷

Social Security Income: Many juveniles qualify for SSI and receive it through a representative payee. Juvenile adjudications will not affect a juvenile’s eligibility to receive these federal benefits.

Traveling to Canada

Canadian border officials at the Washington border have the ability to run criminal history checks and may deny entry to individuals based on “inadmissible” criminal history; however, juvenile adjudications should not bar entry to Canada. Under Canadian law, a foreign national may be inadmissible to Canada for, among other reasons, “committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.”¹⁸⁸ Inadmissibility under

this provision excludes offenses under the “Young Offenders Act,”¹⁸⁹ which is the equivalent of the Juvenile Justice Act. Therefore, juvenile adjudications should not bar a person’s entrance into Canada.

Juvenile Sex Offenses

In Washington, juveniles convicted of sex offenses or kidnapping offenses as juveniles are subject to the same sex offender and kidnapping registration and notification requirements as adults.¹⁹⁰ They are required to register as sex offenders for sex offenses committed in Washington or in another state.¹⁹¹ Knowingly failing to register or failing to notify the sheriff of a changed name or changed residence is a crime.¹⁹² The duty to register for a juvenile sex offense does not “go away” when the person becomes an adult.

End of the Duty to Register as a Sex Offender: A person convicted of a juvenile sex or kidnapping offense may be relieved of the duty to register as a sex offender by either petitioning the court or, under certain circumstances, by the passage of time.

•Petitioning the Court

- o Juveniles 15 years or older at the age of their offense may be relieved of the duty to register at any time by petitioning the court and showing, with clear and convincing evidence, that future registration will not serve the purposes of the registration laws.¹⁹³
- o Juveniles under 15 years old at

the age of their offense may be relieved of the duty to register if they (1) have not been adjudicated of any additional sex or kidnapping offenses during the twenty-four months following adjudication for the offense giving rise to the duty to register, and (2) prove by a preponderance of the evidence that future registration will not serve the purposes of the registration laws.¹⁹⁴

These provisions do not apply to juveniles prosecuted as adults.¹⁹⁵

• **Expiration of Duty to Register by the Passage of Time**

o Class A sex or kidnapping felonies. A person convicted as a juvenile must register forever unless relieved of the duty to register by petitioning the court as set forth above.¹⁹⁶

o Class B sex or kidnapping felonies. A person convicted as a juvenile may be relieved of the duty to register by petitioning the court or the duty to register will end if the juvenile has no prior sex or kidnapping offenses and has spent 15 consecutive years in the community without being convicted of any new offenses.¹⁹⁷

o Class C or an attempt to commit a Class C sex or kidnapping felony. A person convicted as a juvenile may be relieved of the duty to register by petitioning the court or the duty to register will end if the

juvenile has no prior sex or kidnapping offenses and has spent 10 consecutive years in the community without being convicted of any new offenses.¹⁹⁸

Effect of the Duty to Register:

Sex offender registration will result in various levels of community notification depending upon the person's risk level and the discretion of the county sheriff. The law requires some level of notification/public disclosure of sex offender information and permits other disclosure at the discretion of the county sheriff.

Risk Levels: All juveniles convicted of sex or kidnapping offenses are assigned a risk level of I, II or III by the Department of Social and Health Services, through the Juvenile Rehabilitation Administration (JRA). Levels I, II and III indicate a low, moderate or high risk of re-offense in the community at large.¹⁹⁹

Once a juvenile is released to the community, the sheriff of the county where the juvenile resides must assign a risk level after considering the level assigned by JRA. If the sheriff makes a decision to change the offender's risk level, the sheriff must give notice to JRA with reasons for the change in classification. Notice of the change must also be given to the Washington Association of Sheriff and Police Chiefs (WASPC).²⁰⁰ There are no statutory criteria for determining when a risk level should be changed by the county sheriff and no statutory procedures for an offender to request a change in risk classification.

Notification: For any juvenile convicted of a sex, violent or stalking offense, no later than 30 days prior to discharge, parole, release, leave or transfer to a community residential facility, JRA must send written notice to:

- The chief of police of the city where the juvenile will reside;
- The sheriff of the county where the juvenile will reside;
- The public or private school board of the district where the juvenile will attend or last attended school;
- The victim, if the victim requested notice in writing;
- Any witnesses who testified against the juvenile, if the witnesses requested notice in writing;
- Any person specified in writing by the prosecuting attorney.²⁰¹ Notices to law enforcement must include at a minimum, the identity and criminal history behavior of the offender and the department's risk level classification.²⁰²

For Level III sex offenders, the county sheriff where the offender is registered must publish notice in at least one "legal newspaper with general circulation in the area of the sex offender's registered address or location." The sheriff may also provide notice to the public at large through community notification meetings, fliers,

etc. For sex offenders classified as Level I and II, the sheriff must disclose "relevant" information to "other appropriate law enforcement agencies" and may disclose information upon request to the victim, witnesses or neighbors of the offender. For Level II offenders, the sheriff may also disclose information to, among others, public and private schools, day care centers, public libraries, and organizations serving women, children and vulnerable adults that are near where the offender will reside or will be regularly found.²⁰³

*Levels I, II and III indicate a low, moderate or high risk of re-offense in the community at large.*¹⁹⁹

Sex Offender Websites

- State Website: Since 2004, WASPC maintains a searchable statewide sex offender website, which includes juvenile sex offenders, The Washington State Sex Offender Information Center.²⁰⁴ The website posts the following information about Level II and III registered adult and juvenile sex offenders:
 - o Photograph;²⁰⁵
 - o Identifying information;
 - o Conviction/adjudication information – without detail (no date of offense, nature of crime, or age of victim);
 - o Address within a block, e.g., "85XX N. 100th St.
- County Websites: At the time of this article, some county sheriffs in Washington continue to maintain sex offender websites pursuant to RCW 4.24.550(4) while others are

phasing them out. A list of all of the counties websites may be accessed through the WASPC website.²⁰⁶ Individual counties vary in the amount of information they provide on their sex offender websites. For example, some counties describe the offenders' offense in detail and some counties list names of Level I sex offenders, etc.

School Attendance and Notification:

A juvenile found guilty of a sex offense will not be allowed to attend the school attended by the victim or their siblings.²⁰⁷ If a juvenile is enrolled in school and convicted of a sex offense, the court must notify the principal of the student's school of the disposition of the case, after first notifying the parent or legal guardian that the notification will be made.²⁰⁸ The principal shall then notify all of the student's teachers and anyone who supervises the student or "for security purposes" should be aware of the student's criminal record.²⁰⁹ This requirement applies only to students enrolled in school at the time of disposition.

Juvenile sex offenders admitted to or employed by a public or private institution of higher education must notify the sheriff of their county of their intent to attend the institution or begin employment within ten days of enrolling/acceptance or by the first business day after arriving at the institution, whichever is earlier.²¹⁰

Effective September 1, 2006, juveniles required to register as sex offenders must notify the sheriff of their county of their intent to attend any public or private school

within 10 days of enrolling or prior to arriving at the school, whichever is earlier. The sheriff is then required to notify the principal of the school.²¹¹ The principal is required to notify all of the student's teachers and any others who supervise the juvenile or "for security purposes" should be aware of the juvenile's record, if the juvenile sex offender is classified as risk Level II or III. For Level I offenders, the principal must provide information only to school personnel who "for security purposes should be aware of the student's record."²¹²

Foster Children

Juveniles in the State's custody as foster children, i.e., dependent children, may face additional consequences related to criminal adjudications. A foster child's criminal history may affect where that child may be placed, for example, whether they will be placed in a foster home or in a group home. Dependent children who are charged with sex offenses may be considered "sexually aggressive youth" requiring specialized placement even if not convicted of a sex offense.²¹³

Parental Responsibility

Civil Liability for Shoplifters: In the case of a minor who shoplifts, a parent or legal guardian is liable for the cost of the stolen goods (not more than \$500), penalties between \$100-\$200, attorney's fees and court costs of the victim.²¹⁴ The minor, however, can be liable for restitution to parents who pay these penalties.²¹⁵

Civil Liability for Malicious Mischief: Parents are liable in civil damages up to

\$5,000 for their minor child's malicious destruction of property or malicious injury to a person if the child is living with them. This does not limit civil damages that might arise from the parents' own negligence.²¹⁶

Attorney Fees: The court may order parents, legal guardians or juveniles to pay, as they are able, for the costs of publicly funded counsel after a juvenile disposition, modification, or after the state prevails on an appeal.²¹⁷

Costs of Incarceration: The court may order the parent or legal custodian to pay in whole or in part for the costs of "support, treatment, and confinement of the child."²¹⁸

Diversion Costs: Parents or legal guardians must pay, as they are able, for the cost of diversion services.²¹⁹

Endnotes

1. RCW 13.04.240 (2005).
2. RCW 13.04.011(1) (2005).
3. RCW 9.94A.030(11) (2005).
4. RCW 13.30.050 (2) (2005).
5. *State v. Varga*, 151 Wash.2d 179, 86 P.3d 139 (Wash. Mar 18, 2004); RCW 9.94A.525 and RCW9.95A.030, Laws of 2002, ch. 107, § 1.
6. National Center for Juvenile Justice, citing Szyman-ski, L. Confidentiality of Juvenile Delinquency Hearings, NCJJ Snapshot 5(9), Pittsburgh, PA: National Center for Juvenile Justice, 2000, at <http://ncjj.servehttp.com/NCJJWebsite/faq/faq.htm>. The other eight states are Arizona, Idaho, Iowa, Kansas, Michigan, Montana, New York, Oregon.
7. <http://www.courts.wa.gov/jis/>.
8. RCW 10.97.050 (2005); RCW 10.97.100 (2005); RCW 43.43.838.

9. "Juvenile justice or care agency" means any of the following: "Police, diversion units, courts, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of family and children's ombudsman, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415." RCW 13.50.010(1)(a) (2005).

10. RCW 13.50.010(6) (2005).

11. *State v. Noel*, 5 P.3d 747, 749, 101 Wn. App. 623 (Wash.App. Div. 2, 2000).

12. "To seal means to protect from examination by the public or unauthorized court personnel." A record can be completely or partially sealed. The existence of a sealed file, unless statutorily protected, is still viewable by the public, but is "limited to the case number, names of the parties, the notation 'case sealed,' the case type in civil cases and the cause of the action or charge in criminal cases." 2 Wash. Prac., Rules Practice GR 15 (6th ed.).

13. RCW 13.50.050(11-12) (2005).

14. RCW 13.50.050(14) (2005).

15. RCW 13.50.050(16) (2005).

16. RCW 13.40.050(12) (2005). Pursuant to a recent Division II case, pre-1997 juvenile class A and sex offenses may be sealed if the juvenile was eligible to seal, i.e. the juvenile had spent 2 years crime-free in the community, prior to the legislative amendment in 1997. *State v. D.S.*, ---Wash.App.---, Div. 2, July 12, 2005 following *State v. T.K.*, 139 Wash.2d 320, 987 P.2d 63 (1999).

17. RCW 10.97.030(2) (2005).

18. RCW 10.97.060 (2005); WAC 446-16-025 (2005); RCW 13.50.050(17).

19. RCW 13.50.050(17) (2005).

20. RCW 13.50.050(22).

21. RCW 10.97.060 (2005).

22. *Id.*

23. 18 U.S.C. § 5038(a) (2005).

24. 18 U.S.C. § 5038 (2005).

25. Matter of Ramirez-Rivero, 18 I. & N. Dec. 135 (B.I.A. 1981); Matter of Devison, 22 I. & N. Dec. 1362 (B.I.A. 2000).
26. INA § 8 USC 1182(a)(2)(C).
27. INA § 8 USC 1227(a)(2)(E)(ii).
28. INA § 8 USC 1158.
29. INA § 8 USC 1101(a)(27)(J).
30. JRA Bulletin 38, § 38-400(1)(2) (interpreting RCW 10.70.140 to apply to juveniles as well as adults and therefore require reporting the juvenile to ICE).
31. JRA Bulletin 38, § 38-400 (6).
32. INA § 8 USC 1182(a)(1)(A)(iv).
33. INA § 8 USC 1227(a)(2)(B)(ii).
34. RCW 13.40.020(22) (2005).
35. RCW 7.68.035(b) (2005).
36. RCW 13.40.145 (2005).
37. Unlike the 12% interest rate assessed on adult legal financial obligations, See RCW 10.82.090 (2005), the Juvenile Justice Act, RCW 13.40, does not provide for interest on legal financial obligations. Collection fees may be imposed. See e.g., King County Code 4.71.160 (Ord. 13995 § 2, 2000).
38. RCW 13.40.020(22) (2005).
39. State v. Hiatt, P3d 2005 WL 1528872, (Wash. Jun 30, 2005).
40. RCW 13.40.190(1) (2005).
41. Id.
42. RCW 13.40.192 (2005).
43. RCW 13.40.0357 (2005).
44. RCW 13.40.200(4) (2005).
45. RCW 13.40.192 (2005).
46. RCW 7.68.035(b) (2005); RCW 13.40.200(4) (2005).
47. RCW 13.40.192 (2005); RCW 13.40.198 (2005).
48. RCW 13.40.145 (2005).
49. Id.
50. RCW 66.44.365 (2005).
51. RCW 69.50.420 (2005).
52. RCW 69.41.065 (2005).
53. RCW 69.52.070 (2005).
54. RCW 13.40.265 (2005) and RCW 9.41.040(5) (2005).
55. RCW 46.20.265 (2005).
56. See RCW 46.61.5055 (2005) for penalty schedule driving under the influence of alcohol.
57. See RCW 46.61.502 (2005) (DUI), RCW 46.61.504 (2005) (Physical Control).
58. RCW 13.40.265 (2005).
59. RCW 46.20.265 (2005).
60. RCW 46.20.285 (2005).
61. RCW 46.20.285 (2005).
62. Id.
63. RCW 46.61.500, 530 (2005); RCW 46.20.285 (2005).
64. RCW 46.20.285 (2005), RCW 46.52.020 (2005).
65. RCW 46.20.342 (2005).
66. RCW 46.61.024 (2005).
67. RCW 46.61.685 (2005).
68. RCW 46.61.527 (2005).
69. RCW 13.40.265 (2005).
70. RCW 13.40.080(14) (2005).
71. Wash. AGO. 1990, No. 10 citing RCW 13.40.080(11).
72. RCW 13.40.265 (2005).
73. RCW 46.20.075 (2005).
74. RCW 46.20.075(e)(f) (2005).
75. RCW 46.20.005 (2005).
76. RCW 46.20.317 (2005).
77. RCW 46.20.342 (2005).
78. RCW 46.20.391 (2005).
79. RCW 13.50.050(7) (2005).
80. RCW 13.04.155 (2005).
81. Id.
82. RCW 28A.600.010, 020, 040 (2005).
83. RCW 28A.600.020(5) (2005).
84. RCW 28A.600.420 (2005).
85. RCW 28A.600.460(2) (2005).
86. RCW 28A.600.460(3) (2005).
87. Id.
88. RCW 28A.600.455 (2005).
89. RCW 9A.46.120 (2005).
90. RCW 28A.600.020(5)(a) (2005).
91. WIAA Policy 18.22; WAC 392-183A-015 (2005).
92. WIAA Policy 18.22.2.
93. Id.
94. See e.g., Seattle Public Schools Athletic/Activity Sub-

stance Use Policy, www.seattleschools.org/area/athletics/substance.pdf. Under Seattle School District policy a student caught selling or distributing any quantity of illegal drugs, counterfeit drugs or controlled substances will be excluded from athletic participation for 1 calendar year and law enforcement will be contacted. A student caught in possession, use, distribution, transmittal, or under the influence of any drug or counterfeit drugs will be immediately excluded from the sports team for 20% of the contests, but not practice. If the student and parents do not agree to participate in assessment and approved substance abuse education then they will be excluded from participation in athletic events for one calendar year.

95. See e.g., Tacoma School District Regulation 2151R, <http://www.tacoma.k12.wa.us/schoolboard/policies/2151R.pdf>.

96. The University of Washington, Western Washington University, Washington State University and the University of Oregon do not ask about prior convictions/ adjudications on their applications.

97. RCW 43.43.842 (2005).

98. For example, Gonzaga and Seattle Pacific Universities ask about a student's criminal history on their applications. The University of Puget Sound and Whitman College do not ask applicants about criminal history but will consider it if it is revealed through recommendations or other sources.

99. 34 C.F.R. §668.40 (a)(2) (2005).

100. See Federal benefits found under 20 U.S.C. §1070 et seq. and 42 U.S.C. §2751 et seq.; Higher Education Act, 20 U.S.C. §1091(r)(1).

101. 20 U.S.C. § 1091(r)(2).

102. For information on H.R. 1184 and efforts to amend the HEA, go to www.raiseyourvoice.com.

103. RCW 9.41.040; 042 (2005). Some permissible circumstances include, among others, at an authorized shooting range, hunting with a valid license, on his or her parent's property with parental consent or as a member of the armed forces.

104. 18 U.S.C. § 922(x) (2005).

105. 18 U.S.C. § 922(g) (2005).

106. RCW 9.41.040(1), 9.41.047 (2005).

107. RCW 9.41.040 (2005).

108. RCW 9.41.041(b) (2005).

109. *Id.*; *State v. Masangkay*, 121 Wash. App. 904, 91 P.3d 140 (Div. 1 2004), petition for review granted, 153 Wash.2d 1017, 108 P.3d 1228, March 1, 2005.

110. *Id.*

111. 18 U.S.C. 922(g).

112. 18 U.S.C. 921(a)(20).

113. *State v. Wright*, 88 Wash. App. 683, 946 P.2d 792 (Div. 1 1997), *State v. McKinley*, 84 Wash. App. 677, 929 P.2d 1145 (Div. 1 1997).

114. RCW 9.94A.030(11) (2005); RCW 13.04.011(1) (2005); *See In the Matter of JUVENILES A, B, C, D, E*, 121 Wash.2d 80, 847 P.2d 455 (1993) (holding juveniles found to have committed sex offenses must submit to HIV testing under RCW 70.24.340(1)(a) and finding "Numerous other statutes, including sections of the Sentencing Reform Act of 1981, RCW 9.94A, and the Juvenile Justice Act of 1977, RCW 13.40, use "convicted" to reference both adult and juvenile offenders."); But see also, *U.S. v. Walters*, 359 F.3d 340 (4th Cir.(Va.) Feb 20, 2004) (Virginia law finding a juvenile delinquent was not a "conviction" for purposes of the federal firearms statute).

115. 18. U.S.C. 5031-5042 (2005); *U.S. v. Walters*, 359 F.3d at 343.

116. 18 U.S.C. 921(a)(20). However, there are some offenses committed in Washington for which there is no reinstatement process which is recognized by the federal government. Pre-1993, adults and juveniles in Washington did not lose their firearms rights for misdemeanor domestic violence offenses. Therefore, they cannot restore those rights under Washington law. Federal courts have split on whether one can be convicted under federal law where there was no removal or restoration process. *See United States v. Jennings*, 323 F.3d 263 (4th Cir.2003), *cert. denied*, 540 U.S. 1005, 124 S.Ct. 531, 157 L.Ed.2d 412 (2003) (Under South Carolina law DV misdemeanants who did not serve jail time did not lose their firearms rights and therefore could not have them "restored" to

meet the exception under 18 U.S.C. § 921(a)(33)(B)(ii), but see, *U.S. v. Wegrzyn*, 305 F.3d 593 (6th Cir. 2002)(Michigan DV misdemeanor who did not lose firearms rights could not be convicted under federal law).

117. RCW 29A.08.520; RCW 10.64.070(2005) (Requires the clerk of the court to forward notice of felony “convictions” of “defendants” to the county auditor or custodian of voting records.) See also, FAQ section of Washington Secretary of State’s website, www.secstate.wa.gov/elections/voterguide/faq.aspx. Although some ambiguity may exist with respect to juvenile felonies and voting since the definition of “adjudication” and “conviction” have become more interchangeable after amendments to RCW 13.40 and RCW 9.94 in the mid-1990’s, juvenile adjudications cannot remove civil rights which have not attached and where there is no statutory provision for restoration of civil rights following such adjudications.

118. RCW 9.94A.637 (2005).

119. RCW 2.36.070 (2005).

120. 32 C.F.R. § 96.3 (2005).

121. 5 U.S.C. §9101 (2005); 32 CFR § 571.3(c)(2)(i) (2005) Army regulations); See also AR 601-210, §2-11(a).

122. 10 U.S.C. §504, 32 C.F.R. §96.1 et seq (2005). The standards for waivers can be complex and variable. The following information is current as of 6/2005, current information should be obtained directly from a recruiter. The **Army** requires a waiver for applicants with (1) six or more minor traffic offenses (where the fine was \$250 or more per offense); (2) three or more minor non-traffic offenses; (3) two or more misdemeanors; or (4) one or more felonies. See AR 601-210 Chapter 4. The **Air Force** divides offenses into five different categories based on seriousness and requires waivers based on the category, the number of adjudications and the time frame in which the offenses were committed. See “Air Education and Training Command Instruction 36-200,” *Air Force Recruiting*. The **Marines** divide criminal offenses into one of six categories. In general, a waiver is required for: five to nine minor traffic offenses; two to five more serious traffic offenses; two or more Class

1 minor non-traffic offenses; two to nine Class 2 minor non-traffic offenses; two to five serious offenses; or one felony. Individuals with ten or more minor traffic offenses, six or more serious traffic offenses, ten or more Class 2 minor non-traffic offenses, six or more serious non-traffic offenses, or more than one felony are not eligible for a waiver. See Marine Corps Order (MCO) P1100.72. B, *Military Personnel Procurement Manual, Volume 2, Enlisted Procurement*. The **Navy** divides criminal offenses into four categories. Applicants with six or more minor traffic violations, three or more Minor Non-Traffic Violations/Minor Misdemeanors, one or more Non-Minor Misdemeanors, or one or more felonies, require a waiver. See “Comnavcruitcominst 1130.8F,” *Navy Enlisted Recruiting Program*.

123. DOD Directive 1304.26 *Qualification Standards for Enlistment, Appointment and Induction* (December 21, 1993, incorporating change, March 4, 1994).

124. 32 CFR § 571.3 (2005)(Army enlistment and waiver criteria).

125. 10 U.S.C. § 978 (c)(1) (2005) (This section can be waived by the president during a time of war).

126. “Former juvenile offender, who had pleaded guilty to second degree robbery and served sentence in juvenile detention facility, requested “certificate of rehabilitation” less than three years after his release, to reinstate his right to possess firearms so that he could join the Marines.” *State v. Masangkay*, 121 Wash. App. 904, 91 P.3d 140 (Div. 1, 2004) *petition for review granted*, 153 Wash.2d 1017, 108 P.3d 1228 (March 1, 2005).

127. RCW 9.96A.020 (2005).

128. RCW 43.43.834 (2005).

129. WAC 388-06-0110 (2005).

130. RCW 28A.400.303 (2005).

131. RCW 43.43.830(5) (2005).

132. RCW 43.43.842(2005); WAC 388-97-203 (2005)(nursing homes); WAC 388-76-685 (2005) (adult family homes); WAC 388-06-0170 (2005) (access to children).

133. RCW 43.43.830(7) (2005).

134. WAC 388-06-0170 (2005).

135. WAC 388-06-0180 (2005).

136. RCW 28A.400.320 (2005) (school employees); RCW 28A.400.330 (school contractors); WAC 180-20-101 (school bus drivers).
137. WAC 180-86-013 (2005).
138. RCW 18.130.040 (2005).
139. Id.
140. RCW 18.130.180 (2005).
141. The federal laws in this section do not specifically address juvenile adjudications; however, definitions of “conviction” may be broad enough to include Washington juvenile adjudications. Specific statutes should be consulted.
142. 12 U.S.C. § 1829 (2005).
143. 18 U.S.C. § 1033(e)(2) (2005).
144. 29 U.S.C. § 504 (2005).
145. 42 U.S.C. § 1320a-7 (2005).
146. 21 U.S.C. § 335a (2005).
147. 42 U.S.C. § 13726b (2005).
148. 49 U.S.C. § 44935 (2005); 49 U.S.C. § 44936 (2005).
149. See WAC 139-05-220 (2005).
150. WAC 204-91A-060 (2005).
151. WAC 204-93-040 (2005).
152. RCW 72.05.440 (2005).
153. *But see* RCW 46.20.391 (2005) (occupational driver’s licenses).
154. WAC 162-12-140(3) (2005).
155. Id.
156. RCW 49.60 et seq.; WAC 162-12-140(3) (2005).
157. Examples include First Advantage Corporation at www.fadv.com and Tenant Screening Services at www.tenantscreening.com.
158. 24 CFR § 966.4 (2005).
159. 24 C.F.R. § 100.201(a)(2) (2005).
160. 42 U.S.C. § 3607 (2005); 24 C.F.R. § 100.10(a)(4) (2005).
161. 42 U.S.C. § 3602(h)(3) (2005); 24 C.F.R. § 100.201(a)(2) (2005).
162. RCW 59.18.130 (2005).
163. RCW 59.16 et seq. (Unlawful Detainer Statute), RCW 59.18 et seq. (Residential Landlord-Tenant Act).
164. RCW 59.18.130(8)(a) and (b) (2005).
165. RCW 59.18.130(6) and (9) (2005).
166. RCW 59.20 et seq. (Mobile Home Landlord-Tenant Act).
167. These programs include, among others, public housing projects, Section 8 voucher programs and multi-family housing programs (a.k.a. project-based assistance).
168. 42 U.S.C. § 13663 (2005).
169. 42 U.S.C. § 1437n (2005), 24 CFR 966.4(i)(A) (2005).
170. 42 U.S.C. § 13661 (2005), 24 CFR § 982.553 (2005).
171. Id.
172. Id.
173. 24 CFR § 5.851 (2004).
174. *U.S. Dept. of Housing and Urban Development v. Rucker*, 535 U.S. 125, 122 S.Ct. 1230, 152 L.Ed.2d 258 (2002); 42 U.S.C. 1437d(l)(6)(2005); 24 CFR 966.4(12) (2005).
175. RCW 59.18.130(6) (2005).
176. 42 U.S.C. § 1437f(d)(1)(B)(iii) (2005).
177. 42 U.S.C. § 13662 (2005).
178. 42 U.S.C. § 1437f(d)(1)(B)(v) (2005).
179. 42 U.S.C. § 608(a)(1). A “dependant child” is someone under 18 (unless a court order for support exists), not married, self supporting or a member of the armed forces. RCW 74.20A.
180. 21 U.S.C. § 862a. See WAC 388-408-0015 (2005) for who is eligible in a household to receive TANF in Washington.
181. 21 USC §862(b), 21 USC §862(d)(1).
182. E2SSB 5213, passed by the 2005 Washington legislature, effective 9/1/05, amended RCW 74.08.025(4) by restoring drug felons’ rights to cash assistance under TANF.
183. ESB 6411, passed by the 2004 Washington legislature, effective 6/10/04, amended RCW 74.08.025 by restoring felons’ rights to food assistance.
184. RCW 74.08.025 (2005).
185. WAC 388-454-0015 (2005).
186. WAC 388-418-0007(6) (2005).
187. WAC 388-442-0010 (2005). Fleeing felons are ineligible for all of the above (TANF, food assistance, SFA). A fleeing felon is a person who is fleeing to avoid pros-

- ecution, custody or confinement for a crime or an attempt to commit a crime.
188. Immigrant and Refugee Protection Act [Canada], 36(2)(c).
189. Immigration and Refugee Protection Act [Canada], 36(3)(e). The “Young Offenders Act” is the Canadian Statute dealing with juveniles.
190. RCW 9A.44.130 (2005); RCW 13.40.217 (2005) authorizes the release of information to law enforcement agencies and to a website, regarding juveniles adjudicated of sex offenses. RCW 4.24.550 (2005) governs the release of information to a website.
191. Id.
192. RCW 9A.44.130(10), (11) (2005).
193. RCW 9A.44.140(4)(a) (2005).
194. RCW 9A.44.140(4)(b) (2005).
195. Id.
196. RCW 9A.44.140(1)(a) (2005).
197. RCW 9A.44.140(1)(b) (2005).
198. RCW 9A.44.140(1)(c) (2005).
199. RCW 13.40.217(3) (2005).
200. RCW 4.24.550(10) (2005).
201. RCW 13.40.215 (2005).
202. RCW 13.40.217 (2005).
203. RCW 4.24.550(3) (2005).
204. RCW 4.24.550(5) (2005).
205. Whereas Washington is one of the more liberal states regarding displaying juvenile photos, federal law prohibits pictures and names from being given to the public unless the juvenile is prosecuted as if an adult 18 U.S.C. § 5038(e) (2005).
206. <http://www.waspc.org/>.
207. RCW 13.40.160; RCW 13.40.215 (2005).
208. RCW 13.04.155 (2005).
209. Id.
210. RCW 9A.44.130 (2005).
211. SB 2101 *amending* RCW 9A.44.130.
212. Id.
213. RCW 74.13.075 (2005).
214. RCW 4.24.230(2) (2005).
215. *State v. T.A.D.*, 122 Wash. App. 290, 95 P.3d 775 (Div.1 2004).
216. RCW 4.24.190 (2005).
217. RCW 13.40.145 (2005).
218. RCW 13.40.220 (2005).
219. RCW 13.40.085 (2005).

PRESENTATIONS

BEYOND THE CONVICTION
Collateral Consequences of Criminal Convictions

Kim Ambrose
Washington Defender Association

Collateral or Direct?

Sex Offender Registration	COLLATERAL
Mand. Community Placement	DIRECT
Loss of Firearms	COLLATERAL
Immigration	COLLATERAL
Restitution	DIRECT
Habitual Criminal Proceeding	COLLATERAL
Mandatory DNA Sample	COLLATERAL

How long will it stay on my record?

Adult Misdemeanor (non-DV)	3 YEARS
Adult Misdemeanor (DV)	5 YEARS
Juvenile Misdemeanor*	2 YEARS
Adult C Felony	5 YEARS
Juvenile C Felony*	2 YEARS
Adult B Felony	5 YEARS
Class A Felony Juv./Adult	FOREVER

Why Judges Should Know

- Many sanctions faced by offenders are not included in the plea forms or J & S
 - Many sanctions flowing from a conviction will impact other individuals besides the offender
 - Criminal history records created by the courts are easily accessible by the public and should be accurate
 - Sentencing alternatives may mitigate some of the consequences
 - Post-conviction matters can be critical
-

Criminal History Records **Washington State Patrol releases:**

- Conviction information
 - Arrests not leading to conviction under one year old
 - Pending charges
 - For \$10 on the Internet
-

JIS / SCOMIS

Releases

- Conviction and Non-Conviction Data
- Docketing Information
- FREE on the Internet

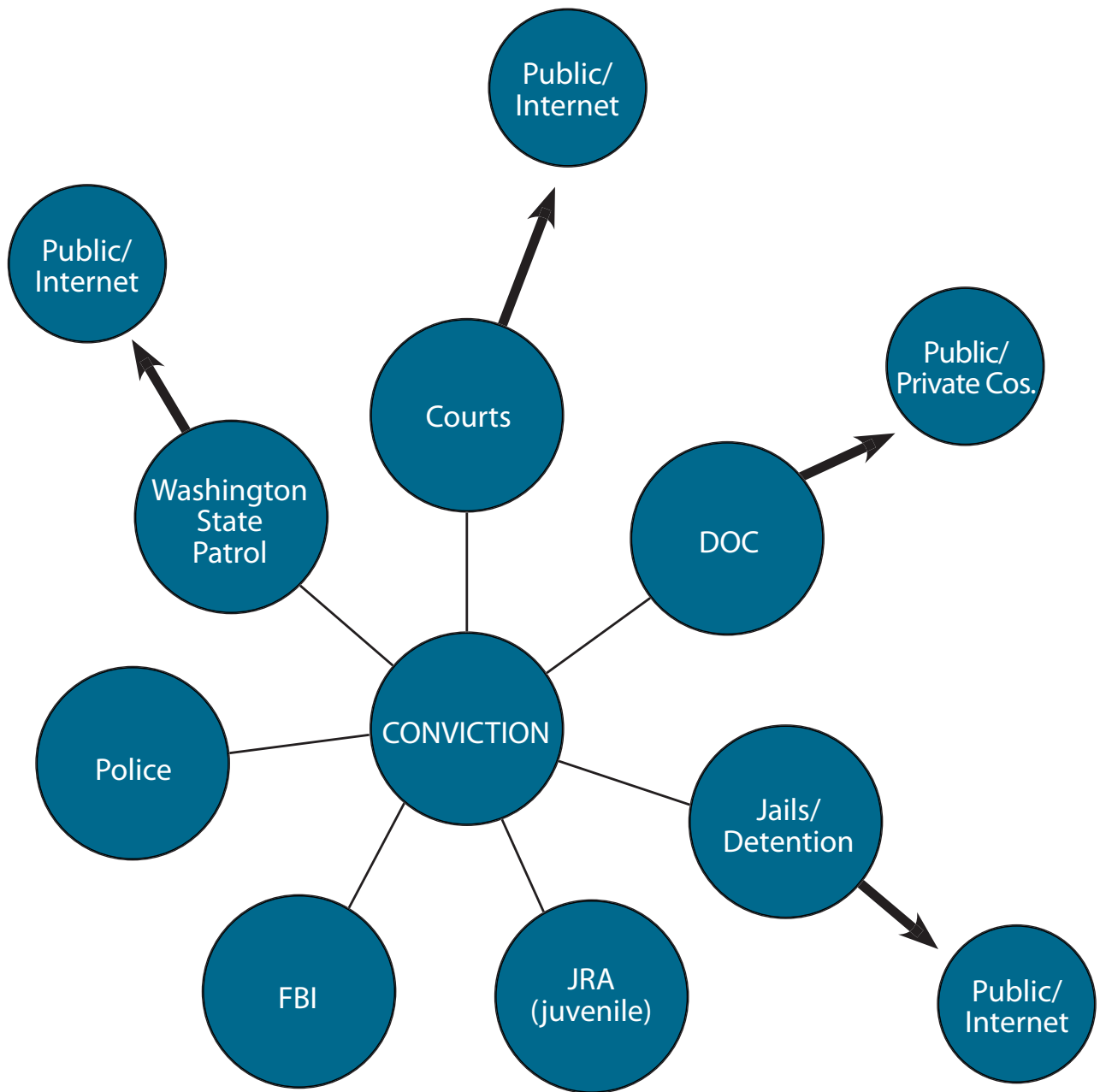


**What kind of case would you like to search for?
would like information on ...**

- Child Support
- Criminal Records
- Dissolution (Divorces)
- Guardianships
- Judgment
- Juvenile Offender
- Landlord Tenant
- Name Change
- Find My Court Date
- Tax Warrants
- Traffic Tickets
- Wills

There are 6 cases case that match your search criteria.

Case Number	Person Name	Superior Court	Participant Code	Case Status
03-8-04464-6	Ahmed, Abdurham Obsa	King	Defendant	Open
05-8-03168-1	Ahmed, Abdurham Obsa	King	Defendant	Open
03-8-04464-6	Ahmed, Ahbdurman	King	Defendant	Open
05-8-03168-1	Ahmed, Ahbdurman	King	Defendant	Open
03-8-04464-6	Ahmed, Abduranmann Opsa	King	Defendant	Open
05-8-03168-1	Ahmed, Abduranmann Opsa	King	Defendant	Open



Legal Financial Obligations (LFO's)

- Restitution
- Fines
- crime victim penalty assessments
- court costs
- county or inter-local drug funds
- court-appointed attorneys' fees and costs of defense
- any other financial obligation that is assessed to the offender as a result of a conviction

INTEREST ACCRUES AT 12 %

LFO Balance 2004

- \$1.2 billion owed
- \$24.65 million collected

Why LFO's are Significant

- Certificate of Discharge/Restoration of Civil Rights obtained ONLY upon FULL payment of LFO's
- Certificate of Discharge triggers waiting period for Vacating Criminal History Record

Certificates of Discharge

- Required for Restoration of Civil Rights under RCW 9.94A.637
 - Issued by DOC if LFO's and other sentencing obligations met before termination of supervision
 - If DOC supervision terminated, offender must petition for certificate of discharge on his/her own
-

Certificates of Discharge Issued Since 1988

- Fewer than 70,000 Certificates of Discharge were issued by DOC
- Over 200,000 persons released from DOC supervision without a certificate of discharge

Source: Washington Department of Corrections

Felony Disenfranchisement in Washington State

- 150,000 Persons are Unable to Vote Due to felony convictions
- 1 in 5 African American men cannot vote because of a felony conviction
- Approximately 10% of Latinos cannot vote because of a felony conviction

Source: ACLU of Washington 2004

Housing Evictions

- Public housing tenants may be evicted for drug activity of guest or household member on or off the premises
 - Other federally subsidized housing may evict for criminal activity on or near the premises
 - Private housing tenants may be evicted if they have knowledge or control of drug activity of guest or household member
 - Treatment may mitigate.
-

Employment

- Restoration of Employment Rights Act, RCW 9.96A
 - Jobs and licenses relating to children and vulnerable adults
 - Federal laws
 - Most employment consequences flow from the accessibility of criminal history records
-

Public Benefits

- Mandatory ban for most public benefits for “fleeing felons”
- Mandatory ban for probation and parole violators
- Mandatory ban on TANF and food assistance for drug felons removed in 2004 and 2005

Social Security Income

- Conviction does not trigger ineligibility
 - “Fleeing felons” are ineligible
 - Jail/prison time can effect payment and/or termination of benefits
-

Right to Possess Firearms

- **Revoked** for all felonies, crimes of domestic violence or involuntarily commitments under RCW 71.05.320, 71.34.090, 10.77
 - **Reinstated** upon petition to the court after 5 years for felonies and 3 years for non-felonies
-

Federal Student Loans

- Conviction for Possession (misdemeanor or felony) – 1 Year Ineligibility
- Conviction for Delivery – 2 Year Ineligibility
- Waivers available for successfully completing treatment

Military Service

- Felony convictions generally preclude service; however, waivers are available
 - Rules vary by branch
-

Family Matters

- Eligibility to provide foster care, child care and to adopt children will be impacted by convictions
 - Dependency/Termination/Child Support proceedings
 - Over 20,000 children in Washington State have a parent incarcerated
-

What Judges Can Do

- Consider collateral consequences as part of the punishment – whether or not you can change them
- Advise defendants/respondents of the collateral consequences of their convictions
- Consider the importance of the accuracy of the conviction and non-conviction records you create
- Consider how barriers to court access can be removed for restoration of civil rights and vacation/sealing of records



TEN SUGGESTIONS FOR DEALING WITH IMMIGRANTS IN THE COURTS

Ann Benson

Washington Defender Association's Immigration Project

1. Avoid making assumptions about or inquiring unnecessarily into citizenship or immigration status.

- Generally not relevant to criminal proceedings;
 - Unnecessarily puts non-citizens at risk;
 - Best practices allow for dealing with the issue without exposing non-citizens to risks;
 - Criminal defense counsel must take the lead in addressing this issue.
-

2. Ensure the advisement of rights to all defendants entering pleas includes the possible immigration consequences, such as deportation.

- Ensure that the right of advisement is meaningful;
- Be aware that deportation is now a virtual certainty for vast majority of criminal convictions;
- Ensure that all defendants, regardless of appearance and language abilities receive meaningful advisement.

3. Appoint competent defense counsel who will address possible immigration consequences.

- Non-citizen defendants must be able to make knowing and informed choices about how to proceed with their criminal case;
 - Work to raise the level of competence with the defense bar to address these issues;
 - WDA's Immigration Project provides technical assistance to defenders to address these issues.
-

4. Use certified court interpreters.

- Be aware that interpreters from the community may reflect community biases;
 - Recognize the importance of defendant's need to effectively communicate with defense counsel outside of and prior to court hearings;
 - Competent interpreters are essential to defendant's ability to understand and make knowing choices about the criminal proceedings.
-

5. Consider the consequences for deportation when sentencing.

- Avoid imposing one year sentences (especially 365 day suspended sentences) whenever possible.
- Minor convictions can result in deportation.
- Stipulation to the facts of a police report in deferred adjudications can also trigger deportation.

6. Be aware that the Dept. of Homeland Security (DHS) acts rapidly to remove criminal aliens from the United States.

- DHS apprehends majority of non-citizens in state and county jails;
 - “Holds” (aka detainers) mean DHS must take custody within 48 hrs. of release from incarceration;
 - Certain procedures – waivers of rights to hearings, mandatory detention – result in rapid removal.
-

7. Regardless whether a person is undocumented, there still may be options for obtaining lawful immigration status.

- Determining these avenues is beyond scope of criminal proceedings;
 - Important not to assume that current illegal status would result in automatic deportation.
 - Just some of the possibilities for obtaining lawful status:
 - Asylum; DV or crime survivor; qualifying family member (including spouse); employment; future legalization program.
-

8. Recognize that immigration status can be a tool used by abusers in domestic violence cases.

- Consider cultural issues for domestic violence victims in civil and criminal cases;
- Be aware that immigration options for obtaining lawful status exist for DV & crime survivors and that aspects of civil and criminal proceedings impact these options.

9. Be sensitive that reporting agencies may have biases (police reports, social services, probation officers, guardian ad litem, etc.).

- In light of increasingly diverse communities, take leadership in raising the level of cultural competence among the agencies in your area;
 - Documents generated by these agencies have direct and important impact on immigration proceedings.
-

10. Be cognizant that deportation of the defendant may not be in the best interest of the victim, defendant, or the family.

- Often defendant is primary source of economic support for partner and children;
- Once deported, all opportunities for obtaining lawful status are effectively eliminated;
- Deportation after criminal convictions will subject those who return to severe sentence enhancements in federal illegal reentry prosecutions.



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Barbara Earl Thomas



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Alejandro Canales



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Edward Kiloh



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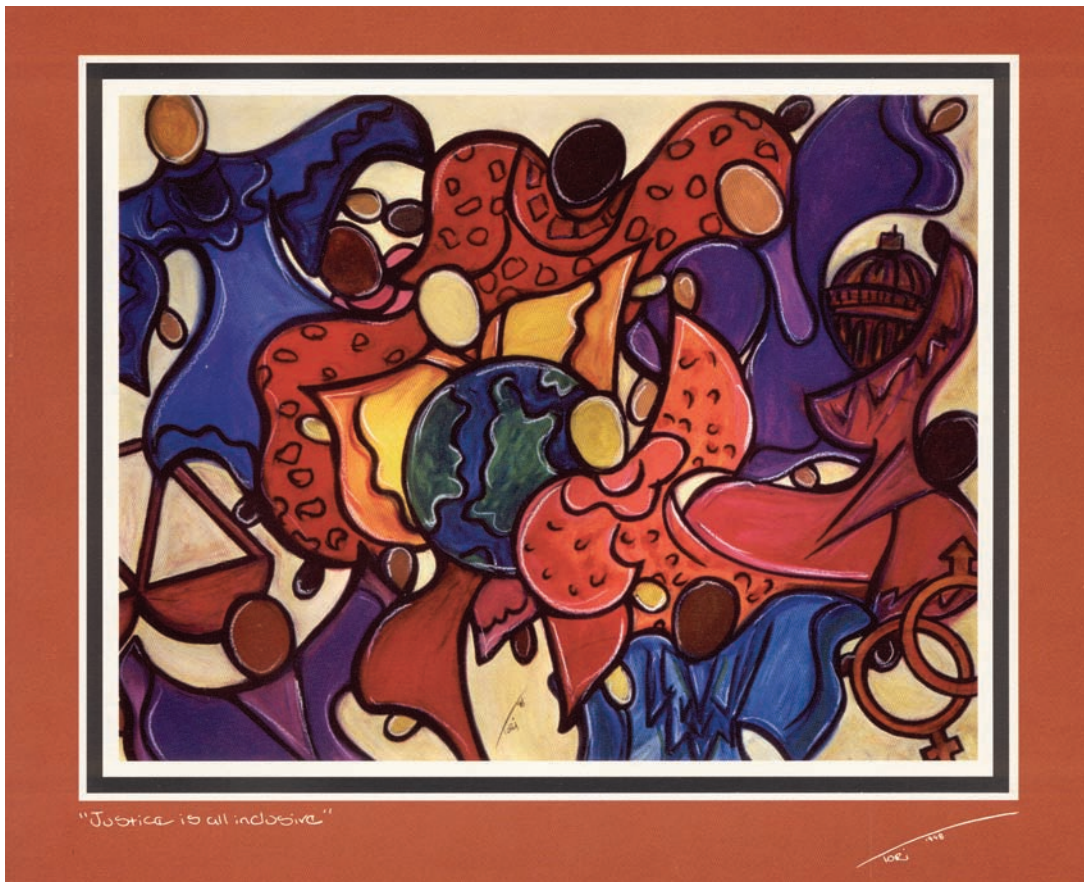
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“JUSTICE IS ALL INCLUSIVE”

Tori



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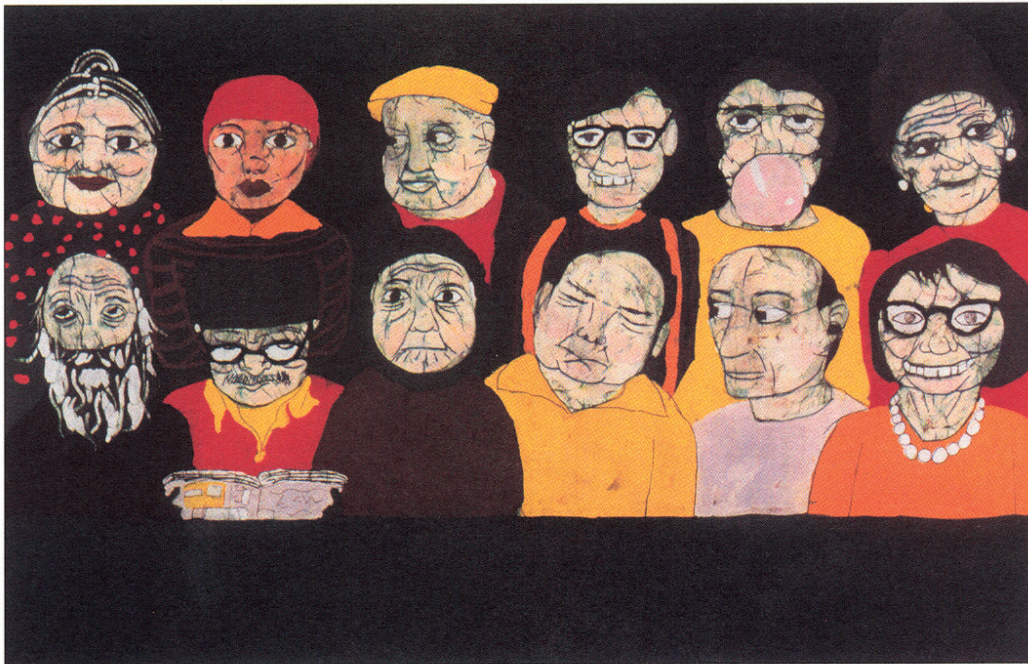
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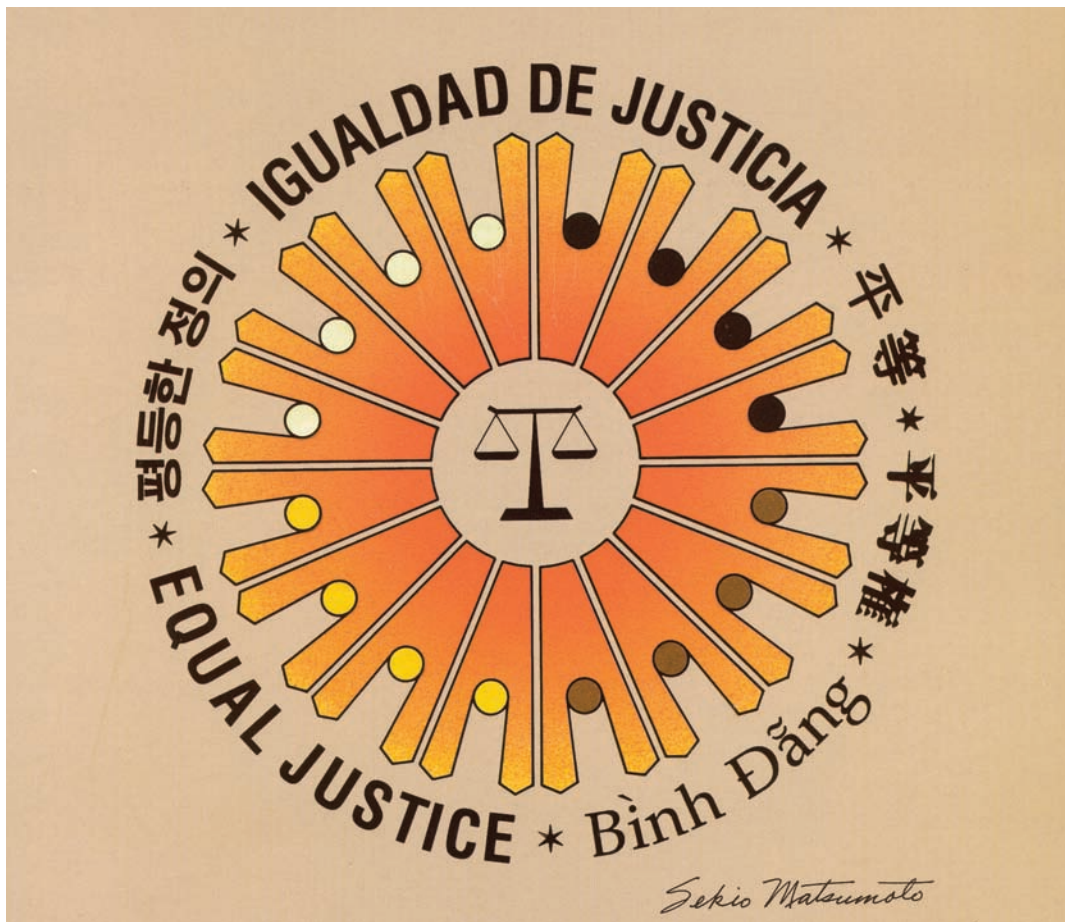
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