WASHINGTON
COURTS
ADMINISTRATIVE OFFICE OF THE COURTS

WASHINGTON STATE SUPREME COURT
GENDER AND JUSTICE COMMISSION

MEETING

FRIDAY, NOVEMBER 5, 2010

RED LION HOTEL
SEATAC, WASHINGTON

WASHINGTON STATE SUPREME COURT
GENDER AND JUSTICE COMMISSION

2010-2011

CHAIR

Honorable Barbara A. Madsen
Washington State Supreme Court

MEMBERS

Ms. Barbara L. Carr
Jefferson County Juvenile Court

Honorable Vickie I. Churchill
Island County Superior Court

Ms. Mirta Laura Contreras
Columbia Legal Services

Honorable Sara Derr
Spokane County District Court

Honorable Joan DuBuque
King County Superior Court

Honorable Ruth Gordon
Jefferson County Clerk

Honorable Cynthia Jordan
Coeur d'Alene Tribal Court

Ms. Judith A. Lonnquist, P.S.

Professor Natasha T. Martin
Seattle University School of Law

Honorable Craig Matheson
Benton County Superior Court

Honorable Alicia H. Nakata
Chelan County District Court

Ms. Leslie W. Owen
Northwest Justice Project

Ms. Yvonne Pettus
Tacoma Municipal Court

Mr. Bernard Ryan
Retired, Attorney at Law

Honorable Ann Schindler
Court of Appeals Division I

Honorable Jane M. Smith
Colville Tribal Court of Appeals

Honorable Chris Wickham
Thurston County Superior Court

Executive Director

Ms. Myra W. Downing
Administrative Office of the Courts

Updated November 2010

WASHINGTON COURTS

GENDER AND JUSTICE COMMISSION

November 5, 2010, 8:45 a.m. – 3:00 p.m.
RED LION HOTEL
18220 INTERNATIONAL BLVD
SEATAC, WASHINGTON

CHIEF JUSTICE BARBARA MADSEN, CHAIR

		TAB
8:45 a.m.	**Call to Order – introductions and approval of minutes**	
	COMMISSION BUSINESS **Staff Report** **Chair Report**	1
	Presentation Beyond Pink Walls: A Call to Action – Barbara Carr (page 63)	2
	Project Reports • State Justice Institute – Myra Downing (page 69) • Domestic Violence Protocols Project (page 75)	3
	New Business – Commission Work Plan (page 91)	4
	Additional Materials • Judge Joan DuBuque Honored for Exemplary Contributions to Domestic Violence Prevention and Coordination (page 97) • Yakima Municipal Court, Following Controversy Stirred in Seattle, Begins Sentencing Policy with Dire Consequences for Immigrants (page 99) • Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders (page 101) • Educating Juries in Sexual Assault Cases (page 117) • Substitute House Bill 2747 – Using Restraints on Pregnant Offenders Brochure (page 125) • HB 2747 Model Policy (page 127)	5
3:00 pm	**Adjournment**	

TAB 1

Washington State Supreme Court Gender and Justice Commission
September 10, 2010
Meeting Minutes

Members In Attendance: Chief Justice Barbara Madsen, Chair, Ms. Barbara Carr, Ms. Laura Contreras, Ms. Jeri Costa, Judge Sara Derr, Ms. Ruth Gordon, Ms. Lisa Hayes, Ms. Grace Huang, Judge Cynthia Jordan, Ms. Judith Lonnquist, Judge Craig Matheson, Ms. Judith Lonnquist, Judge Alicia Nakata, Ms. Leslie Owen, Ms. Yvonne Pettus, Mr. Bernie Ryan, Judge Ann Schindler, and Ms. Myra Downing, staff.

Members Absent: Judge Joan DuBuque, Professor Natasha Martin, Justice Jane Smith, and Judge Chris Wickham

Guests in Attendance: Ms. Heather Morford, Dr. Tom George and Dr. Sarah Veele-Brice.

May 2010 minutes reviewed and approved.

STAFF REPORT

The Commission has not received a final decision and are being very judicious in expenditures.

STOP Grant Programs
The STOP grant programs are proceeding as planned and within their budgets. Funds were set aside for the statewide domestic violence protocol work addressing no-contact and protection orders as well as surfacing potential or existing challenges and seeking cross-jurisdictional solutions.

The following judicial officers attended National Domestic Violence Training:
Enhancing Judicial Skills in DV Cases (April 2010)

- Judge Tam Bui, Snohomish County District Court
- Judge Kathryn Nelson, Pierce County Superior Court
- Judge Peter Strow, Island County District Court
- Commissioner Richard Weber, Okanogan County Superior Court

Continuing Judicial Skills in Domestic Violence (June 2010)

- Judge Michael Evans, Cowlitz County District Court
- Judge Kimi Kondo, Seattle Municipal Court
- Judge David Mitchell, Everett Municipal Court
- Judge Marilyn Paja, Kitsap County District Court
- Judge Linda Portnoy, Lake Forest Park Municipal Court
- Judge Carrie Runge, Benton/Franklin Superior Court
- Judge James Swanger, Clark County District Court

Elder Abuse (October 2010)

- Commissioner Gary Bashor, Cowlitz County Superior Court
- Judge Anna Laurie, Kitsap County Superior Court
- Commissioner Tracy Mitchell, Lewis County Superior Court

IT Governance Model

There is a new governance model for the Judicial Information System Committee (JISC). While the Gender and Justice Commission (Commission) is not part of that model, the ability to review the proposals before they are accepted has been granted. This will allow the Commission to provide input before a project is accepted and increases the likelihood that issues and questions of interest and importance to our work are included in the work plan.

In Her Shoes

Thurston County court has requested that the Commission conduct the "In Her Shoes" exercise for their judicial officers and court staff.

CHAIR REPORT

National Association of Women Judges (NAWJ) District Meeting

The NAWJ District meeting was held in Seattle on June 25-26, 2010. Educational programs were attended by judicial officers and attorneys. The topics were Cyberstalking, "In her Shoes" simulation, and alternative ways to enhance learning for youth participating in the Color of Justice Program, and other law related topics.

NAWJ Scholarship

The Commission secured a scholarship from the National Association of Women Judges. The scholarship will be granted to a student attending Gonzaga Law School.

ACTION: Ms. Myra Downing will create and mail the scholarship packet to Gonzaga Law School to distribute to their students. Chief Justice Madsen, Judge Vickie Churchill, Jeri Costa, Judge Cynthia Jordan, Ms. Judith Lonnquist, and Judge Schindler will review and applications and select the scholarship recipient.

Commission vacancies

Three Commission members have completed their terms so there are three vacancies.

ACTION: Ms. Myra Downing will collect the names of potential members. Chief Justice Madsen, Ms. Laura Contreras, Judge Craig Matheson, Ms. Leslie Owen, and Mr. Bernie Ryan have agreed to review the applications and make a recommendation to the Commission for consideration.

PRESENTATION

Dr. Tom George and Dr. Sara Veele-Brice with the Washington State Center for Court Research (WSCCR) did a presentation on a grant they just received.

They, in collaboration with the Office of Financial Management (OFM), applied for a federal State Justice Statistics grant in the spring. The grant was awarded this summer and is a one-year grant that runs through June 30, 2011. The activities are limited to statistical analyses of existing databases. OFM will be addressing issues related to sex offenders, and the WSCCR will be answering three questions:

1. Are sex offender's specialists or generalists?
2. Does a juvenile offender's criminal career predict adult sexual offending?
3. What, if any, offenses are "gateway" crimes to sexual offending?

ACTION: Ms. Jeri Costa, Judge Matheson, Judge Nakata, Judge Schindler and Ms. Myra Downing will work with Dr. George and Dr. Veele-Brice as a review team for the work of the grant.

PROJECT UPDATE

Domestic Violence Protocols Project

Mr. Bernie Ryan provided an update on the Domestic Violence Protocol Project. A survey was sent to over 1,000 people and approximately 300 replied. As of the Commission meeting, seven regional meetings had occurred. Eight more are planned.

Three topics were on the agenda:

1. Review and recommendations regarding modifications to the No-Contact Form.
2. Gather suggestions for policies that would allow a person who is a victim of domestic violence the ability to request a modification or rescission of a no-contact order.
3. Identification of current practices and possible solutions that would reduce the number of conflicting and/or duplicative no-contact and protection orders.

A group will meet in early October to review the information received from the surveys and during the meetings and make recommendations on the three topics mentioned. Participants will include representatives from the Commission, the trial courts, county clerks, advocates, prosecutors, law enforcement and the defense bar.

State Justice Institute Grant

Judge Ann Schindler provided an update to Commission members. She and Judge Mary Yu will Co-Chair a statewide Immigration Advisory Committee comprised of representatives of the trial court associations, court manager associations, Access to Justice, the County Clerks, and the law schools.

Commission members identified some immigration areas of concern to them:

- Ineffective presentation of counsel;
- Dependency cases – children being taken away;
- People not getting access to interpreters;
- People not knowing the law and mistrusting the legal community;
- Immigration status in domestic violence cases; and
- Immigration and Custom Enforcement (ICE) arresting people in the court room.

The SJI Advisory Committee will be working on addressing these and other issues through education and information sharing.

RECOGNITION OF RETIRING COMMISSION MEMBERS

Chief Justice Barbara Madsen recognized the work of Ms. Jeri Costa, Ms. Lisa Hayes,and Ms. Grace Huang. She stressed how the significant amount of time they volunteered to work on Commission activities and the sharing of their talents clearly increased gender equity and reduced gender bias within the court communities.

STOP Recovery Act (ARRA) Grant

Agency Name: King County District Court – Office of the Presiding Judge Grant Number: IAA09648

Report Prepared by: Judy Garcia, Program Manager Contact Email: judy.garcia@kingcounty.gov

Date of report 9/29/10

Current reporting period:

☐ April 1, 2009 through June 30, 2009
☐ July 1, 2009 through September 30, 2009
☐ October 1, 2009 through December 31, 2009
☐ January 1, 2010 through March 31, 2010
☐ April 1, 2010 through June 30, 2010
xx July 1, 2010 through September 30, 2010
☐ October 1, 2010 through December 31, 2010 – FINAL QUARTERLY REPORT

Quarterly hours worked: 68.75 hrs.

Amount of funding expended during this current reporting period: $ None

Report the total number of full-time equivalent (FTE) staff funded by your STOP Recovery Act Grant during the current reporting period: Number of FTEs created: 14% Number of FTEs retained: _____

Report the status of your STOP Recovery Act Grant activities as of the end of the current reporting period:
Status: xx Ongoing ☐ Completed

Use the space below to provide a brief description of the KEY ACTIVITIES performed during the current reporting period:

KEY ACTIVITIES (all grantees must complete this section).

1. Continued work on data collection and analysis.
2. Maintained communication between King County District Court and Heliotrope Principal and staff about stages in the development of the contract.
3. Recorded 15.5 In-Kind hrs (for $ $953.83 this quarter). Revised 2nd quarter to add 10 hours of technology data collection time (for $671). Note 3rd quarter hours and additional 2nd quarter hours increase the "in kind" total to $8583.97.
4. Recorded 68.75 hours of contractor hours this quarter (equivalent to 14% of 1 FTE).

STOP RECOVERY ACT (ARRA) GRANT

Agency Name: Snohomish County Superior Clerk's Office Grant Number: IAA09649

Report Prepared by: Mary Albert Contact Email: mary.albert@snoco.org

Date of report: 09/24/2010

Current reporting period:

- ☐ April 1, 2009 through June 30, 2009
- ☐ July 1, 2009 through September 30, 2009
- ☐ October 1, 2009 through December 31, 2009
- ☐ January 1, 2010 through March 31, 2010
- ☐ April 1, 2010 through June 30, 2010
- ☒ July 1, 2010 through September 30, 2010
- ☐ October 1, 2010 through December 31, 2010 – FINAL QUARTERLY REPORT

Quarterly hours worked: 462 hours

Amount of funding expended during this current reporting period: $ 11,564.45

Report the total number of full-time equivalent (FTE) staff funded by your STOP Recovery Act Grant during the current reporting period: Number of FTEs created: _____ Number of FTEs retained: 1

Report the status of your STOP Recovery Act Grant activities as of the end of the current reporting period:
Status: ☒ Ongoing ☐ Completed

Use the space below to provide a brief description of the KEY ACTIVITIES performed during the current reporting period:

KEY ACTIVITIES (all grantees must complete this section).
This employee predominantly assists customers who require help obtaining, modifying and or dismissing protection orders related to Domestic Violence, Sexual Assault, Anti-Harassment, and Vulnerable Adult cases. The position provides information, guidance and review of paperwork to individual customers as needed. The position also maintains current forms, brochures and resource lists as necessary.

STOP Recovery Act (ARRA) Grant

Agency Name: Thurston County Superior Office Grant Number: IAA09650

Report Prepared by: Marti Maxwell, Court Administrator Contact Email: maxwellm@co.thurston.wa.us

Date of report: 9/30/10

Current reporting period:

☐ April 1, 2009 through June 30, 2009
☐ July 1, 2009 through September 30, 2009
☐ October 1, 2009 through December 31, 2009
☐ January 1, 2010 through March 31, 2010
☐ April 1, 2010 through June 30, 2010
x July 1, 2010 through September 30, 2010
☐ October 1, 2010 through December 31, 2010 – FINAL QUARTERLY REPORT

Quarterly hours worked: 281

Amount of funding expended during this current reporting period: $ 6723.83

Report the total number of full-time equivalent (FTE) staff funded by your STOP Recovery Act Grant during the current reporting period: Number of FTEs created: 0. Number of FTEs retained: .5

Report the status of your STOP Recovery Act Grant activities as of the end of the current reporting period:
Status: x Ongoing ☐ Completed

Use the space below to provide a brief description of the KEY ACTIVITIES performed during the current reporting period:

KEY ACTIVITIES (all grantees must complete this section).

Amanda Garrett third quarter cost breakdown:

July: salary $1727.10; benefits $271.30, mileage $2

August: salary $1812.67, benefits $250.25, mileage $25.95

September: salary $2281.07, benefits $349.49, mileage $4

Washington State Gender and Justice Commission

FY09 STOP GRANT TO THE COURTS
QUARTERLY PROGRESS REPORT
September 2010

Award No. IAA10405	**Date Report Prepared: October 5, 2010**
Project(s): Staffing the implementation of the King County DV and Child Maltreatment Coordinated Response Guideline Project.	**Report No.: ☐ 1 √ 2 ☐ 3 ☐ 4**
	Reporting Period: 5/1/10 – 6/30/10
	Final Report ☐ Yes √ No
Grantee: King County Superior Court	**Subgrantee: Seattle & King County Department of Public Health**

REPORT and Report Attachments

(1) Project activities during the reporting quarter.

A. Project Oversight Committee:

The quarterly Oversight Committee meeting was convened by Judge Joan DuBuque on August 6, 2010. During this meeting the following activities occurred.

One: The revised 2010 King County DV and Child Maltreatment Coordinated Response Guideline was disseminated to Oversight members. Attachment A of this report summarizes the changes that were made in the coordinated response guideline document and its web link on the King County Superior Courts web site.

Two: The final DV Symposium agenda for the DV and Child Maltreatment Training theme was presented and reviewed. We recognized the tremendous support we received from Seattle University School of Law for help with event planning, registration, subsidizing catering costs, speaker fees, and the in-kind donation of meeting rooms. We acknowledged the tremendous support we received from the Washington State Supreme Court's Gender and Justice Commission VAWA STOP Grant as well as the City of Seattle Human Services, DV and Sexual Assault Prevention Division, which provided funding for staff coordination and support, speaker costs and scholarships. We acknowledged the tremendous support we received from the King County Prosecuting Attorney's VAWA STOP Grant to Law Enforcement/Prosecution was also provided substantial funding staff coordination, speakers, and scholarships.

Three: Oversight Committee members participated in the initial planning of three upcoming training events. Oversight Committee members were asked to help serve as trainers for Dependency CASA volunteers DV training. Judge DuBuque and Commission Jeske agreed to help with this September 24, 2010 training.

Planning began for DV training to King County Superior Court, Unified Family Court (UFC). Two UFC trainings were planned for the Seattle on November 10, 2010 and Kent on November 17, 2010 The training theme for these events will be on "Visitation for Families Experiencing DV". The training will be provided by Judge Joan DuBuque and Tracee Parker from Safe Havens Visitation Center. During these trainings copies of the revised coordinated response guideline will be disseminated and its content reviewed.

Planning began for the February 17, 2011 DV and Dependency Symposium. A draft agenda and training content was developed. The planning for this symposium will continue at the October Oversight Committee Meeting.

B. Project Best Practices Workgroup:

Deborah Greenleaf convened two Best Practices meetings during this project period. A Best Parasites meeting was held

on July 28, 2010. At this meeting Best Practices Members finalized training dates, presenters, and training content for Children's Administration (CA) training on the newly revised coordinated response guideline document and the CA Social Worker's Practice Guide to DV. There also was a case staffing from the White Center CA office. This case again highlighted how difficult it is for CA social worker to obtain information on protection orders and criminal history when they are working with families. It also highlighted the barriers and issues that non-English speaking families face when systems-based providers become involved with DV. Best Practices members debriefed this case staffing process and reported that it really does help to provide good support to the presenters on how to navigate resources and issues in DV cases. One member requested that we have an update on Batterer's Intervention Programs (BIP) effectiveness and should it be ordered as it keeps coming up in our community. A presentation on BiP was then scheduled for the August Best Practices meeting.

A Best Practices meeting was held on August 25, 2010. At this meeting we had two guest presenters discuss Batterer's Intervention Programs (BIP). Terri Kimball from the City of Seattle DV and Sexual Assault Prevention Division gave a presentation on the Gold Standards BIP Project. Terri discussed the goal of this project to improve the quality of BIP services and coordination with other BIP providers in our the region. This work includes the development of procedures, tools, and peer evaluation processes that can be adopted by area BIP providers. Joan Zegree from the University of Washington then gave a presentation on what the evidence tells us about BIP programs. Joan reviewed the development of the state WAC for BIP and what are the essential components of a good BIP. Best Practices Members were highly engaged with this presentation, and after the presenters left they remarked on how valuable this information was. They also reported that and it will help to reinforce with our community partners on how we best can work with BIP for families experiencing DV and child maltreatment.

C. September 9 & 10, 2010 DV Symposium Planning Group and Activities:

Deborah Greenleaf participated in DV Symposium Planning meetings on 8/10/10 and 9/7/10 to coordinate symposium activities. Deborah Greenleaf also met with symposium presenters on 7/13/10, 7/29/10, 8/3/10, 8/9/10, 8/19/10, and 9/2/10 to prepare for their symposium sessions.

Over 400 participants registered for this event and all symposium session were well attended. 106 participants completed an evaluation on the overall symposium. Participants were asked to rate the overall symposium and 74 (75%) rated it as "excellent" and 24 (25%) rated it as "good". No one rated the conference as "fair" or "poor". See Attachment B for a summary of the overall ratings on the DV symposium. All the session evaluations are currently being tabulated and summarized. The evaluation findings will be reported on in the December STOP Grant report. The symposium will be discussed at the October Oversight Committee meeting and with the Symposium Planning Committee late October 2010.

As a follow up to the symposium, Deborah met with Dr. Anne Ganley on 9/24/10 to debrief her symposium session. This consultation was also used to discuss plans and training content for the 2011 DV and Dependency Symposium.

D. Project Presentations and Training:

8/19/10: Presentation by Deborah Greenleaf, Jeff Norman, and Sara Steininger (Eastside DV Project) on project activities and DV and child maltreatment issues to Children's Administration, King East Office. Training was provided to 35 Child Protective Services, Family Voluntary Services, and Children and Family Welfare Social Workers. Each participant received a summary document on the 2010 King DV and Child Maltreatment Coordinated Response Guideline document with the web link and were urged to obtain the document for their reference.

9/23/10: Presentation by Deborah Greenleaf, Jeff Norman, and Chris Meinhold (Broadview Emergency Shelter and Transitional Housing Program) on project activities and DV and child maltreatment issues to Children's Administration, Indian Child Welfare Office & White Center Office. Training was provided to 39 Child Protective Services, Family Voluntary Services, and Children and Family Welfare Social Workers. Each participant received a summary document on the 2010 King DV and Child Maltreatment Coordinated Response Guideline document with the web link and were urged to obtain the document for their reference.

9/24/10: DV Presentation by Judge Joan DuBuque and Commissioner Jeske to the King County Dependency CASA Program volunteers. Twenty-eight Dependency CASA volunteers attended this training, and only three of these participants reported having any prior DV training experience. The participants were well engaged and interested in the training content. Since there was such excellent participation and feedback from the participants, plans are underway to repeat this training in South King County in spring 2011.

9/30/10: Presentation by Deborah Greenleaf, Jeff Norman, and Kellie Rogers (South County YWCA) on project activities and DV and child maltreatment issues to Children's Administration, Martin Luther King Jr. Office. Training was provided to 34 Child Protective Services, Family Voluntary Services, and Children and Family Welfare Social Workers. Each participant received a summary document on the 2010 King DV and Child Maltreatment Coordinated Response Guideline document with the web link.and were urged to obtain the document for their reference.

(2) Any significant problems that developed.

No significant problems occurred during this time period. All project activities were completed as scheduled.

(3) Activities scheduled during the next reporting period.

We plan to continue with the project work plan and convene all project workgroups as outlined in the STOP grant application. We anticipate that we will be able to complete all project activities on time and as designated on the project work plan.

Submitted by:

Name:	**Deborah Greenleaf, RN, MN**
Title:	**Advanced Practice Nurse Specialist;/Project Coordinator**
Phone Number:	**206-263-8375**
e-mail address:	**Deborah.Greenleaf@kingcounty.gov**

FY09 STOP GRANT TO THE COURTS
QUARTERLY PROGRESS REPORT
September 2010 Report Attachments

Attachment A

King County
Domestic Violence (DV) and Child Maltreatment
Coordinated Response Guideline

Many children experiencing child maltreatment concerns have co-occurring DV within their families. In order to improve the safety and well-being of children and DV survivors, and to hold batterers accountable for their abuse, a consistent and coordinated response to DV and child maltreatment is required. A system-wide King County DV and Child Maltreatment Coordinated Response Guideline was developed and released in March 2007 to help agencies and courts understand one another's roles, increase communication and sharing of resources among the agencies, increase collaboration and coordination, and to ensure that the actions of one agency do not compromise the goals of other agencies. In 2009, the guideline was reviewed and revised* by the project's Oversight Committee members and community stakeholders. The revised guideline was released and posted to the King County Superior Court's Website in August 2010. The direct link to the guideline is: http://your.kingcounty.gov/kcsc/docs/DVResponseGuideline.pdf

The guideline includes the following sections:

- Glossary of terms and definitions
- Mandated reporting of child maltreatment
- Agencies roles, responsibilities, and coordination for Children's Administration, Law Enforcement DV Advocacy Programs, Attorney General's Office, Health Care Providers, Prosecutor's Office, and Family Court Services
- Information sharing
- Court security, visitation guidelines, and court collaboration with Children's Administration
- DV screening, DV assessment, safety planning, and service planning, and
- Services for DV survivors, DV batterers, and children

With the 2010 revised guideline, the following information was added and changes were made:

- Roles and coordination of Children's Administration and Law Enforcement in responding to DV and child maltreatment
- Best Practice guidelines for Children's Administration and Law Enforcement visits to DV shelters and housing programs
- Updates to Agencies/courts procedures and resource lists
- In-depth description on roles and services of advocates
- Expanded description on role and scope of Batterer's Intervention Programs

- Updates on Children's Administration procedures in DV screening and service, and web linkage to Children's Administration 2010 Social Worker's Practice Guide to DV
- Web hyperlinks updated regarding changes to Revised Code of Washington DV and child maltreatment statutes and resources
- Reformatting of document for easier navigation (*the desired page comes up when clicking onto table of contents page numbers or Appendices references within the guideline*)

Project Contact: Deborah.Greenleaf@kingcounty.gov or 206.263-8375

* The revision of the King County DV and Child Maltreatment Coordinated Response Guideline was supported through the Washington State Supreme Court Gender and Justice Commission STOP Grant FFY08 # IAA09652 and STOP Grant FFY09 # 1AA10405 for Court Related Purposes. The FFY09 STOP Grant was awarded by the Office on Violence Against Women, U.S. Department of Justice through Grant # 2009-WF-AX-0004

Attachment B

September 9 & 10, 2010
DV Symposium
Overall Symposium Evaluation

This exciting symposium was developed in partnership with the Washington State Supreme Court Gender and Justice Commission's King County DV and Child Maltreatment Coordinated Response Project, Seattle University School of Law, King County Prosecuting Attorney's Office, Northwest Justice Project and City of Seattle Human Services, DV and Sexual Assault Prevention Office. We recognized the tremendous support we received from Seattle University School of Law for help with event planning, registration, subsidizing catering costs, speaker fees, and the in-kind donation of meeting rooms. We acknowledged the tremendous support we received from the Washington State Supreme Court's Gender and Justice Commission VAWA STOP Grant as well as the City of Seattle Human Services, DV and Sexual Assault Prevention Division, which provided funding for staff coordination and support, speaker costs and scholarships. We acknowledged the tremendous support we received from the King County Prosecuting Attorney's VAWA STOP Grant to Law Enforcement/Prosecution was also provided substantial funding staff coordination, speakers, and scholarships

Over 400 participants registered for this event and all symposium session were well attended.
106 participants completed an evaluation on the overall symposium. Participants were asked to rate the overall symposium and 74 (75%) rated it as "excellent" and 24 (25%) rated it as "good". No one rated the conference as "fair" or "poor".

Participants were also asked to rate the symposium materials, but 16 did not answer as they had not had the opportunity to view the CD. Of those who did provide an answer 58 (64%) rated it as" excellent" and 32 (36%) rated it as "good".

There were many positive comments made about the overall conference. They also appreciated having a wonderful venue at Seattle University.

"It was awesome",
"Very balanced and informative",
"I love that we are focusing efforts on the children"
"it was a good use of my precious time"
"I plan on attending next year"
"Did you expect so many to turn out this year? Congratulations!"
"Wish I could have gone to more workshops"
"Everything was really fantastic"
"A wonderful conference... I'm already looking forward to next year"

"Best Conference I have been to in quite a while"

We had several comments about the high quality of speakers and training sessions at such a reasonable cost:

"The presenters have been eager and willing to talk after sessions. That made the sessions exciting and more engaging. Everyone was prepared and the sessions were easy to find."
"The caliber of the speakers was extraordinary."
"I'm so appreciative of the availability of such a quality training offered at such an affordable cost."
"So impressed by the quality of all the speakers"
"Thank you for making my long drive worthwhile. The "bang for the buck" of this conference cannot be beat."

There were numerous positive comments about providing the symposium keynotes and sessions materials on a CD. One participant stated: *"Why is the symposium CD not being delivered to each agency in Washington State?"*

Participants also remarked on how much they enjoyed the interdisciplinary audience. They felt it was helpful to get together as colleagues and to have the opportunity to network and collaborate across systems.

"I find it most helpful to come together as colleagues. It's great to network with one another."
"Great opportunities to collaborate across systems"

Attachment C

MATCH funds for
June – September 2010

Judge Joan DuBuque:

- 7/30/10: 2 hours to plan for August 4 Oversight Meeting and DV Symposium Coordination
- 8/4/10: 2 hours to facilitate project's Oversight Committee Meeting
- 8/9/10: 1 hour to participate in DV symposium "You Be the Judge" Court Panel planning session
- 9/2/10: 1 hour to participate in DV symposium "You Be the Judge" Court Panel planning session
- 9/9/10 – 9/10/10: 10.75 hours to present two sessions and attend the DV Symposium
- 9/24/10: 1 hour 15 minutes to present at King County Dependency CASA DV training
- 9/30/10: 1 hour to prepare for October 6 Oversight meeting

Commissioner Mark Hillman:

- 8/9/10: 1 hour to participate in DV symposium "You Be the Judge" Court Panel planning session
- 9/2/10: 1 hour to participate in DV symposium "You Be the Judge" Court Panel planning session
- 9/9/10 – 9/10/10: 10.75 hours to present one session and attend the DV Symposium

Commissioner Jacqueline Jeske:

- 8/4/10: 2 hours to attend and participate in project's Oversight Committee Meeting
- 9/24/10: 1 hour 15 minutes to present at King County Dependency CASA DV training
- 9/9/10 – 9/10/10: 10.75 hours to attend the DV Symposium

King County Superior Court Commissioners who Attended the September 9 &10, 2010 DV Symposium

10.75 contact hours for each Commissioner listed below:

- Canada-Thurston, Bonnie
- Castilleja, Elizabeth
- Gallaher, Rich
- Garratt, Julia
- Ponomarchuk, Les
- Sassaman, Meg
- Smith, Lori-Kay
- Singleton, Sheila

SCJA EDUCATION SESSION PROPOSAL

Sponsoring Entities: Gender and Justice Commission, Minority and Justice Commission, and Access to Justice Board

Immigration Law and Consequences to Decision Making
Plenary Session (2 – 3 hours)

Identified Need:

Decision making in cases involving non-citizens can pose ethical questions for judicial officers. Some of the following questions arise. With suspended sentences being a common practice, is it acceptable to grant a 364 day sentence in an appropriate immigration case? What does a judicial officer do when a person is convicted of a domestic violence crime which may mean they could be deported? How do courts rectify the Federal and State legal conflicts? What factors does a judicial officer take into consideration when faced with these questions? Can judges provide immigration related certifications for victims of certain crimes in order for them to regularize their immigration status? How should judges address conditions of release or sentencing, or restraint provisions in no-contact or protection orders to reduce witness intimidation or jeopardizing an alleged victim's immigration status? Judicial officers need the time to explore these issues and come up with their own answers.

Describe the Purpose of the Session and Key Issues to be Presented:

The purpose of this session is to pose ethical questions and explore answers based on information from immigration experts and opinions derived from experienced judicial officers. Topics to be covered during the session:

- Similar and different issues based on status –citizens versus non-citizens
- The 364/365 day sentence dilemma issue
- Domestic violence – what is unique in cases involving non-citizens?
- Immigration law remedies and protections for crime victims and the judge's role
- Immigration Enforcement in the courtroom
- How non-citizens involved in the criminal legal system are referred to ICE for detention and removal
- The Do's and Don'ts of immigration issues for Superior Judicial Officers

Faculty

- This session requires and will have a strong and experienced moderator.
- An ICE or DHS representative will be on the panel to provide an overview of their operations and to discuss overlapping ICE and court immigration issues.
- An immigration law expert will provide an overview of issues to consider relating to non-citizen victims of crime, including domestic violence in criminal cases and protection orders.
- An Immigration Judge, a Superior Court Judge, Prosecutor and Defense Attorney will complete the list of presenters.

List what the participant will know or be able to do as a result of this session (outcomes)?

Judicial officers will:

- Articulate the implications of immigration issues in their courts
- Identify the impact of immigration law, policy and practice on their courts
- Discuss ethical considerations that arise in immigration matters

Materials: Are there obvious materials for the session – case law, rules, seminal law review articles, etc.?

Anticipated Cost?	**Do you have funding available, please describe:** All costs will be covered.

DCMJA EDUCATION SESSION PROPOSAL

Sponsoring Entities: DMCJA Diversity Committee and Gender and Justice Commission

In Her Shoes – choice session

Identified Need:

Domestic Violence is a complicated subject. One of the complications is that often the person who is a victim of domestic violence returns to the batterer and we hear "Why does she keep going back?"

In a normal situation and under normal circumstances it is fair to suggest that a reasonable person would not go back. But these situations are not normal and the need to know why the person may go back or may never leave is critical for all those who come into contact with domestic violence victims and perpetrators.

Describe the Purpose of the Session and Key Issues to be Presented:

Through a facilitated exercise, participants will experience the ups and downs a victim of domestic violence faces over a course of many years. Judicial officers will have the opportunity to be "in her shoes" and live her life, in a very compressed period of time.

Faculty

- This session requires and will have a strong and experienced /moderator / facilitator to process the exercise to ensure maximum learning.

List what the participant will know or be able to do as a result of this session (outcomes)?

Judicial officers will:

- Experience being a victim of domestic violence and the subsequent challenges to decision making
- Increase their understanding and appreciation of the dynamics of domestic violence
- Discuss how they will apply their learning to their work in the courts

Materials: Are there obvious materials for the session – case law, rules, seminal law review articles, etc.?

Anticipated Cost?	**Do you have funding available, please describe:** All costs will be covered.

DCMJA EDUCATION SESSION PROPOSAL

Sponsoring Entities: DMCJA Diversity Committee

Understanding the Misunderstood

Identified Need:

Judicial officers make decisions. Those decisions are based on taking information that is provided and filtering through it to come up with a just response. The filtering process is a conscious and subconscious action. The subconscious filtering is largely based on one's life experiences and the resulting beliefs and attitudes.

It is essential for judicial officers to continually assess the impact of their subconscious filtering system.

Describe the Purpose of the Session and Key Issues to be Presented:

The purpose of this session is to provide judicial officers the opportunity to explore possible filters they may have that they are not aware of or realize impact their decision making.

Judicial officers will guide them through several scenarios or vignettes that provide an exploration of cultural situations that are not from the predominant culture.

Faculty

- This session requires and will have a strong and experienced /moderator / facilitator.
- Several judicial officers will be involved in providing and presenting the scenarios.

List what the participant will know or be able to do as a result of this session (outcomes)?

Judicial officers will:

- Identify the impact of filtering in their decision making practices
- Discuss practices that can continue an ongoing exploration of their own filters.

Materials: Are there obvious materials for the session – case law, rules, seminal law review articles, etc.?

Anticipated Cost?	**Do you have funding available, please describe:**
0	All costs will be covered.

DCMJA EDUCATION SESSION PROPOSAL

Sponsoring Entities: Gender and Justice Commission, Minority and Justice Commission, and Access to Justice Board

Chapter Two: Immigration Law and Consequences to Decision Making
Plenary Session (2 – 3 hours)

Identified Need:

One very specific topic was covered at the 2010 DMCJA conference addressing issues for the courts because of the Padilla v. Kentucky decision. It was evident then based on the amount of audience participation as well as comments and continued dialogue on immigration issues that another session is warranted.

Decision making in cases involving non-citizens can pose ethical questions for judicial officers. Some of the following questions arise. With suspended sentences being a common practice, is it acceptable to grant a 364 day sentence in an appropriate immigration case? What does a judicial officer do when a person is convicted of a domestic violence crime which may mean they could be deported? How do courts rectify the Federal and State legal conflicts? What factors does a judicial officer take into consideration when faced with these questions? Can judges provide immigration related certifications for victims of certain crimes in order for them to regularize their immigration status? How should judges address conditions of release or sentencing, or restraint provisions in no-contact or protection orders to reduce witness intimidation or jeopardizing an alleged victim's immigration status? Judicial officers need the time to explore these issues and come up with their own answers.

Describe the Purpose of the Session and Key Issues to be Presented:

The purpose of this session is to pose ethical questions and explore answers based on information from immigration experts and opinions derived from experienced judicial officers. Topics to be covered during the session:

- Similar and different issues based on status –citizens versus non-citizens
- The 364/365 day sentence dilemma issue
- Domestic violence – what is unique in cases involving non-citizens?
- Immigration law remedies and protections for crime victims and the judge's role
- Immigration Enforcement in the courtroom
- How non-citizens involved in the criminal legal system are referred to ICE for detention and removal
- The Do's and Don'ts of immigration issues for District and Municipal Judicial Officers

Faculty

- This session requires and will have a strong and experienced moderator.
- An ICE or DHS representative will be on the panel to provide an overview of their operations and to discuss overlapping ICE and court immigration issues.
- An immigration law expert will provide an overview of issues to consider relating to non-citizen victims of crime, including domestic violence in criminal cases and protection orders.
- An Immigration Judge, a District or Municipal Court Judge, Prosecutor and Defense Attorney will complete the list of presenters.

List what the participant will know or be able to do as a result of this session (outcomes)?

Judicial officers will:

- Articulate the implications of immigration issues in their courts
- Identify the impact of immigration law, policy and practice on their courts
- Discuss ethical considerations that arise in immigration matters

Materials: Are there obvious materials for the session – case law, rules, seminal law review articles, etc.?

Anticipated Cost?	**Do you have funding available, please describe:** All costs will be covered.

WASHINGTON COURTS
ADMINISTRATIVE OFFICE OF THE COURTS

SUPREME COURT

Commissions, Boards & Task Forces Assessment Work Group

Final Report

August 2010

The Supreme Court Commissions, Boards and Task Forces Assessment Work Group was convened by Chief Justice Barbara Madsen to assess the structure and functioning of various existing judicial entities responsible for ensuring that *inclusion, diversity* and *cross-difference competence* are a judicial system imperative. The committee was asked to determine how to maximize the justice system's effectiveness in eliminating *bias, inequity,* access barriers, *disparate treatment* and *disproportionate outcomes* for certain disadvantaged and underserved individuals, groups and populations as they experience and engage with the justice system. This assessment is meant to serve as a component of the Supreme Court's long-range planning process. This report was prepared and authored by the Committee members listed in Appendix B. If you have any questions regarding this report, please contact:

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Executive Summary

This report presents the analysis and recommendations of a work group convened by The Washington State Supreme Court Chief Justice, Barbara Madsen. The work group was charged with assessing the efforts of ten entities initially identified as having as part of their purpose the reduction and mitigation of bias in the justice system. The entities and the participating individuals are identified in Appendix B. It is clear, based on the work group's review, that Washington State has made strong, often ground-breaking, efforts to identify and eliminate bias in its justice system. This effort has taken courage and leadership.

The changing needs of an increasingly diverse public, and expanding understanding and awareness of bias, compounding bias, inequity, access barriers, disparate treatment and how those may lead to disproportionate justice system outcomes make a reassessment of the current approach an appropriate step to take.

The work group met April 14, May 12, June 2, June 3 and July 7, all in 2010. In addition, a sub-group met with the Chief Justice April 21 for clarification of scope and intent. The work group received and reviewed extensive written material from the original entities, as well as from other relevant Washington entities and the states of California and Georgia. It heard formal presentations from staff, had opportunities for questions and answers, and spent three of its meetings reviewing and analyzing the information provided. The work group considered current structures, values, processes and fiscal concerns relating to justice system efforts in the issues under consideration.

The work group determined there are opportunities for significant improvement in the justice system's ability to ensure inclusion, diversity and cross-difference competence. There has been no overarching direction to the various entities and, as a result, the system's efforts suffer from fragmentation and a significant lack of communication and

collaboration. Some entities lack a formal mission statement and methods of accountability and evaluation of outcomes. The work group found no common system of values or terms underlying the various efforts of the entities to address bias, compounding bias, inequity, access barriers, disparate treatment and disproportionate outcomes. Instead, the work group found an approach best described as "silos" in nature, often as much affected by personality and history as by mission.

The work group recommends, based on its findings, establishment of an entity (Council) to directly address how the justice system can best address the issues noted above.. The Council should consist of the initially identified entities and such additional members as the Council deems appropriate.

The Council should be created by an Order of the Supreme Court and, initially, develop expectations, values, its own mission statement, work plan and measurable outcomes for determination of progress. It should offer support infrastructure for cross-entity integrated coordination, communication and collaboration, consistent with its mission statement, values and outcomes.

The work group recommends that the Court commission an independent review at the two and a half year mark from the Council's creation. The independent review should determine whether reasonable and substantial progress has been made towards achieving Council objectives and goals, and if not, the Court should respond with necessary and appropriate restructuring and reallocation of resources. Afterwards, reviews should continue on a regularly scheduled basis.

II. Final Report

I. Introduction

In early 2010, Chief Justice Barbara Madsen called for an assessment of the structure and functioning of various existing judicial entities responsible for ensuring that *inclusion*[1], *diversity* and *cross-difference competence* are a judicial system imperative.[2]

The purpose of the assessment is to determine how to maximize the justice system's effectiveness in eliminating *bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* for certain disadvantaged and underserved individuals, groups and populations as they experience and engage with the justice system. This assessment is meant to serve as a component of the Supreme Court's long-range planning process.

The Chief Justice convened a group of volunteers (hereinafter 'work group') who are actively engaged in and knowledgeable about various aspects of *inclusion*, *diversity* and *cross-difference competence* to serve on a "Commissions/Task Forces Assessment Project." She asked the work group to:

- review the roles, functions, structures and processes used by entities engaged in work that relates to disadvantaged or underserved populations and the justice system; and
- make appropriate recommendations for strengthening the coherence and coordination of the justice system's capacity to address *bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* in ways that are coherent and coordinated, and that make the most effective and economical use of *resources*. (Note: in this report, '*resources*' is more expansive than fiscal and includes the moral authority of the Court as well as the intellectual, experiential, technical and cultural knowledge of the entities and their staff members).

Consistent with instructions from the Chief Justice, the work group defined its charge broadly—to consider and make recommendations for a more effective framework for the coordination and strategic integration of all justice system activities designed to

[1] Italicized terms are defined in the Glossary.

[2] Access to Justice Board and two of its committees (Technology and Justice without Barriers), Certified Professional Guardian Board, ADA Access & Accommodation Tech Assistance Group, Commission on Children in Foster Care, Gender and Justice Commission, GR27 Family Law Courthouse Facilitator Committee, Interpreter Commission, Minority and Justice Commission and Public Guardianship Committee

identify and eliminate *bias*, inequities, access barriers, *disparate treatment* and *disproportionate outcomes* for persons involved in the justice system based on *social rank* and *status*-related characteristics.

II. Charter

The Chief Justice provided the work group with a charter (Appendix A) that neither assumes nor precludes recommendations for a new model. The work group was encouraged to use the Charter as a starting point and a guideline for deliberation and not as a *limitation*.

III. Work Group

Names and affiliations of work group members appear in Appendix B. Work group members and smaller sub-groups met five times through the period of April 14, 2010 to July 7, 2010.

IV. Education of the Work Group

To initiate the process, the work group members were educated about the scope and nature of the work of various entities identified in the Charter. Extensive briefing materials were provided (Appendix C). A presentation by each of the entities was made, with an opportunity for questions and answers.

The work group also identified a number of entities which, while not included in the Charter, need to be directly and significantly engaged in any coordinated effort to address issues of *inclusion*, *diversity*, *cross-difference competence* and the elimination of bias, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* as a result of *social rank* and *status*-related characteristics.[3] The work group is not certain that all pertinent entities within the justice system that should be included in the recommendations have been identified and follow up on this will be necessary.

The work group also received input from California, Georgia and Washington State's Supreme Court-established Access to Justice Board on how their various justice system entities address issues of *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* (Appendices D, E and F).

V. Findings

This report offers an examination of what has taken place, an analysis of many of the structures and processes established over the past several decades and a proposal

[3] E.g. State Bar Association, Judicial Boards/Commissions, Board for Judicial Administration, Associations of Superior/District/Municipal Courts, and others. See Sec. VI.B

for strengthening the justice system's ability to make good on its commitment to justice for all.

Washington State has a long history of groundbreaking and courageous justice system leadership initiatives to address and redress *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*. The work group acknowledges and commends the work done in this area and the persons dedicated to this task.

In spite of these accomplishments, the work group finds the impediments listed below significantly interfere with the effective and economical use of *resources* currently allocated to justice system efforts to eradicate *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* and to ensure *inclusions*, *diversity* and *cross-difference competence*. These findings are not listed in an order of priority, as they are interconnected and were considered together in the work group's analysis and recommendations.

A. Justice System Leadership Vision and Leadership Articulation

1. Leaders have not consistently required or established unifying and commonly understood values, expectations and definitions governing justice system efforts in the areas of *inclusion*, *diversity* and *cross-difference competence*.

2. Many of the entities have been as influenced by the personalities of the individuals who lead them as by their organizational mission.

3. Some of the entities lack mission statements, long-range work plans, and mechanisms for evaluation of *outcomes*. This limited the work group's ability to make adequate assessments of the current situation.

4. A more clear and specific articulation of the *social rank* and *status*-characteristics that can lead to *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* is necessary to give meaningful operational effect to the goal of *inclusion*, *diversity* and *cross-difference competence* in the justice system.

B. Expanding Understanding of *Bias* and its Effects, and an Appropriate Response

1. Over the past several years, the level of understanding and awareness about the effects of *social rank*, *status* and other characteristics, *bias* and *compounding bias* on members of the public and on the justice system's capacity to carry out its mission have greatly expanded in response to major, dynamic transformations in society.

2. The work group defined *social rank* and *status*-related characteristics that may lead to *disparate treatment* and *disproportionate outcomes* in the justice system as follows. The definition is based on the "*ADDRESSING MODEL.*"[4]

    - Age
    - Disability (developmental)
    - Disability (acquired)
    - Religious beliefs or traditions
    - Ethnicity and race
    - Social or economic class
    - Sexual orientation
    - Indigenous background
    - National Origin
    - Gender

    Other more *mutable characteristics* that may lead to *disparate treatment* or *disproportionate outcomes* include such things as

    - *Familial Status*
    - Geographic isolation
    - *Immigration status*
    - Linguistic barriers
    - Literacy/illiteracy, including digital
    - Political beliefs
    - Level of education

3. The work group recognizes that many members of the community experience *compounding bias* from multiple *social rank* and other characteristics and that *compounding bias* can exponentially increase access barriers, *disparate treatment* and *disproportionate outcomes.*

C. Frameworks and Infrastructure for a Coordinated Effort

1. No coherent or consistent direction regarding the importance of, and need for, regular collaboration exists. As a consequence, justice system entities operate in isolation within the confines of their jurisdictional "*silos*" which are defined as "entities which are clearly defined, self-contained and structurally isolated in ways that may operate to preclude effective

[4] Developed by Dr. Neticia Nieto; ADDRESSING acronym by Pamela A. Hays, "Addressing the Complexities of Culture and Gender in Counseling:, Journal of Counseling and Development, March April 1996, Vol 74 (Appendix G)

integration that promotes coordinated, collaborative efforts toward common goals and objectives." Coordination and collaboration efforts that do occur happen on a sporadic and irregular basis.

2. The lack of a framework by which to coordinate the respective efforts of justice system entities in addressing *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* within the justice system has resulted in lost opportunities to:

    - Maximize synergies, effectiveness and economy of scale;
    - Identify and share best practices;
    - Identify and share knowledge about gaps, redundancies and emerging issues;
    - Make best strategic use of technological advances; and
    - Identify appropriate responses to *compounding bias* dynamics.

3. While most of the entities have demonstrated a strong desire for increased collaboration and cooperation in spite of their unique and differing organizational roles and functions, they commonly acknowledge the lack of a suitable framework for this to happen.

4. Some entities are concerned that excessive forms of collaboration may detract from their specific mission or effectiveness.

D. Structural Issues

1. There is a lack of uniformity and clarity as to the respective authority, level of recognition, roles and functions (such as education, training, research, regulation, coordination, identification of gaps, best practices, emerging issues, etc.) of the various entities that relate to *inclusion*, *diversity* and *cross-difference competence.* This has led to some duplication of effort and unproductive competition. The high degree of confusion is reflected in something as basic as the wide range of organizational titles for the various entities: commissions, task forces, boards, committees, technical assistance groups, etc.

2. The lack of basic organizational structure and mechanism for evaluation interferes with the ability of leaders of the justice system to identify the most comprehensive, effective and economical ways possible to eliminate *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes.*

3. Some entities expressed strong reservations about changes to existing structures based on concerns that the focus and expertise of their respective entities, which may be the only voice in the justice system for their unique, special needs populations, will be diluted by efforts to collaborate and coordinate.

4. Indeed, most entities involved in this assessment process have been charged with serving specific target clienteles with unique defining *social rank* and *status*-related characteristics that contribute to *bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* within the justice system. This has led to each entity primarily focusing on the population(s) within its specific "*silo*." This specific focus can interfere with efforts to effectively identify and address *compounding bias* dynamics. Specific focus can also interfere with the ability of all entities to maximize the strategic leveraging of all available *resources*.

5. All entities involved in the process agreed that a regularly scheduled forum would be a constructive way to strengthen the justice system's capacity to more efficiently address *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*.

E. Resource Allocation/Budgetary and Staffing Issues

1. The justice system budget should reflect a coherent, rational approach to *inclusion*, *diversity* and *cross-difference competence*. However, significant budgetary constraints have hampered efforts to work cooperatively as more tasks have been imposed on a shrinking work force.

2. There are gross disparities in the level of *resources* allocated among and between various justice system entities working to ensure *inclusion*, *diversity* and *cross-difference competence*.

3. These disparities have been influenced by timing, history and personality/political dynamics.

The work group concludes, based on these findings, that there is a need and an opportunity for significant change in the way the justice system as a whole addresses issues relating to *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*. Failure to make significant change will result in continuation of fragmented, inefficient and ultimately immeasurable efforts in this area that do not serve the public as well as is necessary.

Moving forward in change will require the establishment of trust, cooperation and collaboration among all parties, as well as empowerment and *inclusionary* leadership

to achieve common objectives. Progress will be enhanced if all entities have been provided with the opportunity to meaningfully participate in the discussion aimed to bring necessary change so that structural and administrative changes will offer realistic benefits, not only for the populations within their respective jurisdictions and the public, but across the justice system. These two components, the need for change and the need to develop trust among the affected parties, present an opportunity for establishing a process for implementation of the recommendations.

VI. Recommendations

The following recommendations are based on the findings of the work group. The supporting findings are identified in the parentheses following each recommendation.

The work group recommends that the Court enact a comprehensive overarching policy statement on *inclusion*, *diversity* and *cross-difference competence* as a *justice system imperative* and establish a mechanism (herein referred to as "Council") to address the findings and analysis contained in this report. The Council should develop and put in place a consistent and common set of justice system-wide expectations and a support infrastructure to ensure the most cost effective and economical use is being made of all *resources* in efforts to eliminate *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*. (V.A.1)

The work group encourages the Court to act with all due dispatch in establishing the Council, giving due consideration to the efficient use of *resources* to achieve the maximum possible success.

A. Establishment of the Council

The Attached **Draft Order** should be considered for adoption by the Court, establishing *inclusion*, *diversity* and *cross-difference competence* as a *justice system imperative*, and providing for a dedicated infrastructure for developing and coordinating policies, practices and initiatives to eliminate *bias*, *compounding bias*, access barriers, *disparate treatment* and *disproportionate outcomes*. (V.A.1-.3)

B. Composition of the Council

The Council should include, but not be limited to, the following entities identified in the Charter:

- Access to Justice Board and its relevant committees, such as the Technology and Justice without Barriers Committees;
- Certified Professional Guardian Board;
- Court ADA, Access and Accommodation Technical Assistance Group;

- Committee on Children in Foster Care;
- Gender and Justice Commission;
- GR 27 Family Law Courthouse Facilities Committee;
- Interpreter Commission;
- Minority and Justice Commission; and
- Public Guardianship Advisory Committee.

The Council should, as quickly as possible, identify additional parties that could be involved. Additional parties identified by the work group include, but are not limited to, the Washington State Bar Association, judicial branch boards and commissions, Board for Judicial Administration, Superior Court Judges Association, District and Municipal Court Judges Association, Judicial Information System Committee, Public Trust and Confidence Committee, Court Management Council, Board for Court Education and the three in-state law schools. (V.B.1)

Members on the Council may be a commission or committee member, but may also be some other designated person. Regardless of the basis of his or her selection, each member is expected to offer expertise and judgment, and act on the overarching goals of *inclusion*, *diversity* and *cross-difference competence* rather than solely on his or her representational *status*. Members are expected to act as a conduit of information and expertise to their entities from the Council and to the Council from their entities. (V.A.2, V.B.1-2)

Because *inclusion*, *diversity* and *cross-difference competence* are "*permeators*" the Council must have the ability and opportunity to actively engage with or participate in the work of judicial branch and justice-system governance and policy level entities. The participation may be consultative, in the form of technical assistance as liaisons or even as full voting members where appropriate. All voting Council members shall have equal voice and vote. Initially, the Council shall recommend and not direct Council entities. This will allow the Council to proactively identify potential issues or areas of improvement in timely and meaningful ways during planning stages, allowing it to provide assistance from within the justice system. (V.C.1-2 V.D.4)

There should be periodic review of whether Council participants and entities utilized for liaison purposes should be removed or added to address gaps, reduce redundancies or update the Council based on societal changes as well as changing needs of the public. (V.D.2.5)

C. The Council shall provide a forum for

1. Mission Statement

   Adopting its own overarching Mission Statement (V.C.1)

2. Ensuring Values Fidelity/Accountability

   - Establishing a core set of overarching values and providing a commonly understood framework for incorporating these values into the work of each of the entities involved in efforts to eliminate *bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*. (V.C.1)
   - Establishing an institutional basis for ongoing collaboration and coordination of justice system efforts relating to *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*. (V.C.2-.3)
   - Ensuring the strategic and timely coordination of research and development within and across substantive issue and jurisdictional areas that affect *inclusion*, *diversity* and *cross-difference competence* within the justice system and of the identification, development, testing and promoting of best practices, new programs and innovative strategies relating to the capacity of the justice system to ensure *inclusion*, *diversity* and cross-difference competence in all aspects of its operation. (V.C.2-.3)

3. Work Plan Development

   Developing a work plan utilizing the time frame described in "D" below. The work plan should include a set of values-based performance standards and *outcomes* to measure success in reducing and eliminating justice system *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*. (V.D.1)

4. Identifying/Addressing Challenges and Opportunities

   Identifying ways in which the status quo reflects gaps, fails to halt unproductive redundancies and competition or otherwise interferes with the justice system's capacity to effectively identify and eliminate the harmful effects of *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* and developing mechanisms to address these problems and maximize justice system effectiveness and efficiency (V.C.4, D.1-4)

5. Institutionalizing Communication and Collaboration

   Providing an institutionalized basis for ongoing collaboration and coordination of justice system efforts relating to *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes*. (V.D.2, V.D.5)

6. Better Use of Technology

   Identifying technological needs and ways to improve justice system *inclusion*, *diversity* and *cross-difference competence* through the use of technology in light of its unique capacity to enhance justice by bridging the digital divide, as well as ensuring that technology does not inadvertently create, amplify or perpetuate access barriers, *bias*, *compounding bias*, *disparate treatment* or *disproportionate outcomes*. Special consideration should be given to sharing best practices and leveraging technology's enormous potential to identify concrete, practical ways to directly empower and serve underserved communities and populations. The Council, as a forum, can bring together persons with special technological skills. (V.D.2)

7. Better Orientation and Training for All

   Ensuring the development and provision of a high quality integrated and consistent orientation training curriculum and skills acquisition system for justice system officers, employees, contractors, volunteers and others involved in the administration of justice. (V.A.1-.3, V.C.2-.3)

D. Conditions, Agreements and Time Frame

1. Begin with a Voluntary Effort

   The Council should begin as a cooperative venture, with the goal of ongoing and regular engagement, communication and meetings with participation from each appropriate entity. The Council's success at achieving its goals and objectives will depend on its ability to achieve workable unity among the various entities after a common set of values and frameworks of understanding relating to *inclusion*, *diversity* and *cross-difference competence* has been adopted and applied to developing and implementing initiatives that address *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* within the justice system. (V.A.1-.3, B.3, C.1-.2)

2. Working Together on the Mission

   Each entity identified to engage in this effort must agree to set aside issues of "*turf*" and adopt the understanding that it does not work in an institutional "*silo*" or vacuum, but that its work reflects one component of a coordinated, coherent overall justice system strategy to address *bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* that result from *social rank* and *status*-related characteristics. (V.C.2-.4)

3. Creating a Work Plan

   The Council should produce a work plan for accomplishing Council goals and objectives in Section C.1-.7 above within six months of its first meeting. (V.D.1-.2)

4. Being Accountable for Results

   After establishment of the goals and objectives, the Council will have one year to prove itself to be an effective catalyst for substantial and reasonable progress and conduct an assessment of the level of success that has been achieved. If the Council finds that insufficient progress has been made, it shall develop a corrective plan of action and put the plan into place.

5. Setting a Calendar for Success

   The Council will have an additional year to continue to make progress under a voluntary model and to take any needed corrective action, after which an independent review, in a manner and scope determined by the Court, will be made of the extent to which the goals and objectives have been achieved. (V.D.2, V.E.1-.3)

6. Being Willing to Change

   A finding by the independent external review that the Council's efforts have not achieved substantial and reasonable success, including consideration of budgetary constraints, will trigger a recommendation by the Council to the Court for a changed approach, which may involve restructuring of entities and reallocation of *resources* (V.E.1)

7. Staying Accountable on a Regular Basis

   After the initial two and a half year phase, the Council will conduct regular, periodic reviews of progress to determine whether sufficient progress is being made and whether any changes are necessary. (V.E.1)

E. Rationale for this Approach

First, the entities will be provided an opportunity to accept and incorporate common justice system values, frameworks, language and performance expectations relating to *inclusion*, *diversity* and *cross-difference competence* as a *justice system imperative* into their work and organizational culture.

Second, the entities will be provided an opportunity to establish ongoing collaborative working relationships with one another grounded in a common set of values, and to collaborate on those issues that cross "boundaries" of the entities. The entities need not fear immediate loss of expertise or derogation of their missions provided they can demonstrate collaborative and integrated efforts that strengthen effectiveness and produce economies for the justice system. This process is designed to help mitigate inherent concerns that any entity is being labeled a "failure" or that it has lost the ability to adequately represent its specific target populations(s).

Third, the entities will be given a full and lengthy opportunity to adapt their organizational and policy perspectives and concerns to the paradigm of the new Council and its values, structure and processes.

Fourth, a Council is a mechanism that is well suited to determine which additional entities should be brought into the process, either as members of the Council or via liaisons or other relationships for external engagement and outreach by Council representatives.

VII. Conclusions

Washington State has a long history of ground-breaking initiatives originating from a strong commitment to ensuring a justice system open and accessible to all. The work done has been vital to incorporating the values of inclusiveness and access into the system. These initiatives have led to the establishment of various specialized commissions, board and task forces charged with serving and protecting vulnerable and underserved populations.

It is now appropriate to take the necessary next steps in the effort. The Council provides an opportunity to improve our system by establishing a unifying set of values, a clearly articulated vision around *inclusion*, *diversity* and *cross-difference competence* as a *justice system imperative* and a framework for a unifying and coordinated approach to this important mandate. Precious *resources* can be used in a more strategic and integrated way. There are redundancies, unintentional and unproductive competition and confusion about the various entities' roles and functions and lost opportunities for collaborative efforts. The Council offers a mechanism to address these realities in an inclusive, coordinated manner.

Today, our justice system faces unprecedented challenges as it strives to serve increasingly diverse populations who are bringing ever more complex problems to the justice system in the context of the worst economic climate in many decades. The Chief Justice's call for an assessment of the current situation and recommendations for improvement offers the justice system an important and timely opportunity. It has taken leadership and courage for the Chief Justice to initiate this assessment, and it will take courage for the justice community to come together and make these recommendations real for the benefit of the members of the public it serves.

This recommendation of the work group, summarized below, call for a collective, cooperative and corrective approach that is initially voluntary.

1. Establish a Council, by order of the Supreme Court, that will include key institutional entities whose mission includes eliminating *bias*, *compounding bias*, *inequity*, access barriers, *disparate treatment* and *disproportionate outcomes* in the justice system;

2. Establish a time frame for the Council to become established, robust and productive;

3. Provide, through the Council, a forum for sharing of vision, values, projects and priorities in ways that facilitate effective coordination of the justice system's efforts to ensure *inclusion*, *diversity* and *cross-difference competence*;

4. Require a rigorous, objective and data-driven analysis of the success of the Council's work, reported to the Court with recommendations, and do so on a regular basis; and

5. Require a response by the Court to the reports and recommendations.

The work group urges the Court to promote an understanding and acceptance from the outset that the voluntary approach is preferred. If significant progress is not made, the Council and justice system entities may be subject to restructuring and the reallocation of *resources* by the Court in furtherance of *inclusion*, *diversity* and *cross-difference competence* as a *justice system imperative.*

III. Proposed Order

THE SUPREME COURT OF WASHINGTON

ORDER ESTABLISHING SUPREME COURT OF WASHINGTON JUSTICE COUNCIL)
)
)
)

WHEREAS, equal justice for all is a cornerstone of our democracy, and essential to its proper functioning;

WHEREAS, our state's justice system serves as the principal means for the peaceful resolution of civil and criminal disputes involving individuals, not-for-profit and commercial entities and governmental entities; and that by ensuring such means, our state effectuates its commitment to equal justice under law;

WHEREAS, it is the duty of the state's justice system to protect rights and liberties, uphold and interpret the law, and resolve disputes peacefully through the open and fair administration of criminal and civil justice;[1]

WHEREAS, full and equal access to the justice system for all persons is a fundamental principle central to the fair and impartial administration of civil and criminal justice in Washington state; that this principle demands conscious and intentional consideration in the discharge of all justice system activities; that the advancement of this principle is a fundamental obligation of all entities charged with any aspect of the promotion and administration of justice; and that achieving full and equal access for all persons is necessary to secure and maintain the legitimacy of and the public's trust and confidence in our justice system;

WHEREAS, the Supreme Court has declared a principal statewide policy to be that "Washington Courts, Court facilities and Court systems will be open and accessible to all participants regardless of cultural, linguistic, ability-based or other characteristics that serve as access barriers;"[2]

[1]Washington Supreme Court, Principal Policy Goals of the Judicial Branch (May 2008), Goal No. 1
[2] Washington Supreme Court, Principal Policy Goals of the Judicial Branch (May 2008) Goal No. 2

WHEREAS, in a diverse society, equal justice under law means that inclusion, diversity and cross-difference competence are a justice system imperative;

WHEREAS, inclusion, diversity and cross-difference competence as a justice system imperative is a concept that encompasses acceptance and respect, and an understanding that each individual is unique; it calls for recognizing individual differences, while also acknowledging that certain differences lead to the creation and perpetuation of systemic barriers and obstacles to justice and practices that contribute to and perpetuate differential or disparate treatment of certain populations within the justice system;

WHEREAS, social rank differences that may lead to differential or disparate treatment and/or disadvantage in our justice system include age, disability (acquired and developmental), religious beliefs or traditions, ethnicity and race, social or economic class, sexual orientation, indigenous background, national origin and gender; and that other more mutable factors that may lead to disparate treatment and disadvantage include characteristics such as familial status, geographic isolation, immigration status, linguistic barriers, literacy/illiteracy including digital, and political beliefs;

WHEREAS, it is recognized that members of the public may experience compounding bias dynamics that can operate in ways that exponentially increase the likelihood and severity of bias, inequity, access barriers, disparate treatment and disproportionate outcomes;

WHEREAS, in the exercise of its inherent constitutional authority to promote the fair and proper administration of justice, the Washington Supreme Court has established or engaged with a number of entities including commissions, boards, task forces, technical assistance groups and committees,[3] and has undertaken a number of initiatives designed to develop and promote policies and strategies relating to different aspects of access, equity and fairness in our state's justice system; that these commissions, boards, task forces, technical assistance groups and committees have made and continue to make significant and enduring contributions to the quality and effectiveness of our justice system; that, despite the best of intentions, the individual efforts undertaken by these separate entities has been uncoordinated and disjointed; and that the lack of a framework to ensure the intentional coordination and integration of these and other related justice system activities has undermined the development of coherent and comprehensive, effective and economical strategies and policies to achieve inclusion, diversity and cross-difference competence throughout the justice system;

WHEREAS, the justice system must work in an integrated manner to ensure the highest and best use of all resources and all capacities in coordinated service of its commitment to inclusion, diversity and cross-difference competence as a justice system imperative;

[3] These entities include, but may not be limited to: Access to Justice Board and Committees, such as the Technology Committee and Justice without Barriers Committee, Certified Professional Guardian Board, Court ADA, Access and Accommodation Technical Assistance Group, Commission on Foster Care, Gender and Justice Commission, GR 27 Family Law Courthouse Facilitator Committee, Interpreter Commission, Minority and Justice Commission, Public Guardianship Advisory Committee, and others such as the Board for Judicial Administration, Washington State Bar Association, judicial branch boards and committees, Superior Court Judges Association, District and Municipal Court Judges Association, Judicial Information Systems Committee, Public Trust and Confidence Committee, Court Management Council, Board for Court Education, in-state law schools: Gonzaga University, Seattle University and the University of Washington, etc.

Now, therefore, it is hereby

ORDERED:

The Washington State Justice Council (hereinafter, "the Council") is established by the Supreme Court, and is charged with developing and putting in place a consistent and common set of justice system-wide expectations and support infrastructure to ensure that the most effective and economical use is made of all resources relevant to inclusion, diversity and cross-difference competence as a justice imperative.

The Council will:

1. Adopt a mission statement;

2. Establish a core set of overarching values and provide a commonly understood justice system-wide framework for incorporating these values into the work of each of the entities involved in efforts to eliminate bias, compounding bias, inequity, access barriers, disparate treatment and disproportionate outcomes in the justice system;

3. Develop a work plan utilizing the timeframe described below; the work plan should include a set of values-based performance standards and outcomes to be used to measure success in reducing and eliminating justice system-related bias, compounding bias, inequity, access barriers, disparate treatment and disproportionate outcomes;

4. Identify the extent to which existing entities and structures reflect gaps, result in unproductive redundancies and competition, or otherwise interfere with the justice system's capacity to effectively identify and address bias and compounding bias dynamics;

5. Establish an institutional basis for ongoing collaboration and coordination of justice system efforts to eliminate bias, compounding bias, inequity, access barriers, disparate treatment and disproportionate outcomes;

6. Develop mechanisms to eliminate unproductive redundancies and competition, and to maximize overall justice system effectiveness and economy;

7. Identify technological needs and ways to improve justice system inclusion, diversity and cross-difference competence through the use of technology in light of its unique capacity to both enhance equal justice as well as create barriers to access. Special consideration should be given to sharing best practices and maximizing technology's positive potential to engage and be relevant to diverse communities. The Council should establish a mechanism that brings together members of the community with specific technological skills;

8. Coordinate research and development within and across substantive issue and jurisdictional areas that affect inclusion, diversity and cross-difference competence within the justice system; identify, develop, test and promote best practices, new programs and innovative strategies relating to the capacity of the justice system to ensure inclusion, diversity and cross-difference competence in all aspects of its operation;

9. Develop and submit for justice system entities consistent and integrated orientation and training curricula and skills acquisition system for justice system officers, employees, contractors, volunteers and others involved in the administration of justice; and

10. Develop consistent, values-based communication messages and dissemination strategies.

The Council shall produce a work plan for accomplishing its goals and objectives within six months of its first meeting.

After establishment of goals and objectives, the Council will have one year to become an effective catalyst for substantial and reasonable progress, and conduct an assessment of the level of success that has been achieved.

If the Council finds that insufficient progress has been made, it shall develop a corrective plan of action and put it into place.

The Council will have an additional year to continue to make progress under a voluntary model, and to take any needed corrective action, after which an independent external review, as determined by the Court and with due consideration of budgetary constraints, will be made of the extent to which the goals and objectives have been achieved.

A finding by the independent external review that the Council's efforts have failed to result in substantial and reasonable success in the achievement of its goals and objectives will trigger a recommendation by the Council to the Court for a changed approach, which may involve restructuring of entities and reallocation of resources.

After this initial two-and-a-half year phase, the Council will conduct regular, periodic reviews of progress to determine whether sufficient progress is being made, and whether any changes are necessary, and it will make timely reports to the Supreme Court.

DATED at Olympia, Washington this _____ day of August, 2010.

Glossary of Terms

Glossary of Justice System Terms Relating to Inclusion, Diversity and Cross-Difference Competence

(defined terms appear in *italics* in text)

access: the ability to reach or find a way to participate or engage in the justice system for its intended purpose in a meaningful and timely way;

"ADDRESSING Model"[1]**:** A duality-based framework for understanding "agent" and "target" social rank characteristics;

agents: members of social identity groups who disproportionally experience and reap unfair advantage and privilege over target groups in a variety of ways by the predominant societal system;

barriers: limitations and obstacles experienced by those attempting to gain access to the justice system;

bias: the systematic and pervasive predilection or inclination toward the valuing of certain individuals, groups and populations over others based on factors unrelated to equal justice for all;

compounding bias: multiple target social rank characteristics often combine to exponentially increase the likelihood and severity of harm suffered as a result of bias, inequity, access barriers, disparate treatment and disproportionate outcomes;

cross-difference competence: the ability to be aware of and understand social rank differences, and to act appropriately as a member of the justice system;

digital literacy: having the requisite skills and access to make effective use of the justice system – related to digital and information technology;

disparate treatment: the unfair and harmful singling out, or marginalization or rendering of invisibility of individuals, groups or populations with target social rank characteristics by the justice system;

[1] See "ADDRESSING Model" by Pam Hays and adapted by Dr. Leticia Nieto, Appendix __.

disproportionate outcomes: results that unfairly burden and harm individuals and groups due to bias and compounding bias dynamics, inequity, access barriers and disparate treatment;

diversity: differences that make individuals, groups and cultures unique;

duality: an "either/or" binary construct under which the complete range of possible choices lies in one or the other of only two options;

exponentially increased barriers: where the justice system is not sufficiently inclusive, diverse and cross-difference competent, individuals and groups with multiple target social rank characteristics can experience significantly more burdensome and severe harmful effects and disparate treatment;

familial status: status as defined by one's position in a household and other relationships including, but not limited to marriage, civil unions, domestic partnerships or other communal living situations; encompasses responsibility for dependants, including children and children in foster care, elder care, and/or kinship care;

immigration status: standing of an individual, group or population based on complex and mutable nationality and immigration law-related definitions;

inclusion: a strategic and intentional approach by which all individuals, groups and populations, including those with target social rank characteristics, are intentionally integrated and incorporated into the justice system;

inequity: the existence or perception of unfair differential treatment by the justice system;

justice system imperative: a foundational premise for which the justice system should hold itself accountable;

language access/linguistic competence: ability of the justice system to communicate effectively and convey information in a manner that is easily understood by diverse audiences, including persons of limited English proficiency, those who have low literacy skills or are not literate, including digital literacy, individuals with disability, and those who are deaf or hard of hearing;

mutable characteristic: a characteristic that can transform or fundamentally change;

outcomes: a statistically significant change in a result, which change is determined to have occurred primarily as a result of an action being taken by an entity;

permeator: a core value and justice commitment underlying all aspects of the justice system;

resources: broadly defined assets, including not only fiscal matters, but also the moral authority of the Court and the intellectual, experiential, technical and cultural knowledge and skills of the entities and their staff members;

silos: entities which are clearly defined, self-contained and isolated in ways that may operate to preclude effective integration that promotes coordinated, collaborative efforts toward common goals and objectives;

social rank: pervasive, systemic categorizations by which individuals, groups or populations are externally ascribed by society as either "Agents" or "Targets", and that create and maintain stratified societal levels, and systematically influence the kind of treatment or blanket assumptions, favorable or otherwise, accorded to individuals, groups and populations;

status: pervasive, systemic social, legal or cultural characteristics that are or can be conferred or removed, and that result in the overvaluing of certain groups or individuals over others;

systemic barriers: situations, policies and practices which permeate all levels of an organization, institution or its services, and operate in ways that exclude members of target social rank groups from full and meaningful engagement;

targets: members of social identity groups that disproportionally experience disenfranchisement, disadvantage or marginalization in a variety of ways by the predominant societal system; see the "ADDRESSING Model" for target social rank categories;

turf: divisive, self-protective culture and/or belief system that manifests itself as opposition to coordinated and collaborative engagement in furtherance of common, shared goals and objectives.

The Supreme Court
State of Washington

BARBARA A. MADSEN
CHIEF JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929

(360) 357-2037
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E-MAIL J_B.MADSEN@COURTS.WA.GOV

November 1, 2010

Ms. Myra Downing, Director
Gender and Justice Commission
PO Box 41170
Olympia, WA 98504-1170

Dear Ms. Downing:

Recent coverage of comments made during the October Supreme Court en banc conference provides an important opportunity for a constructive discussion about the issue of bias in the justice system.

As Chief Justice, I would like to take this opportunity to connect with you, and to reaffirm the Judiciary's commitment to improving access to justice and eliminating bias. As a first step, we must recognize that bias exists.

We know this because we have spent 23 years asking, studying, surveying, researching, crafting solutions, monitoring results and working to understand the barriers to justice created by the complex nuances of bias via our work with the Washington State Minority and Justice Commission, the Washington State Gender and Justice Commission and the Washington State Access to Justice Board, established by the Supreme Court and administered by the Washington State Bar Association.

As the new Chief Justice, I convened "The Supreme Court Commissions, Boards and Task Forces Assessment Work Group", and charged its members with taking a hard look at existing efforts to ensure that the values of equity, inclusion and fairness be respected throughout our justice system.

I asked for a presentation to the Court on October 7, 2010, on the Work Group's findings and recommendations for strengthening the justice system's ability to ensure that no one will be treated unfairly or left out of our justice system. That report called for a clearer articulation of justice system diversity goals and accountability to them, as well

as for effective and economical coordination and integration of justice system inclusion and diversity efforts. Comments made at the October meeting and reported in the media were made in response to the Work Group's presentation.

The Court remains concerned about the way in which the remarks served to distract from the stated purpose of the meeting, which was to engage in a serious discussion about justice system inclusion and diversity. Nevertheless, those remarks have served an important purpose, which is to show that we urgently need leadership to tackle the corrosive effects of unfair or different treatment in the justice system. We understand that components of our justice system suffer from practices that perpetuate racial and other social stigmas and stereotypes and create concern that "justice" may not always done in these cases.

In order to focus public attention on the continued need to address issues of fairness and equal access, I wrote a guest editorial for the *Seattle Times* last week in response to this situation. While my hope was that the op-ed would have been published earlier, I have been informed that the editorial will appear in this Sunday's edition. I have also been in contact with Mr. James Kelly, of the Seattle Urban League to discuss "next steps" by the Supreme Court. In addition, the Minority and Justice Commission, Gender and Justice Commission, and the Access to Justice Board are involved in planning a symposium on disproportionality in the prisons to be hosted at Seattle University School of Law. I am also reconvening the Work Group to discuss steps toward implementing that group's recommendations.

I am confident that my colleagues throughout the justice system will join me in thoughtful discussion of the recommendations for improvement made by the Work Group and in making the improvements necessary to move us toward a more just system.

I thank you for your support in hard work in achieving this goal, and invite you to contact me with any questions or concerns you may have in this important area.

Sincerely,

Barbara Madsen

Chief Justice Barbara Madsen
Washington Supreme Court

Yates

National Association of Women Judges 2010 Law Student Scholarship Application

"Don't ask yourself what the world needs. Ask yourself what makes you come alive. And then go do that. Because what the world needs is more people who have come alive." – Harold Whitman

I came to law school to pursue a career in public interest law. My passion for serving and working with the poor and underrepresented began prior to entering law school and has not wavered even as I enter my third year at Gonzaga University School of Law. After college graduation I worked at a legal themed charter high school in the low-income neighborhood of Anacostia in Washington DC and worked to make the law accessible to 9th grade students by facilitating and coordinating a Street Law program with Georgetown University and law firm partners. I continue working to bring legal knowledge to high school students by serving on the Gonzaga Street Law Executive Committee which revitalized Gonzaga's Street Law program by partnering with Roger's High School's American History classes in the low-income neighborhood of Hillyard in Spokane. My summer internships have further confirmed my commitment to public interest law. My externship this past summer and my continued volunteer time this Fall semester with Northwest Justice Project's Family Law Unit and specifically my work with the domestic violence task force has allowed me to clarify just where in the broad scope of public interest law my passion lies.

My interest in family law and working with underrepresented women was piqued when following my first year of law school I volunteered for Southern Arizona Legal Aid's Volunteer Lawyer's Project where I was the recipient of the "Life Saver" award for my service there. With more advance skills following my second year of law school, my work with NJP's domestic violence task force has included participating in state wide meetings and researching and writing pocket briefs on issues arising within the State. These issues have been identified as barriers to

the legal process for protection order petitioners. I hope my work with the statewide team will make the system more navigable and accessible to the pro-se litigant. Along with my advocacy work, my position in the family law unit of NJP has lent itself to direct representation of clients in domestic violence proceedings including the entry an emergency domestic violence protection order on behalf of two children and a motion to reconsider a protection order denial based upon the exclusion of hearsay statements. Having completed allotted externship credits at NJP I would look forward to using the Judge's Scholarship monies to continue my volunteer work within the area of domestic violence. Since my year of volunteer service in Washington D.C. following college graduation through law school I have demonstrated a sustained commitment to public interest law and bringing legal knowledge and services to the public I look forward to continuing this commitment.

Emily B. Yates

168 S. Coeur D' Alene Apt #305 ■ Spokane, WA 99201 ■ (509) 496-9989 ■ eyates@lawschool.gonzaga.edu

EDUCATION

Gonzaga University School of Law Spokane, WA
Candidate for *J.D.*, May 2011
Rank 58/157

- Thomas More Scholar – Full tuition waiver based on academic performance and a commitment to public interest law
- Gonzaga High School Street Law Program – President 2010-2011
- Gonzaga Public Interest Law Program – President 2010-2011
- Law School Graduation Committee – Chair 2010-2011
- Gonzaga Public Interest Program Board Member – Auction Chair 2009-2010
- Gonzaga Public Interest Program Grant Recipient Summer 2009
- Student Bar Association 1L Class Representative 2008-2009 and 2L Class Representative 2009-2010
- Appointed Student Bar Association Representative to Gonzaga Student Alliance for Social Justice 2008-2010
- Child Advocacy Club 1L Representative 2008-2009

Beloit College Beloit, WI
B.A. Sociology, May 2007

- Eaton Scholar - Scholarship based on academic merit and leadership
- Duffy Community Partnership Scholar
- Beloit College Leadership Institute

LEGAL EXPERIENCE

Northwest Justice Project Spokane, WA
Rule 9 Legal Intern, May 2010 – Present

- Represent indigent clients in family law and domestic violence matters before Spokane, Stevens, Ferry, and Lincoln Superior Court.
- Draft legal documents and pleadings on: dissolutions, custody modifications, nonparental custody, residential schedules, parenting plans, domestic violence protection orders, motions for reconsideration, and motions for revision.
- Complete research memos for staff attorneys on: adequate cause in nonparental custody, evidentiary rules in domestic violence protection orders, emergency jurisdiction under the UCCJEA, and genetic testing in paternity cases.
- Member of Northwest Justice Project's Domestic Violence Protection Order Task Force
- Member of Spokane Family Law Task Force

Gonzaga Center for Law & Justice Spokane, WA
Legal Intern, January 2010 – May 2010

- Interviewed and counseled clients in various cases including family law, children's rights, consumer law, and tribal law under clinic attorney supervision.
- Researched the legal basis and investigated the factual basis for clients claims, developed a strategic approach to each case, managed case information, and wrote advice letters to clients.
- Drafted legal documents, engaged in written discovery, and negotiated with opposing attorneys.

Southern Arizona Legal Aid – Volunteer Lawyers Program Tucson, AZ
Legal Intern, May 2009-August 2009

- Advised over 150 clients on initial filings, discovery and trial preparation in the areas of family law: paternity, child custody, child support, and divorce.
- Appeared in U.S. Federal Bankruptcy Court as student "friend of the Court" with client during Chapter 7 bankruptcy reaffirmation hearings and offered the Court recommendations in the best interest of the client.
- Appeared in Pima County Superior Court, Probate Division as a student "friend of the Court" and examined petitioners on behalf of Court to determine if a minor guardianship was appropriate under Arizona Statutes.
- Drafted motions for Legal Aid clients and performed legal research in the areas of family law and drafted legal memoranda.
- Recipient of the 2009 Volunteer Lawyers Program "Lifesaver Award" presented by Justice Stephen Breyer.

Jeffry Finer Attorney at Law (federal criminal defense attorney) Spokane, WA
Intern, Summer 2006 and Summer 2007

- Organized court transcripts, voir dire and pleadings into binders and indexed discovery using Excel.
- Conducted preliminary research and interviews for cases.

PROFESSIONAL EXPERIENCE

Thurgood Marshall Academy (legal themed charter high school) Washington, D.C.
Programs Associate, August 2007 – June 2008

- Organized and facilitated 9th grade street law program with law firms in the D.C. area.
- Worked with traditionally underserved students to become academically able, confident and empowered for college.
- Collaborated with other schools and non-profit organizations.
- Facilitated after school activities/clubs and coordinated school community service hours and projects.

Purpose for Life Washington, D.C.
Volunteer in Life Skills Program, - December 2007-June 2008

- Participated in bi-monthly Saturday life skills workshops with other volunteers at D.C.'s juvenile detention center.
- Taught resume writing skills, job etiquette, customer service, job searching techniques and self esteem development.

RAINN (Rape Abuse Incest National Network) Washington, D.C.
Online Hotline Worker, - December 2007 – June 2008

- Provided live, secure, and anonymous instant message style crisis support and gave those affected by sexual assault a safe place to turn to when they could not find their voice.

Rock County Job Center Janesville, WI
Intern, August 2006-December 2006

- Provided job resources and skills to Rock County citizens by creating, marketing, and administering curriculum for Rock County youth in order to teach job skills and Encourage employment within the community.

FHAT – Females Helping Adolescent Transition Beloit, WI
Founding Member, October 2003-May 2004

- Mentored young girls at the Boys and Girls Club about body image, conflict resolution skills and problem solving.

TAB 2

Beyond [redacted]: A Call to Action

A day-long gathering for juvenile justice professionals to learn strategies for implementing effective care for justice-involved girls.

Background

Since the early 1980's, arrests of girls has increased by 80%. The influx of girls into the juvenile justice system has prompted a wave of policy and research activity around the effectiveness of the justice system in meeting the needs of female youth, many of whom suffer from increased rates of abuse, trauma and mental health needs. The Office of Juvenile Justice and Delinquency Prevention, the American Correctional System and international policy statements have all called for gender-responsive practices in juvenile justice. While a few juvenile courts within Washington State are implementing programs for girls, there currently exists no systemic mechanism to disseminate and promote principles of gender-responsive practice applicable across a continuum of care. The proposed gathering would bring together stakeholders from juvenile courts and allied professional fields across the state to discuss how effective practices can be implemented statewide.

Coalition Purpose & Vision

The Justice for Girls Coalition of Washington State, started in 2007, is a state-wide group leading efforts to expand expertise in gender responsive/specific programming for females in the juvenile justice system and use that expertise to help influence policy and program development toward sustainable improvements. To accomplish our work, we focus on promoting change in the areas of policy, program, and system culture.

Taking Steps to Achieve Our Goals

Beyond Pink Walls represents our efforts to go beyond the surface of what people consider gender responsive services for girls. The Coalition believes that investing in a one day gathering of professionals who work with girls in the juvenile justice system will:

Goal One: *leave attendees with increased knowledge and awareness of best practices and policies for supporting girls in prevention and intervention services*

Goal Two: *provide attendees with ability and motivation to implement their new knowledge in their workplace*

Goal Three: *encourage attendees to contribute their own knowledge and expertise to the conversation*

Goal Four: *ensure a subset of attendees become active in the coalition*

Details

- One day – Friday in October of 2011

- 100 summit attendees: Reps from juvenile justice programs, juvenile court-professionals, schools, victim advocacy, community based organizations state-wide
- Location – central, close to airport as affordable option for those coming from a distance
- Very targeted invitations (but after certain date open to others)

What We Have

- Volunteers for on-line registration, prep-work and day-of set-up,
- Program printing costs

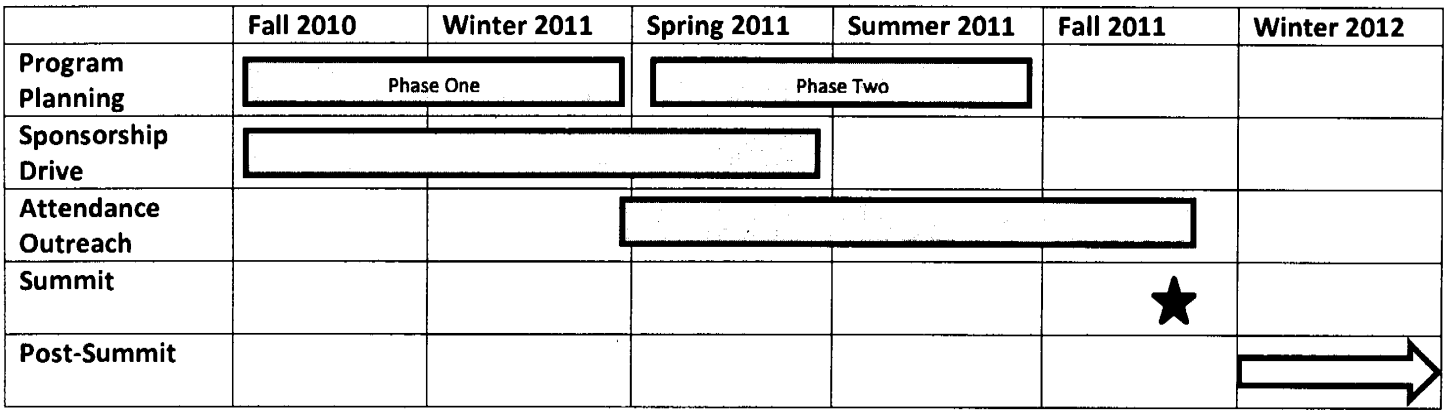
What We Need

- Your financial support: Anticipated cost is approximately $35,000
- Another option is to provide staff and/or materials to ensure event planning and presentation materials

What You Get

- Opportunity to support tangible efforts to improve services for girls in the juvenile justice system
- Support community partnerships and best practice
- Sponsor package and opportunity to attend Beyond Pink Walls
- Name in brochure

Project Timeline



Project Budget

Facility Rental Fee	3,500
Food	4,000
Print materials	1,000
Website hosting and registration	2,000

Phone	200
Postage	200
Misc. supplies	500
Keynote speaker fee	8,000
Event coordination	5,000
Project Coordinator	10,000
TOTAL	34,400

Justice for Girls Coalition

Purpose: To expand expertise in gender responsive/specific programming for females in the juvenile justice system and use that expertise to help influence policy and program development toward sustainable improvements while acknowledging current programs. To accomplish our work, we will focus on promoting change in the areas of **policy**, **program**, and **system culture**.

History: On November 30th, 2007 the Washington State House of Representatives' Health and Human Services convened a hearing on ***Trends in the Treatment of Girls in the Juvenile Justice System.*** Panelists included girls who had been in the Pierce County detention system and staff from the Governor's Juvenile Justice Advisory Committee, Juvenile Rehabilitation Association, King County Juvenile Detention, Pierce County Juvenile Detention Center and non-profits including the Museum o f Glass (Pierce County) and Powerful Voices (King County). Testimony included data on female juvenile offender populations, services and programs for meeting their needs and experiences of girls themselves. Post testimony, Chairwoman Representative Mary Lou Dickerson, asked the panel to make follow-up recommendations on what the state can do to better support girls in prevention and intervention services. The group now convenes bi-monthly to share findings and inform strategic directions that relate to data, training, standards, new programs and evaluation and collaborations.

Scope: While our emphasis is on the females in the juvenile justices system, we cannot ignore policy, program, and system culture in the pathways that lead these girls to juvenile justice.

Guiding Principles:

- Promoting and monitoring gender-responsive best practices for girls in the juvenile justice system;
- Providing continuity of care for girls across systems;
- Using Washington State data to promote better outcomes for girls

2010 Objectives

Policy:

- Use best practice information and Washington State Girl Offender Project data to identify policy areas to concentrate on for integration (ie, use of restraints, etc.) to update policy brief and develop "policy consideration kit" for practical use in juvenile justice agencies by June & September 2010.
- Compile state-by-state gender responsive practice principles report summary for Girls Group with replication recommendations by May 2010. This will include promising practices in Washington State's juvenile justice system, as well as evaluation and research underpinnings wherever possible.

Program:

- Promote program quality assurance by providing or ensuring evaluation of programs to determine effectiveness by December 2010.
- Seek blended funding for and provide cost-neutral examples of changes in practice that all or most jurisdictions/organizations can implement to increase gender awareness and responsiveness by April 2010. Package and distribute the "toolkit" by July 2010.

Culture:

- Align with other groups to use work from tool kit and training group to develop communication themes to match to strategies. Initiate identified communication strategies by September 2010.

Resources

Group members

2009 Survey Data

2009 Girls Group Newsletter v.1

Court Risk Assessment data

Membership considerations: **For now, we will build momentum from the ground up, stay task-focused according to 2010 objectives, and bring in expert support where needed vs. adding new members. Down the road, once we have had some success, we should consider moving to a more clearly defined advisory, decision-maker, do-er role distinctions with a different meeting structure.** New member suggestions reflect that we need greater diversity of all kinds: youth members, evidence-based practitioner, mental health representative, AOC representative, Judges, WAPA, WDA, legislative reps, funders. Current preference is to have a standing meeting the 2nd Friday, every other month.

Current members:

Bonnie Bush
Spokane Count Juvenile Court

Justice Bobbe Bridge
Center for Children and Youth Justice

Barbara Carr
Jefferson County Juvenile Court

Karen Gough
Pierce County Juvenile Court

Rebecca Larkin
Pierce County Juvenile Court

Ann Muno
Powerful Voices

Shelly Maluo
Pierce County Juvenile Court

Sharon Pearson
Governor's Juvenile Justice Advisory Committee

Ryan Pinto
Governor's Juvenile Justice Advisory Committee

Cheryl Sullivan-Colglazier
Juvenile Rehabilitation Administration

Susan Waild
King County Juvenile Court

TAB 3

State Justice Institute
Immigration Advisory and Education Committee
Honorable Ann Schindler and Honorable Mary Yu, Co-Chairs

Judge Ann Schindler, Co-Chair **Gender and Justice Commission**	**Judge Mary Yu, Co-Chair** **Minority and Justice Commission**
Professor Robert Chang Seattle University School of Law Korematsu Center	
Professor Tom Cobb University of Washington	Mike Killian Washington State Association of County Clerks
Stacey DeMass Seattle University School of Law	Dr. John Martin Center for Public Policy Studies
Judge Sara Derr Gender and Justice Commission	Emily McClory Seattle University Women's Law Caucus
Judge Deborah Fleck Superior Court Judges Association	Judge LeRoy McCullough Minority and Justice Commission
Dan Ford Columbia Legal Services	Andra Motyka Superior Court Administrators Association
Judge Steven Gonzales Access to Justice Board	Bryan Olsen Law Clerk
Grace Huang Washington State Coalition Against Domestic Violence	Leslie Owen Northwest Justice Project
LaTricia Kinlow District and Municipal Court Managers Association	Judge Kim Walden District and Municipal Court Judges Association
Fe Lopez Seattle University School of Law	Myra Downing Gender and Justice Commission Committee Staff Person
Judge Eric Lucas SCJA Equality and Fairness Committee	Monto Morton Minority and Justice Commission

Advisory Committee on Immigration Issues
September 22, 2010
Meeting Notes
Judge Ann Schindler and Judge Mary Yu, Co-Chairs

Committee members present: Co-Chair Mary Yu and Co-Chair Judge Ann Schindler, Professor Robert Chang, Professor Tom Cobb, Ms. Stacey DeMass, Judge Sara Derr, Mr. Dan Ford, Judge Steven Gonzalez, Ms. Grace Huang, Mr. Michael Killian, Ms. LaTricia Kinlow, Ms. Fe Lopez, Judge Eric Lucas, Dr. John Martin, Ms. Emily McClory, Ms. Andra Motyka, Mr. Bryan Olsen, Ms. Shanthi Raghu, Ms. Arleen Tsao, Myra Downing and Monto Morton, Committee Staff

Official Formation of Committee
Judge Yu thanked everyone for participating and announced that the Advisory Committee on Immigration Issues is officially sanctioned by the Access to Justice Commission, the Gender and Justice Commission, the Minority and Justice Commission, and the Board for Judicial Administration (BJA). The District and Municipal Court Judges Association (DMCJA), the District and Municipal Court Managers Association (DMCMA), the Superior Court Administrators Association (SCA), the Superior Court Judges Association (SCJA), and the Washington State Association of County Clerks (WSACC) have all selected representatives to serve on the Committee. In addition, the Seattle University (SU) School of Law, the SU School of Law Korematsu Center, the SU Women's Law Caucus, and the University of Washington School of Law also have representatives on the committee. Dr. John Martin serves as a consultant to the project.

Meeting Schedule
Monthly conference calls will be scheduled.

Additional Committee Member Recommendations
The following people were recommended as committee members:
Matt Adams, Northwest Immigration Project
Ann Benson, Defender's Association
Defense attorney
Prosecutor
Federal judge
Robert Paun – immigration attorney (Fe Lopez)

Dorothy Stefan – Chief Counsel ICE (Fe Lopez)
Judge Kenneth Josephson- Immigration Judge (Fe Lopez)
Kenneth Josephson (Grace Huang)
Judge Jack White (John Martin)
Department of Corrections representative
Immigration Detention representative
Federal Public Defender – Jayce Jansen (Judge Gonzalez)

Committee Structure
The full committee will meet telephonically for future meetings.

There will be six subcommittees:

1. District and Municipal Court Educational Programs. This will include DMCJA and DMCMA.
2. Superior Court Educational Programs. This will include SCA, SCJA, and WSACC.
3. Appellate Court Educational Programs.
4. Bench Books
5. On Line Programs
6. Immigration Resources

EDUCATIONAL PROGRAMS
The Committee reaffirmed that the number one priority is education. The committee needs to have a very clear statement about its purpose and goals. The work has to answer the question "What's in it for me?' when developing materials and programs so judicial officers and those in the court community can see the value of the immigration work and importance of the topic of ensuring justice for all.

DMCJA - Judge Derr and Judge Schindler, Co-Chairs. Members are Grace Huang and Judge Yu.

Educational Programs. The dates for the conferences are:

- SCJA – April 2011
- DMCMA – May 2011
- DMCJA – June 2011
- Appellate conference cancelled.

DMCMA
LaTricia Kinlow will contact Linda Haggart and Kathy Seymour, the Education Co-Chairs to see if we can offer a program at their regional training events since their May event program has already been finalized.

SCJA – Judge Fleck, Judge Gonzalez, Grace Huang, Mike Killian, Judge Lucas, and Andra Motyka.

Activity for Educational Programs
Conference calls need to be set up with committee members once it is confirmed that the program has been selected.

BENCH GUIDES
Professor Chang and Tom Cobb, Co-Chairs. Committee members are Grace Huang, Fe Lopez, Emily McClory, and John Martin.

Activities:

- Committee members will get copies of bench guides from other states and send to Myra.
- The committee will create books for judicial officers, clerks, administrators, and court staff.
- Myra will find out if we can post information on the AOC website.

ON LINE EDUCATIONAL PROGRAMS

- Myra will work with Roxanne Mennes in exploring options for programming.
- Judge Gonzalez proposed a session on Immigration Law 101.

RESOURCES
Tom Cobb, Chair with John Martin as consultant.

Activities

- Tom and John will work together to create an outline and index to categorize materials as they are submitted and/or developed.
- Myra will post them on the website.

ESHB 2777
Portions of the Bill Being Discussed
(Specific Action Items are Underlined)

Sec. 309. RCW 10.99.040 and 2000 c 119 s 18 are each amended to read as follows:

1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of 15 concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, that the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those 25 criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b)In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(c) The no-contact order shall also be issued in writing as soon as possible. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the Administrative Office of the Courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2) or (3) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed. Such orders need not be entered into the computer-based criminal intelligence information system in this state which is used by law enforcement agencies to list outstanding warrants.

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

NEW SECTION. Sec. 310. A new section is added to chapter 2.56 RCW to read as follows:

(1) The Administrative Office of the Courts shall develop guidelines by December 1, 2011, for all courts to establish a process to reconcile duplicate or conflicting no-contact or protection orders issued by courts in this state.

(2) The guidelines developed under subsection (1) of this section must include:
(a) A process to allow any party named in a no-contact or protection order to petition for the purpose of reconciling duplicate or conflicting orders; and

(b) A procedure to address no-contact and protection order data sharing between court jurisdictions in this state.

(3) By January 1, 2011, the administrative office of the courts shall provide a report back to the legislature concerning the progress made to develop the guidelines required by this section.

Feedback from Survey and Regional Meetings

REGARDING DUPLICATIVE AND CONFLICTING NO-CONTACT AND PROTECTION ORDERS

Section 310

(1) The Administrative Office of the Courts shall develop guidelines by December 1, 2011, for all courts to establish a process to reconcile duplicate or conflicting no-contact or protection orders issued by courts in this state.

(2) The guidelines developed under subsection (1) of this section must include:
   a. A process to allow any party named in a no-contact or protection order to petition for the purpose of reconciling duplicate or conflicting orders; and
   b. A procedure to address no-contact and protection order data sharing between court jurisdiction in this state

(3) By January 1, 2011, the Administrative Office of the Courts shall provide a report back to the legislature concerning the progress made to develop the guidelines required by this section.

Current Issues

Most jurisdictions said they did not have a process for reconciling duplicative or conflicting orders

Lack of ability to see other orders were stated consistently as a major reason for conflicting or duplicative orders.

The parties in domestic violence cases are often mobile, have multiple orders, and appear in multiple courts.

Cases involving the same party can have several orders with several different case numbers. There is only space to enter one number into the law enforcement system. In addition, situations arise that force law enforcement records to create "dummy" codes.

Stand-by orders are a drain on resources for law enforcement. Law enforcement is not always able to comply with "stand-by" orders because of resource limitations.

The codes in the respective information systems are different for the courts and Washington State Patrol.

Children are at times not mentioned inno-contact and protection orders and it can be unclear how an order relates to the children. In addition, law enforcement can't

determine if the children in the order, sometimes identified only by initials, are the same ones at the scene because the dates of births are not provided to allow verification.

Orders are issued without a clearinghouse for determining if another order exists, if there are conflicting conditions and/or if it is duplicative of another order but may have a different expiration date.

No-contact, protection, and restraining orders are often entered regarding the same parties. There are conflicting restrictions or conditions on those orders. Visitation may be established in family court and at the same time be restricted in an order issued in another court.

Areas noted that are common for conflicts are:

- Visitation
- Terms regarding contact with the children
- Special conditions for turning over the children
- Primary distance restrictions
- Special provisions in the order

JABS allows judicial officers to know there are other orders. It does not list restrictions or conditions of the other orders.

There is a perception that judicial officers were not using JABS on a regular basis.

Feedback from judicial officers indicates that information is not being entered into the information system (JIS/JABS/NCIC) in a timely manner.

Many people said "follow the most restrictive order". But there was not agreement regarding the definition of "most restrictive".

Some people believe superior court orders "trump" municipal and district court orders.

There are too many orders.

The people who are victims of domestic violence or charged with domestic violence are not always clear about the difference between a no-contact order (criminal) and a domestic violence protection order (civil). They don't understand that because one is dismissed or expires, the other(s) are still in effect.

The law enforcement system allows only one order to be entered. When there is more than one order, they have to decide which one gets entered and which one doesn't.

There seems to be a lack of buy-in from some prosecutors and some judicial officers to resolve conflicting orders.

Some family law attorneys and prosecutors encourage getting several orders to ensure that one is in place if another expires. This practice is believed to increase the protection of the victim of domestic violence.

Clearly indicate on the form that acknowledges the existence of other orders. Add standard language with a check-box that indicates a modification or rescission of existing orders.

A process needs to be instituted to cross-check court and WASIC data bases to ensure accurate and complete data is in both systems.

There is no process to resolve conflicts with information between State and Tribal Courts.

There is not a process in place to resolve conflicting and duplicative orders
There are conflicts between civil protection orders and military criminal protection orders.

Protection orders are ignored in favor of criminal orders. Children are ignored or left out in criminal no-contact orders. Judges with little knowledge of the situation in the relationship make decisions that put victims and children at risk.

Questions to be Answered

What order is "most restrictive?"

Who should resolve conflicts and duplications?

What should be included in the guidelines?

What might be challenges for smaller or more rural jurisdictions in rectifying conflicts and duplications?

What processes need to be in place to ensure coordination between judicial officers, prosecutors, defense and family law attorneys, and law enforcement?

How do we resolve conflicting and duplicative orders across jurisdictions?

What process should be in place when judicial officers are not readily available? Should there be a requirement that all other related case numbers be placed on any order when it is discovered that more than one order exists? Who should be responsible for this?

What alternatives are there to a mandated "stand-by" order that would ensure victim safety?

Proposed Solutions

The most restrictive order should be followed. There should be standard language in each order that says this.

Restrictions in all orders are to be followed unless there is a conflict.

Joint problem-solving meetings should be arranged between judicial officers, prosecutors, defense bar, and advocates to provide a forum for resolving issues as they arise.

Develop a process to review all orders to prevent or correct conflicting or duplicative orders.

Use standard language for terminating orders. .

Have standard language on the order that says it supersedes all others.
Have a unified court order to cover criminal and civil cases when more than one case exists involving protective or no-contact orders.

Create a unified database for all such orders with a "hot button" key for all courts to easily and quickly access the databases.

Put all case numbers on orders when there is more than one in existence for the same people.

Put expiration date on front of order.

All orders should be scanned and accessible for viewing by the courts.

Involve clerks more in the resolution. Include them in access to information so as they work on ex parte domestic violence and restraining orders.

Match the language of the RCW 26.50 orders with restraining orders.

Develop a solution like E-tickets

Require training for judicial officers in effectively filling out no-contact orders that are clear, concise, and conflict-free.

STANDARD NO-CONTACT FORM

Section 309 (2) (c) By January 1, 2011, the Administrative Office of the Courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the Administrative Office of the Courts.

Current Issues

In a survey conducted, it appears many counties use a version of the existing no-contact order form. Many modify them or omit items as follows:

- The restraint provision: "causing or attempting to cause physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or staling the protected person(s)
- Some of the text in the no-contact provisions: using "....the defendant shall have no-contact, directly or indirectly, in person, in writing, or by telephone, personally or through any other person, with "rather than "[the defendant is prohibited from] coming near and from having any contact whatsoever, in person or through others, by phone, mail or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by defendant's lawyers with the protected person(s)."
- The order directing the clerk to send the no-contact order to law enforcement for data entry into WASIC
- The warnings to respondent
- Pre-trial order findings regarding firearms
- Pre-trial surrender of firearms
- Prohibition from obtaining, owning, possessing or controlling a firearm upon conviction
- Check boxes regarding federal intimate partner status

Distant restrictions vary case by case.

The most cited problem is the lack of legibility of orders. This increases the chances of entering misinformation into the law enforcement systems. At times, nothing gets entered because of the what was written is illegible. In addition, unnecessary time is expended by clerks and law enforcement attempting to interpret what is written.

There is no clear notation on one order regarding the existence of other orders. This creates a problem for law enforcement because they do not know which order to follow when there are conflicting restrictions or release conditions.

The form is not completely filled out.

Names are misspelled.

The definitions on the forms and language used on the forms are not "lay person" friendly.

There is no place on the form to write in modifications so it is done in the margin or squeezed in.

Some courts are putting the "no-contact" provision in the judgment and sentence.

The restriction on the use of technology in domestic violence incidents is often not included in the no-contact order. This includes email, texts, twitter, etc.

Children are at times not mentioned in no-contact orders and it can be unclear how an order relates to the children. In addition, law enforcement can't determine if the children, often identified by initials in an order, are the same ones at the scene because the dates of births are not provided to allow verification.

Cases involving the same party can have several orders with several different numbers. There is only space to enter one number into the law enforcement system. In addition, situations arise that force law enforcement records to create "dummy" codes.

Stand-by orders are a drain on resources for law enforcement. Law enforcement is not always able to comply with "stand-by" orders because of resource limitations.

The codes in the respective information systems are different for the courts and Washington State Patrol.

No-contact forms are not available in all of the most common foreign languages.

Some courts modify the order so they can get what they want in the order on one page.

Questions to be answered

What is the criteria that will measure if an order "substantially complies with" the AOC form?

In what ways could AOC be of assistance with the cost of new forms?

Should the standard form have language addressing "do not keep under surveillance" – stalking, cyber stalking?

What about mandating courts to use the standard form?
What are the specific issues regarding children? There are mixed feelings about the initials of children being listed. Under what circumstances would non-victim children be listed on the order?

Proposed Solutions

Put "here's what you can and can't do" in plain language on the front with legalese on the second page.
Identify standard restrictions/conditions and provide "default" language on the form, reducing the problem of illegibility. Some topics suggested were distance, locations for contact, responsibility for financial obligations.
Have one box for exceptions, modifications, special conditions so everyone knows where to look for them.

Clearly indicate on the form the existence of other orders. Add standard language with a check-box that indicates a modification or rescission of existing orders.

A process needs to be instituted to cross check court and WASIC data bases to ensure accurate and complete data is in both systems.

Put the expiration date on the front of the no-contact order.

Amend or develop judicial bench aids that enhance parties' compliance with orders. Especially problematic situations include the two parties live in the same apartment complex, next door to each other or attend the same school, live on the same street, work in the same building.

Require training for judicial officers in effectively filling out the no-contact orders that are clear, concise, and conflict-free.

MODIFY OR RESCIND AN ORDER

Section 309 (7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The Administrative Office of the Courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

Current Issues

Most courts have a process. There is not a standard practice across the state.

Court staff, clerks, law enforcement, the parties, and the advocates don't know the process.

Modifications are a challenge for law enforcement.

Often, reason for modification has to do with an economical issue.

Many jurisdictions require a safety plan be developed by the person who has been a victim of domestic violence.

Many jurisdictions assess the defendant's follow up and follow through on court ordered actions such as participation in batterers' treatment.

Questions to be Answered

Does the victim have standing? If not, how do you proceed?

Who should pull the information together for the courts?

Should all parties be present? What if person is incarcerated?

Should all parties be notified of the hearing?

What do we do with part-time courts?

How do we deal with multiple orders when only one has been modified?

Should there be a specific calendar for modifications and rescission requests?

Who makes the decision regarding if there will be a hearing?

Proposed Solutions

Make sure information is available to those requesting a modification or rescission and includes information about safety planning.

Provide criteria to be used by the judicial officer in making a decision to modify or rescind an order. Some mentioned:

- The length and nature of the relationship
- Whether children were involved
- Whether alcohol/drugs were involved
- Whether person who has been a victim of domestic violence has had an opportunity to talk with a victim advocate concerning the dynamics of domestic violence
- Whether there have been prior acts of domestic violence in the household
- Review of defendant's criminal history
- Past protection or restraining orders

Be mindful of time to get order modified. This means considering cooling off period, talking to advocate, considering what kind of hearing – ex parte or with attorney.

At pre-trial – modifications only

Washington State Supreme Court Gender and Justice Commission
And the Administrative Office of the Courts
REPORT TO THE LEGISLATURE
ESHB 2777 Section 309(7)

Introduction

On April 1, 2010, ESHB 2777 was approved by Governor Christine Gregoire. The legislation includes an intent section which notes in part the purpose is "to improve the lives of persons who suffer from the adverse effects of domestic violence." There are many sections to the bill but this report focuses on Section 309 (7) which states:

> All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The Administrative Office of the Courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

No-contact orders are issued when a person is charged with domestic violence and are used to protect the victim and prevent the defendant from contact with the victim. No-contact orders have been found to be an effective tool for helping to protect victims of domestic violence. The order exists while the criminal case is open and can be extended past sentencing. Some courts, but not all, allow rescission or modification of these orders.

There are several reasons why victims approach the bench requesting a modification or rescission of a no-contact order. In many situations, the victim does not want to end contact with the defendant but wants the violence to stop. Other reasons for the request often are associated with financial issues or parenting concerns. Also, at times, the request is made because the victim is intimidated by the defendant and feels pressured to make the request. While the no-contact order is intended to protect a victim of domestic violence, research has shown that a victim's separation from an abuser actually increases the risk of lethality for the victim. This places the judicial officer in a challenging situation because he or she is being asked to modify or rescind the order that prevents contact and to protect the victim from further abuse and yet, the person who is making the request is the victim of domestic violence.

The intention of this mandate is to provide the victims an opportunity to make this request, for the courts to have policies in place that ensure this access, and to provide information to the judicial officers that can assist them in making these difficult decisions.

Standing

There are differing opinions regarding standing. Some believe that domestic violence victims, as witnesses in a criminal proceeding and not parties to it, do not have standing to move the court for a rescission or modification of a no-contact order.

Others argue that the legislation grants neither standing nor party status to an individual seeking a modification or rescission of a no-contact order. Giving victims an orderly and consistently drafted process for doing so serves the ends of justice without redefining or reordering the parties in a criminal proceeding.

ESHB 2777 requires that "all courts shall develop policies and procedures . . . to grant victims a process to modify or rescind a no-contact order." Judges are not required by this language to grant such a request made by a victim. The legislation is designed in part to "enhance the ability of the justice system to respond quickly and fairly to domestic violence" and allow victims the ability to achieve safety and stability in their lives. Sometimes this means modifying or rescinding a no-contact order.

Development of the Policies

The Washington State Supreme Court Gender and Justice Commission was tasked with developing the court policies for the Administrative Office of the Courts. Commission members were involved with drafting the original legislation and became acutely aware that several entities were involved in rescission and modification requests: judicial officers, court personnel, county clerks, prosecutors, defense and family law bar, and law enforcement.

It was decided that information needed to be gathered from all the entities so a complete account of the current practices, present challenges, and possible solutions could be assessed.

Four surveys were developed:

1. prosecutor, defense, and family law attorneys
2. judicial officers, court personnel, and county clerks
3. law enforcement
4. advocates

Over 1,000 surveys were sent out and approximately 300 were returned.

In addition, fifteen regional invitational meetings were held around the state. Nearly 500 people participated in those meetings. Each meeting had representatives from the bar, bench, clerk's offices, court staff, and law enforcement. Rich, substantive discussion took place from many perspectives.

In October, a smaller group of stakeholders met and reviewed the information obtained from the survey and the meetings. Consensus was reached on the following policies.

Model Policy for Victims' Request for Rescission or Modification of No-Contact Orders

Each court will develop written instructions explaining the process for requesting a rescission or modification of the no-contact order. Instructions should be available in multiple languages in accordance with local demographics.

Instructions for the motion to rescind or modify must include notice to the moving party victim about factors that the court will consider when deciding whether to rescind or modify the order. Those factors may include but are not limited to: whether the victim has had a chance to make alternate plans for safety, the status and nature of the criminal proceeding(s) against the defendant, the defendant's compliance with court instructions and sentence, and other risk factors.

Instructions for completing the request should also include information about local domestic violence victim advocacy programs and may offer a strong recommendation that the petitioner consult with a domestic violence advocate prior to the hearing.

Each court will provide forms for making a rescission or modification request, granting or denying the hearing, and granting or denying the request for rescission or modification. The Administrative Office of the Courts (AOC) will develop model forms which courts are encouraged to use. These forms will include:

- Motion for modification or rescission of no-contact order completed by moving party victim.
- Notice of hearing completed by moving party.
- Denial of hearing completed by court.
- Findings and Order on hearing completed by court.
- New no-contact order completed by court.

Each court will determine the point of access for the petitioner's request. This could be the prosecutor's office, the defense, advocacy agency, the court, or a combination of these points of access. Courts are encouraged to consider offering multiple entry points to ensure victims have broad and easy access to this process and to minimize potential conflicts of interest.

Regardless of the process for access, all court staff, prosecutors, defense and family law attorneys, advocates, and clerk's offices will know the rescission and modification process.

Courts shall determine a scheduling mechanism to ensure that no contact order rescission and modification hearings happen with a reasonable time frame of the request, for example through a regularly scheduled calendar for rescission and modification hearings.

Each court is strongly encouraged to develop criteria for granting or denying a hearing. The AOC will develop model criteria and courts are encouraged to adopt these criteria.

No safety plan shall be required as a pre-condition for requesting a modification or rescission of a no-contact order. However, a person who wishes to rescind or modify a no-contact order is recommended to have a safety plan in place.

If a hearing is denied, the petitioner will be notified in writing of the reasons for the denial.

If a hearing is granted, all parties will be notified of the date, time, and place of the hearing.

If a no-contact order is modified, a new no-contact order will be issued stating that it is a modification of a previous order and notification will be sent to law enforcement.

If the no-contact order is rescinded, law enforcement will be notified.

TAB 4

Washington State Gender and Justice Commission
Strategic Planning Retreat Summary Report
January 5, 2009

Prepared by
Dr. John A. Martin and Ms. Myra Downing

Background

The Washington State Gender and Justice Commission held a planning retreat November 14 and 15, 2008, to:

- clarify the Commission's purpose, mission, and key functions;
- assess the Commission's capacity to provide effective leadership and promote gender equality throughout the system of law and justice in Washington State; and
- establish strategic priorities for the work of the Commission over the next three to five years.

This report begins by briefly reviewing the mission of the Washington State Gender and Justice Commission and summarizes the functions and capacity of the Commission to lead the courts and justice system in support of that mission. The report subsequently describes the Commission's four strategic priorities.

Mission, Functions, and Leadership and Service Capacity

Mission

The consensus of meeting participants was that the mission of the Gender and Justice Commission, as initially authorized in 1994 and reauthorized in 2000, remains relevant, encompassing, and critical to promoting justice for all.

The mission of the Commission is to promote gender equality in the system of law and justice through:

- Sharing collective implementation about gender equity issues with all levels of state court, the legal profession, law enforcement, the educational community, and the public at large.
- Offering educational programs and examining court practices to ensure that gender bias plays no part in the treatment of parties attorneys and court employees, and that gender bias plays no part in the judicial decision making process.
- Serving as liaison between the courts and other organizations which share the Commission's commitment to gender equality in the courts in order to identify gender equality issues and to deal with them effectively.

- Cooperating and coordinating with national and regional gender and justice programs, networks, committees, task forces and commissions for purposes of developing and offering effective judicial education programs, and developing research projects and sharing ideas.
- Communicating the mission, goals, and developing project of the Commission and the courts to the legal and judicial community and to the public at large.

Functions

Collectively, session participants concluded that the Commission's key functions (education, coordination, grant management, and program and project development and oversight), as well as the general organization and staffing of the Commission, are flexible enough to address changing trends and needs while continuing to support the mission.

In particular, with regard to education, participants agreed that the work of the Commission should stress:

- synthesizing best practice and other knowledge about gender and justice from across the nation into programs and projects that address the particular needs of Washington State;
- increasing the use of research findings;
- developing on-going research partnerships;
- increasing the numbers of Commission partners and expanding the local and state gender and justice network to include greater numbers of local, state, federal, and international public and private sectors participants;
- increasing understanding of the theory and practice of risk assessment in the gender and justice arena;
- working more closely with the National Judicial College and other court support organizations;
- increasing media attention directed at gender and justice topics; and
- developing educational formats that move well beyond the traditional seminar class setting.

With regard to the Commission's coordination functions, it was emphasized that the Commission should:

- coordinate programs and topics in light of a set of well articulated strategic goals and outcomes;
- build personnel and institutional relationships and networks of private and public organizations committed to addressing gender and justice issues;
- leverage participation by private and public attorneys across the state in efforts to address gender and justice issues;
- coordinate the advancement of gender equity and justice among judge organizations, the Washington State Administrative Office of the Courts (AOC), and other commissions and committees; and
- monitor progress towards gender and justice improvement goals and outcomes.

Commission members also indicated that the grant management function should:

- foster alignment between individual grants and the Commission's four long-term strategic priorities;
- establish best practices; and
- monitor, evaluate, and report the outcomes of grant funded efforts.

Finally, with regard to program and project development and oversight, session participants indicated that the Commission should:

- assertively initiate educational and research programs that advance gender equity;
- coordinate the contents of programs and projects;
- generate financial support for programs and projects; and
- evaluate programs and projects.

Leadership and Service Capacity

Commission members indicated that as currently constituted, the Commission has the representation and support from the key court stakeholders and interest groups needed to advance gender and justice in Washington State. Still, participants also stressed that the work of the Commission could be enhanced by:

- developing a broader network of national, state, and local partners to work with the Commission;
- more aggressively collecting and distributing information and training materials throughout Washington;
- establishing and supporting a set of long-term priorities; and
- improving Commission capacity to help develop and implement effective policy throughout the courts.

In addition, session participants explored the desirability of establishing sub-committees as one tool for advancing the Commission's work. The advantages of subcommittees indentified by participants included:

- providing opportunities for smaller groups to meet more frequently;
- increased flexibility;
- possibilities for a more workable division of labor among Commission members;
- increased capacity to reach consensus more efficiently;
- increased capacity to include more participants in the work of the Commission; and
- increased accountability.

Session participants concluded that the possibility of establishing sub-committees aligned with the four strategic priorities outlined below should be considered at a future Commission meeting along with the preparation of a detailed work plan for the next few years.

Strategic Priorities

Strategic priorities are the net result of the interplay of mission, trends, service expectations, needs, and capacity, and long-term vision. Strategic priorities typically focus on general direction rather than on specific projects or operations. They encompass the policies, programs, and actions needed to move towards a more favorable future. Participants stressed that the work of the Commission could be enhanced by building a broader gender and justice network throughout the public and private court and justice communities and by concentrating the work of the Commission over the next three-to-five years on four strategic priorities.

1. Increase awareness of gender inequality in the legal profession and leverage effective responses to gender inequality.
2. Establish effective domestic violence structures in local jurisdictions throughout Washington State including structures that address the problems posed by cyber-stalking and other new and emerging forms of violence.
3. Establish approaches for assuring the continuity of services needed by the increasing numbers of incarcerated women and girls in Washington State.
4. Establish approaches for understanding and addressing the nexus of immigration, culture, and domestic violence.

1. Increase awareness of gender inequality in the legal profession and leverage effective responses to gender inequality.

Session participants indicated that progress is being made increasing awareness of gender and justice issues and lessening gender-based inequities throughout the public sector portion of the Washington State courts and justice system. However, participants also stressed that efforts to address gender and justice issues in the private legal sector, especially the private bar, and the business and family law focused portions of the ADR profession, have lagged behind. Consequently, increased Commission attention should be directed at engaging the private legal sector in identifying and addressing gender and justice issues.

Activities directed at addressing gender and justice issues in the private legal sector might include developing programs and projects directed at:

- inventorying best practices for working with the private legal sector from across the nation on gender and justice issues;
- cataloging the gender and justice implications of domestic partnership laws, including the implications on gay, lesbian, bi-sexual, and transgendered communities;
- exploring the nexus between gender and justice improvements and racial and ethnic diversity; and
- examining the gender and justice implications of family law reform in general.

2. Establish effective domestic violence structures in local jurisdictions throughout Washington State, including structures that address the problems posed by cyber-stalking and other new and emerging forms of violence.

Establishing effective domestic violence structures in local jurisdictions has long been a priority of the Gender and Justice Commission. Participants stressed that traditional approaches need to be updated to:

- Address the emergence of new technology based forms of domestic violence such as cell phone, and computer cyber-based bullying, stalking, and harassment.
- Close gaps in the intersection of gun laws, court proceedings, and domestic violence.
- Implement ways for judges and other court and justice decision-makers to receive accurate and timely information relevant to addressing domestic violence cases and appropriately serving domestic violence victims.

3. Establish approaches for assuring the continuity of services needed by the increasing numbers of incarcerated women and girls in Washington State.

A variety of long-term trends, such as a declining economy, unstable home environments, drug and alcohol abuse, school drop outs, and family history of criminal activity have resulted in increasing numbers of incarcerated women and girls in jurisdictions across Washington State. Gaps between the needs of clients, available services, and the court and justice system capacity have accompanied the rapid increase in the women and girls incarcerated populations. Services especially lacking include the availability and application of gender specific risk and other assessment tools, the availability of adequate training, counseling, and probation services, and general support for reentry into broader society.

4. Establish approaches for understanding and addressing the nexus of immigration, culture, and domestic violence.

Immigration, a changing workforce, and numerous other demographic trends have resulted in jurisdictions across Washington State needing to develop better ways for dealing with domestic violence involving people from diverse cultures. In particular, jurisdictions across Washington State are becoming increasingly populated with people with Latin American, Asian, African, and Middle-Eastern, rather than Anglo-European roots. As one result, courts and justice systems need to formulate approaches to dealing with domestic and family violence that emphasize the importance of understanding culture differences and determining when and how cultural attributes might be helpful in shaping appropriate responses. Moreover, understanding the role immigration status can play in both the dynamics of domestic violence and fashioning and successfully implementing appropriate responses was identified as an important aspect of improving court capacity.

Next Steps

Commission members will meet in January 2009, to prioritize their work for the coming year, create an operating structure, and define their role in ongoing projects that overlap with efforts of related partner agencies and organizations.

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TAB 5

Washington Courts: News and Information

Judge Joan DuBuque Honored for Exemplary Contributions to Domestic Violence Prevention and Coordination

October 22, 2010

October 22, 2010 – King County Superior Court Judge Joan E. DuBuque was honored this evening by the King County Coalition Against Domestic Violence (KCCADV) in recognition of her many efforts to educate, promote and coordinate DV prevention services on both local and national levels.

Since 2004, Judge DuBuque has been the Chair of the King County Domestic Violence and Child Maltreatment Coordinated Response Project. This project involved the work of a multi-disciplinary leadership group, community participants and cooperating parties in Region Four, comprising King County.

The product of this effort was the development of the King County Domestic Violence and Child Maltreatment Coordinated Response Guideline, which aims to achieve safety for children and DV survivors as well as accountability for DV perpetrators to help ensure that the best interests of children are effectively protected.

Additionally, Judge DuBuque is an active member of the "Supporting Early Connections Project" which provides mental health and support services to infants and toddlers involved in dependency proceedings. She regularly trains locally and nationally on issues of family law, domestic violence, and child maltreatment for judicial officers, attorneys, advocates, and social workers.

A member of the King County Superior Court bench since 1984, initially serving as a Family Law Commissioner, Judge DuBuque was appointed to the position of judge by Governor Booth Gardner in 1989. She has served as King County Superior Court's Chief Criminal Judge and served as a member of the court's Executive Committee for over a decade. She was named the Champion of Justice in 2005 by the Washington State Bar Foundation and Judge of the Year in 2003 by the Washington Women Lawyers for her work in Unified Family Court.

Judge DuBuque is a 1977 cum laude graduate of the University of Puget Sound's School of Law, and was admitted to practice in the State of Washington in 1977.

Yakima Municipal Court, Following Controversy Stirred in Seattle, Begins Sentencing Policy with Dire Consequences for Immigrants

By Nina Shapiro, Tue., Oct. 26 2010 @ 12:23PM

Yakima Municipal Court has adopted a new sentencing policy for petty criminals that will likely result in many more immigrants being deported. And they've got Seattle Muni Court Judge Edsonya Charles to thank.

Beginning Monday, Yakima's Muni Court will stop routinely issuing 364-day sentences and start handing out year-long ones instead. A 365-day sentence, the maximum for misdemeanors, triggers mandatory deportation for all immigrants except citizens (including green card holders), even if most of their sentences are "suspended" and they only spend a day or two in jail.

An October 11 memo from the Yakima court to prosecutors and defense attorneys attributes the policy change to an August opinion by the Washington State Ethics Advisory Committee. The opinion responded to a question by Charles, Seattle Muni Court's presiding judge, as to whether a court could adopt a "blanket" 364-day sentencing policy because of immigration concerns.

At the time, she has told *SW*, that's was she thought City Attorney Pete Holmes was asking her court to do. Later, she conceded that she had misunderstood. Holmes had not suggested a blanket policy for *judges*, who have the ultimate discretion over sentencing. Instead, he had asked his own prosecutors to start seeking the slightly shorter sentences.

Responding to the question asked, however, the ethics committee opined that courts could not carry out the "blanket policy" that Charles described "because judicial officers are required to examine the facts and law in each case." Which is why Yakima's decision--which simply seems to issue a new blanket policy--is so puzzling.

Yakima Muni Court Presiding Judge Kelley Olwell insists that there's no new blanket policy. "Each case is subject to individual scrutiny," she tells *SW*. At the same time, she says that the new policy describes what will "typically" happen.

Upon being read the Yakima Court's memo, Alan Hancock, an Island County Superior Court judge who chairs the ethnics committee, says the new policy sounds like a blanket policy to him. "That is not consistent with our opinion," he says. "In fact, it's contrary to our opinion."

That may become even clearer if Hancock's committee issues a clarification, which he says it may do after Wednesday. Charles requested such a clarification after the flap she created become apparent. Facing a tough reelection fight, the judge has lost at east one endorsement, from prominent immigrant rights advocate Pramila Jayapal.

Jayapal, who heads the advocacy group OneAmerica, says she believes judges in Yakima and elsewhere "who don't like immigrants" are using the ethics committee's opinion as a pretext for creating problems for them. Yakima, it should be noted, is home to roiling immigration debates. (See *SW*'s July cover story on former illegals who have become the economic backbone of the Yakima Valley. Pictured at left: Yakima anti-immigrant activist Bob West.)

Olwell denies acting on any feelings she or her fellow judges might have about immigrants. She says she doesn't know why her court had been routinely issuing 364-day sentences, a policy that predated her arrival on the bench five years ago. She says now, however, "we're going back to what the law is." As she describes it, that means maximum sentences that "are not manipulated for any reason."

Model Policy For Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders

Jennifer Long, Christopher Mallios, and Sandra Tibbetts Murphy

February 2010

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Model Policy
For Prosecutors and Judges
on
Imposing, Modifying and Lifting
Criminal No Contact Orders

Jennifer G. Long,[1] Christopher Mallios[2]
and Sandra Tibbetts Murphy[3]

Introduction

The goals of the criminal justice system in a domestic violence case are to seek justice, protect the victim and the community, hold the offender accountable for his crimes, prevent and deter future crime, and rehabilitate the abuser. Criminal no contact orders are an effective tool to help protect victims of domestic violence during the pendency of criminal prosecution.[4] Such no contact orders are designed to prevent individuals who have been arrested for domestic violence from contacting the victim and they are commonly used as restrictions placed on defendants prior to the final case disposition.[5] No contact orders are intended to protect the victim, her[6] family (where applicable) and the community. They are also imposed to prevent the offender from committing additional crimes while the domestic violence case is pending. Such an order only exists while the criminal case is open and can also be extended during the post-conviction sentence of incarceration, probation or parole. If the domestic abuse charges are dismissed, or if the batterer is acquitted, any concomitant no contact order ends.

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[4] See, e.g., R. Brame et al., *Impact of Proactive Enforcement of No-contact orders on Victim Safety and Repeat Victimization*, Nat'l Institute of Justice, grant no. 2004-WG-BX-0007, U.S. Dep't of Justice, Washington, DC (Aug. 2009) , *available at* http://www.ncjr.gov/pdffiles1/nij/grants/228003.pdf (stating "No-contact orders may offer swifter relief than criminal actions by serving as an immediate remedy to the continued threat of violence, prohibition contact by a woman's abusive partner, and serving as a symbolic threat of the criminal justice system.").

[5] *Id.* at 8.

[6] Because research has shown that the overwhelming number of victims of domestic violence are female, and offenders male, this paper refers to victims as female and defendants/batterers as male. See INTIMATE PARTNER VIOLENCE IN THE U.S. (1993-2004), U.S. Dep't of Justice, Office of Justice Pgms., Bureau of Justice Statistics, *available at* http://www.ojp.usdoj.gov/bjs/intimate/htm (indicating that, in 2004, 96.9% of victims of intimate partner violence were female where offender was male).

Violations of such no contact orders, or conditions of release, can be prosecuted as contempt or as additional crimes. Commonly, judges impose no contact orders at a defendant's initial appearance or arraignment, much like release conditions, although some jurisdictions may require the prosecutor to ask the court to issue a no contact order.[7] Additionally, such orders can be modified by a judge upon motion of the prosecutor or the batterer's attorney, or upon decision of the court.

Unlike their civil counterpart, however, criminal no contact orders generally are not victim-initiated; rather, the order is imposed *sua sponte* by the court or upon request of the prosecution. Such orders are increasingly viewed by both prosecution and courts as an appropriate response to criminal domestic violence.[8] The filing of criminal charges and issues of criminal no contact orders (NCOs) alone, however, do not keep victims safe.[9] In fact, one study showed that 51% of defendants charged with domestic violence felonies were rearrested before their criminal cases were concluded.[10] These challenges require that prosecutors and judges consider various factors, in addition to the wishes of a particular victim, when determining whether to impose or maintain a criminal no contact order or release condition.

No contact provisions, whether in specific and separate orders or as conditions of release, are valid protective tools based on the fact that the defendant has been arrested for a crime against the victim, a crime which has at least threatened or caused her some bodily harm. Unfortunately, such no contact provisions may not always increase a particular victim's safety. Significantly, research has shown that, in some cases, a victim's separation from an abuser actually increases the risk of lethality.[11] The decision by the prosecutor or the court to restrict contact between a batterer and his victim does not always achieve the system's goal of victim protection and safety.

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[7] See, e.g., I.C.A. §664A.3 (2008), which requires magistrates in Iowa to issue no contact orders at the defendant's initial appearance in a criminal domestic violence case if contact with the defendant would pose a risk to the victim or her family.

[8] Brame at al., supra n. 3, at 23.

[9] In order to maximize victim safety, victim advocates in community-based agencies should work with victims to identify and address risk and lethality indicators and to develop and monitor safety plans. Victim safety is further enhanced when prosecutors and judges monitor defendants' compliance with such orders and impose immediate sanctions upon violation.

[10] L. NEWMARK, M. REMPEL, K. DIFFILY, AND K. KANE, SPECIALIZED FELONY DOMESTIC VIOLENCE COURT: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE, Final report for National Institute of Justice, grant number 97-WT-VX-0005. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice, October 2001 (NCJ 191861) and 2004 (NCJ 199723); *available at* http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=191861 and http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=199723.

[11] J. Campbell et al., *Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study*, AM. J. PUBLIC HEALTH, vol. 93, no. 7 (July 2003). See also, T.K. Logan & R. Walker, *Separation as a Risk Factor for Victims of Intimate Partner Violence: A Response to Campbell*, J. INTERPERSONAL VIOL., vol. 19, issue 12 (Dec. 2004) (noting that women separating in the context of victimization are also at high risk for stress, mental and physical health problems; have increased conflict over the children and concern for child safety; and have economic, structural, psychological and social barriers to help seeking).

Prosecutors and judges face even greater challenges, however, when they must decide whether to issue or maintain no contact provisions over the objection of a particular victim. Unlike civil protection order proceedings, the victim in a prosecution for domestic violence is not a party to the criminal case. Although the prosecutor advocates for the safety of the victim and community, the prosecutor does not legally represent the victim. The prosecutor represents the government against the abuser because a violation of the criminal code – even one that occurs in private or within a family – is an offense against the peace and dignity of the jurisdiction in which it occurs. The prosecutor's role as attorney for the community, and not the victim, can give rise to conflicts when the prosecutor's decisions about how to proceed with the case conflict with the victim's wishes.[12]

Some victims leave, but then return; some victims do not want to end contact with the defendant but simply want the violence to end.[13] Some victims object to no contact orders because of negative collateral consequences the order may bring her.[14] Other victims object to no contact orders out of fear of the defendant or due to actual threats and intimidation by the defendant.[15] In some cases, victims have determined that no contact provisions may actually increase the violence to dangerous and deadly levels.[16]

Participants in the criminal justice system must understand the competing factors that make these decisions so important. Although the victim is not a party and the prosecutor does not represent her, her wishes must be considered – along with other factors – when deciding to impose or maintain a criminal no contact order. In order to maximize victim safety and offender accountability, while minimizing the potential collateral consequences to a victim, prosecutors and judges must develop and implement a process to gather timely and accurate information about risk and lethality, a particular victim's wishes and motivations, and possible negative consequences in order to best determine when to impose or maintain a no contact order in the face of a victim's opposition.

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[12] S. F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487 (2008) (stating, "The legal system must confront the tension between legal rules that assume that the only solution to domestic violence is to dissolve the relationship and the wishes of many battered women to maintain the relationship in a non-abusive form.").

[13] *Id.* at 1499.

[14] Domestic violence victims may face significant financial consequences, loss of housing and other necessary support due to a no contact order. See, e.g., *Id.* at 1499 (stating "Victims have many reasons for staying with or returning to violent partners, including financial dependency, fear of retaliation, social isolation, community pressure, and concern about losing custody of the children.").

[15] Brame et al., supra n. 3, at 24-25; J.P. GREIPP & R.L. MARTINSON, Monograph: Witness Intimidation, AEquitas: The Prosecutors' Resource on Violence Against Women, Washington, DC: (*forthcoming* 2010).

[16] Goldfarb, supra n. 12 at 1520 (protection order that purports to terminate contact between the parties may be the trigger for an intensification of abuse).

Victim Safety

Victim safety is the ultimate factor behind the decision to issue a no contact order in a criminal domestic violence case. As mentioned earlier, however, victim safety is not always enhanced by the imposition of a no contact order.[17] Prosecutors and judges must recognize that "[w]omen are most at risk of violence after ending, or while trying to end, an abusive relationship."[18] In many situations, the imposition of criminal charges and no contact orders is viewed by batterers as a step towards that separation. While criminal charges are pending, batterers often attempt to prevent their victims from leaving the relationship, retaliate for her efforts to separate or force her to return to the relationship.[19] According to one study, offenders who were subject to no contact orders were more likely to commit further abuse than offenders whose no contact orders or conditions of release permitted some contact with the victim.[20] Because of the prevalence and real likelihood of "separation assault,"[21] a victim's decision to maintain contact with her

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[17] See, e.g., A.R. KLEIN, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS AND JUDGES, SPECIAL REPORT FOR THE NATIONAL INSTITUTE OF JUSTICE, Washington, DC: U.S. Dept. of Justice, Nat'l Inst. of Justice (June 2006) (NCJ 225722) (stating "Studies agree that for those abusers who reoffend, a majority do so relatively soon after their arrest. In states where courts automatically impose no-contact orders after an arrest for domestic violence, re-arrests for order violations begin to occur immediately upon the defendant's release from custody. In both a Massachusetts misdemeanor arrest study and a Brooklyn, N.Y., felony arrest study, the majority of defendants rearrested for new crimes of abuse were arrested while their initial abuse cases were still pending in the court." (citing, E. BUZAWA, G. HOTALING, A. KLEIN, & J. BYRNES, RESPONSE TO DOMESTIC VIOLENCE IN A PRO-ACTIVE COURT SETTING, Final report for National Institute of Justice, grant number 95-IJ-CX-0027. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice, July 1999, NCJ 181427, *available at* http://www.ncjrs.gov/App/Publications/abstracts.aspx?ID=181427; and L. NEWMARK, M. REMPEL, K. DIFFILY, & K. KANE, SPECIALIZED FELONY DOMESTIC VIOLENCE COURT: LESSONS ON IMPLEMENTATION AND IMPACTS FROM THE KINGS COUNTY EXPERIENCE, Final report for the National Institute of Justice, grant number 97-WT-VX-0005. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice, October 2001, NCJ 191861, and 2004, NCJ 199723; *available at* http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=191861 and http://www.ncrjs.gov/App/Publications/abstract.aspx?ID=199723.)).

[18] Goldfarb, supra n. 12 at 1520; M. R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991); P. TJADEN & N. THOENNES, PREVALENCE, INCIDENCE AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, NCJ 172837. Washington, DC: U.S. Dept. of Justice (1998); P. TJADEN & N. THOENNES, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice (2000).

[19] See e.g., K. Murphy Healey, *Victim and Witness Intimidation: New Developments and Emerging Responses*, NAT'L INST. OF JUSTICE RESEARCH IN ACTION, U.S. Dept. of Justice, Washington, DC (October 1995); N. Cline et al., *Prosecuting Witness Tampering, Bail Jumping and Battering From Behind Bars*, ENHANCING RESPONSES TO DOMESTIC VIOLENCE: PROMISING PRACTICES FROM THE JUDICIAL OVERSIGHT DEMONSTRATION INITIATIVE, Vera Inst. of Justice (2006).

[20] Goldfarb, supra n. 12 at 1520.

[21] See generally Mahoney, supra n. 16; R. E. Fleury et al., *When Ending the Relationship Does Not End the Violence: Women's Experiences of Violence by Former Partners*, 6 VIOLENCE AGAINST WOMEN 1363 (2000).

batterer may be a calculated strategy of resistance and survival.[22] Thus, a victim's request to terminate or modify a no contact order, often viewed by the criminal justice system as a symptom of weakness or psychological impairment, may actually be a rational assessment of her danger.[23]

Accurately assessing a victim's safety in any given domestic violence case is complicated by several issues. Many victims face an increased risk of violence simply by revealing to prosecutors and judges the nature and extent of the abuse and their fear.[24] Additionally, while domestic violence victims are very accurate reporters of risk and lethality indicators, they often underestimate their partner's actual level of danger.[25] Often, prosecutors and judges are asked to make decisions about the status of a no contact order with incomplete or even inaccurate information, in the midst of crowded and rushed courtrooms and dockets.

Recognizing that a docket of domestic violence cases takes longer to complete than other types of cases, judges should still strive to create conditions that encourage meaningful discussions between prosecutors and victims in the courthouse. Ideally, this would include allowing sufficient time and a private place for prosecutors to meet with victims and establish the rapport needed to obtain valuable safety information. Victims should also be permitted to involve family, friends and community-based advocates in these discussions as a means of additional support and assistance to provide full information about collateral consequences associated with the criminal charge or no contact order.

Legal interventions on behalf of domestic violence victims are most successful when they are integrated with each other (civil and criminal), as well as with non-legal, community resources.[26] For this reason, it is vital that prosecutors and courts participate in an ongoing collaboration with advocacy groups, police, probation and social service agencies in fashioning a coordinated community response to domestic violence.[27] The arrest of a batterer brings a victim into the criminal justice system, but in a coordinated community response, it also brings her into a realm of other services and assistance. An

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[22] Goldfarb, supra n. 12 at 1502 ("Battered women's acts of resistance can take many forms, including protecting their children, seeking help from formal and informal sources, carving out opportunities for safety, and ending the relationship temporarily or permanently. ... [A] decision to continue the relationship may itself be a carefully calculated strategy of resistance to violence." (citations omitted)).

[23] *Id.*

[24] PRAXIS INTERNATIONAL ET AL., THE ST. PAUL BLUEPRINT FOR SAFETY: AN INTERAGENCY RESPONSE TO DOMESTIC VIOLENCE CRIMES, 61 (2009).

[25] See L. Bennett Cattaneo & L. A. Goodman, *New Directions in Risk Assessment – An Empowerment Approach to Risk Management*, in INTIMATE PARTNER VIOLENCE, 1-10 (Kathleen A. Kendall-Tackett & Sarah M. Giacomoni eds., 2007); A. N. Weisz et al., *Assessing the Risk of Severe Domestic Violence: The Importance of Survivors' Predictions*, 15 J. INTERPERSONAL VIOLENCE 75, at 87 (2000).

[26] P. FINN & S. COLSON, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT, U.S. Dep't of Justice at 63 (1990).

[27] See generally COORDINATING COMMUNITY RESPONSES TO DOMESTIC VIOLENCE: LESSONS FROM DULUTH AND BEYOND (Melanie F. Shepard & Ellen L Pence, eds., 1999).

effective interagency approach recognizes that "a domestic violence crime is rarely fully resolved with the first intervention,"[28] and that victims need various kinds of assistance from different agencies at different times.

Judges and prosecutors should understand that the resolution of the case before them is not necessarily going to end the abuse in the victim's relationship with the defendant. This is especially so if the victim decides to not cooperate with the prosecution and there is insufficient evidence to proceed without her direct testimony. In such a case, even though the charges are ultimately withdrawn or dismissed, the nature of the victim's interaction with each practitioner in the criminal justice system will impact her future willingness to seek such protections.

Identifying Victim Motivations

For a substantial number of women who find themselves in abusive relationships, the ideal outcome is the elimination of the violence while maintaining the relationship. A victim such as this may wish to modify a no contact order to permit some contact between her and the batterer, or she may wish to have the no contact rescinded entirely. On the other hand, many victims ask prosecutors and judges to lift or modify no contact orders due to fear, because they have been threatened or intimated by their abusers. In this situation, granting an abuser greater access to the victim could place her in greater danger. It is important, therefore, that prosecutors and judges obtain accurate information to determine a victim's motivations in seeking the termination or modification of a no contact order.

The victim's perception of her risk of further abuse is one of the most important predictors of future violence.[29] The most significant step that prosecutors and judges can take to improve victim safety is to ensure that victims have access to confidential advocates with whom they can work to identify the risks of their current situation and to develop safety plans to complement any court orders.[30] Ideally, such advocates are present in courtrooms and available for consultation with victims, and to facilitate

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[28] THE ST. PAUL BLUEPRINT FOR SAFETY, supra n. 22, at 5 (2009).

[29] See, Cattaneo & Goodman, supra n. 25; J. CAMPBELL, PSYCHOMETRIC DATA: DANGER ASSESSMENT, *available at* http://www.dangerassessment.org/WebApplication1/pages/psychometric.aspx.

[30] A. HARRELL, J. CASTRO, L. NEWMARK, & C. VISHER, FINAL REPORT ON THE EVALUATION OF THE JUDICIAL OVERSIGHT DEMONSTRATION: EXECUTIVE SUMMARY, Final Report for the National Institute of Justice, grant number 99-WT-VX-K005. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice and The Urban Institute, June 2007, NCJ 219386, *available at* http://www.urban.org/publications/411498.html (three-state study showed that victims' fear of retaliation was reduced in jurisdictions with specialized domestic violence prosecution units, increased victim advocacy, and specialized domestic violence courts.). In developing a safety plan, an advocate assists a victim to identify the options and resources available and to outline how she will protect herself and her children in a variety of settings and circumstances. See generally, J. DAVIES ET AL., SAFETY PLANNING WITH BATTERED WOMEN, 73-92 (1998).

disclosure and respect any rules or statutes regarding confidentiality, there should be private space in which advocates and victims can meet.[31]

In order to gather information about a victim's situation and concerns, it is vital that prosecutors make all efforts to meet with victims, preferably while their abusers are still in custody. Practitioners must recognize that victims are often attempting to cope with the numerous ways in which the battering affects and threatens their lives, not only the threat of physical violence.[32] An examination of the collateral consequences to the victim of the criminal prosecution and imposition of the no contact order should take into account the victim's financial and child care needs specifically. It is also vital to know whether the victim lost other forms of support, such as help from the defendant's family, after his arrest.

Recognizing Victim Intimidation

Intimidation of victims is a crime designed to procure their silence and thwart the efforts of the criminal justice system.[33] A three-state study of domestic violence prosecutions in five jurisdictions found that fear of retaliation by the abuser was the most common barrier to victim participation with prosecution.[34] Batterers often know that the right to confrontation requires the victim to testify in court, and that the failure of a victim to appear in court can result in dismissal of the charges, or other outcomes in his favor.[35] This intimidation can take many forms, including direct contact by the perpetrator, telephone calls or emails, or contact through other people. Undetected, such tactics re-victimize the abused and reward the batterer with impunity from the justice system.[36] Recognition of such intimidation tactics can be especially crucial when a victim seeks to terminate or modify a no contact order, and represent a valuable opportunity for prosecutors to explore with victims whether such is happening.

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[31] For additional information on the role of confidentiality when working with battered women, and the obligations of victim advocates to help protect it, see J. KUNCE FIELD ET AL., CONFIDENTIALITY: AN ADVOCATE'S GUIDE, Battered Women's Justice Project, Minneapolis, MN (rev'd Sept. 2007).

[32] S. HAMBY WITH A. BIBLE, BATTERED WOMEN'S PROTECTIVE STRATEGIES, VAWNet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence, Harrisburg, PA (July 2009), *available at* http://www.vawnet.org.

[33] GREIPP & MARTINSON, supra n. 15.

[34] A. HARRELL, J. CASTRO, L. NEWMARK, AND C. VISHER, FINAL REPORT ON THE EVALUATION OF THE JUDICIAL OVERSIGHT DEMONSTRATION: EXECUTIVE SUMMARY, Final report for the National Institute of Justice, grant number 99-WT-VX-K005. Washington, DC: U.S. Dept. of Justice, Nat'l Institute of Justice and The Urban Institute, June 2007, NCJ 219386, *available at* www.urban.org/publications/411498.html.

[35] See *Crawford v. Washington*, 541 U.S. 36 (2004); *Davis v. Washington/Hammon v. Indiana*, 547 U.S. 813 (2006); and *Giles v. California*, 128 S.Ct. 2678 (2008). See also, THE ST. PAUL BLUEPRINT, supra n. 22 at 9 ("abusers discourage victims' participation and reinforce the message that interveners cannot or will not help").

[36] GREIPP & MARTINSON, supra n. 15.

An abuser may pressure the victim to seek termination of the no contact order, perhaps to test her loyalty to him, as well as to make it easier to gain access to the victim. Prosecutors must ask about intimidation tactics when obtaining a victim's input regarding the no contact order and the charges. It might be appropriate to ask if she has been threatened and if the batterer has contacted her directly or through a third party. But in addition to asking victims about such intimidation, prosecutors should actively look for evidence of such. With prison call logs, prosecutors can determine whether the abuser has called the victim while in custody, and if recordings of those calls are available, police or prosecutors should review the calls for possible evidence of intimidation. Prison visitor logs will show if the victim has visited the defendant in jail, thereby providing an opportunity for face-to-face intimidation.

Assessing Risk and Lethality

According to the FBI, approximately one-third of female murder victims are killed by an intimate partner.[37] Prosecutors and judges, therefore, struggle to determine which victims are at the most risk for lethal violence. Such assessment is an important aspect of safety planning with a victim. While there are many lethality assessment tools available[38], it is important that practitioners use the tools to foster a conversation with the victim, rather than as a checklist or a collection of discrete data.[39] Most assessments consider prior victimization, a batterer's drug and alcohol problems, a batterer's obsessive-possessive behavior and excessive jealousy, a batterer's threats to kill the victim or children, a batterer's possession of, access to, familiarity with and degree of fascination with guns, a batterer's use of violence in settings outside the home, any stalking behavior, a batterer's suicidal ideations, plans, threats and past attempts, the status of the relationship (separated or separating, estranged), or whether the victim is in

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[37] Bureau of Justice Statistics, INTIMATE PARTNER HOMICIDE: HOMICIDE TRENDS IN THE U.S., *available at* http://www.bjs.ojp.usdoj.gov/content/homicide/intimiates.cfm#intprop. However, a 1998 report indicates that, when looking at city- and State-specific databases, rather than the federal homicide data, intimate partner homicides make up 40 to 50 percent of all murders of women in the United States. J. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, NIJ JOURNAL, No. 250, 15-19 (2003), *available at* http://www.ncrjs.gov/pdffiles1/jr000250e.pdf (*citing* J. Campbell, *If I Can't Have You, No One Can: Power and Control in Homicide of Female Partners,* in FEMICIDE: THE POLITICS OF WOMAN KILLING, (ed. Jill Radford & Diana E.H. Russell, eds., New York: Twayne Publishers, 1992) 99-113; and Linda Langford, Nancy Isaac & Stacey Kabat, *Homicides Related to Intimate Partner Violence in Massachusetts*, HOMICIDE STUDIES 2(4) (1998): 353-377.).

[38] See, e.g., J. Campbell, *Assessing Risk Factors*, supra n. 37; P.R. Kropp, *Intimate Partner Violence Risk Assessment and Management*, VIOLENCE AND VICTIMS 23(2), 202-20 (2008); J. ROEHL ET AL., INTIMATE PARTNER VIOLENCE RISK ASSESSMENT VALIDATION STUDY, FINAL REPORT, Nat'l Inst. of Justice (2005), *available at* http://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf; N. WEBSDALE, LETHALITY ASSESSMENT TOOLS: A CRITICAL ANALYSIS, VAWNet: a partnership of the Nat'l Resource Ctr. on Domestic Violence/PA Coal. Agst. Domestic Violence (2000), *available at* http://www.vawnet.org/category/Main_Doc.php?docid=387.

[39] THE ST. PAUL BLUEPRINT, supra n. 22 at 6 ("engage in a dialogue with the victim rather than treating her or him as a data point").

the process of fleeing. Engaging a victim in a discussion of these risks and dangers improves the information available to prosecutors and judges, not just by learning the simple facts that certain events or behaviors took place, but by filling in the larger context and pattern in which this particular incident occurred. When reviewing the victim's responses, however, it is critical to remember that, while victims are accurate reporters of risk factors for lethality, they consistently underestimate their own risk for future assaults.[40]

Exploring Modified No Contact Orders

Although many victims will request termination of the no contact order, it is very useful for prosecutors and judges to explore the possibility of various modifications, rather than termination, especially when serious safety concerns are evident. Partial no contact orders, or orders which allow limited contact, may provide an important tool to allow prosecutors to respond to a victim's various concerns about the consequences of the order in her life, while still providing some measure of protection.[41] Partial no contact orders do offer some benefits for victims: contact can be limited to public areas; specific behaviors can be prohibited, such as assault, stalking, threats; provisions can mirror custody orders (if there are children involved) to facilitate visitation and other matters. Of course, with interaction, even defined and limited interaction, comes risk. Physical proximity presents opportunities for physical violence, while batterers may exploit other allowed means of contact for purposes of intimidation, coercion and psychological mistreatment.[42] Of practical concern, such partial no contact orders are more complicated to enforce; violations are more difficult to investigate and prove.[43] An order which accounts for the specific challenges in a victim's life may help victims view the criminal justice system as a safe and effective response, thus making a victim more willing to participate in the prosecution of the charges.[44]

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[40] Cattaneo & Goodman, supra n.25; Campbell, supra n. 38.

[41] Goldfarb, supra n. 12 at 1521 (Other harms to victims may include: loss of access to the abuser's income and subsequent poverty, loss of batterer's assistance with child care which may result in victim losing her job, and loss of support from extended family and community.).

[42] *Id.* at 1538. Several studies show that psychological abuse is more common than physical abuse after a protection order is issued. A. HARRELL AT AL., THE URBAN INST., COURT PROCESSING AND THE EFFECTS OF RESTRAINING ORDERS FOR DOMESTIC VIOLENCE VICTIMS, 50 (1993); S. L. KEILITZ ET AL., NAT'L CTR. FOR STATE COURTS, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR VICTIMS OF DOMESTIC VIOLENCE, 38-39 (1997); J. PTACEK, BATTERED WOMEN IN THE COURTROOM, 163-64 (1999); J. Grau et al., *Restraining Orders for Battered Women: Issues of Access and Efficacy*, in CRIMINAL JUSTICE POLITICS AND WOMEN: THE AFTERMATH OF LEGALLY MANDATED CHANGE, 22-23 (Claudine SchWeber & Clarice Feinman eds., 1985); V. L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, 288 J. AM. MED. ASS'N. 593 (2002).

[43] See, e.g., J. Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 18-22 (2006) (provisions prohibiting contact with the victim and presence in the victim's home make it easy for prosecutors to obtain evidence of violations).

[44] THE ST. PAUL BLUEPRINT, supra n. 22, at 123; E.S. Buzawa & C.G. Buzawa, DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE, 3rd ed. (2003); J. Belknap & D.L. R. Graham, *Factors related to*

Conclusion

The decision to obtain or maintain a no contact order in the prosecution of a domestic violence case can have a significant impact on the victim's safety, life and family. Prosecutors and judges often must balance the need to protect the victim and the community and hold the offender accountable against the particular wishes of the victim. There is no universal approach to this issue; rather prosecutors and judges must seek to make thoughtful, fair and beneficial decisions for all of the parties involved. "Applying a single treatment to [all domestic violence cases] inhibits meaningful intervention for victims and perpetrators."[45] Every case is different, and prosecutors and judges must obtain as much relevant information as possible in order to achieve justice, protect victims and hold offenders accountable. Engaging in such a practice will encourage victim participation in the court process, prevent and deter future crimes, and help to rehabilitate abusers who enter the criminal justice system.

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domestic violence court dispositions in a large urban area, DOMESTIC VIOLENCE RESEARCH: SUMMARIES FOR JUSTICE PROFESSIONALS, 11-14 (B.E. Smith ed.). Washington, DC: Nat'l Inst. of Justice (2003), *available at* http://www.ncjrs.gov/pdffiles1/nij/202564.pdf; C.S. O'SULLIVAN ET AL., A COMPARISON OF TWO PROSECUTION POLICIES IN CASES OF INTIMATE PARTNER VIOLENCE. Washington, DC: Nat'l Inst. of Justice (2007), *available at* http://www.courtinnovation.org/_uploads/documents/Case_Processing_Report.pdf.

[45] THE ST. PAUL BLUEPRINT, supra n. 22 at 4.

Judicial Analysis:
Imposing, Modifying and Terminating
Criminal No Contact Orders

1. Victim safety is paramount.

2. Consider each request to modify or terminate a no contact order individually. Analyze the request using all available information and make each decision based upon a totality of the circumstances.

    - Allow the prosecutor ample opportunity to speak with the victim, preferably away from the presence of the defendant.

    - Determine whether the victim's request is based on fear of defendant.[1]
        - Is there information that indicates or suggests the defendant is engaging in ongoing intimidation, coercion[2] or violence towards the victim?[3] Sources for such information may include:
            - Police reports of the current offense;
            - Additional information obtained from officers/investigators;
            - 911 calls and Computer Aided Dispatch (C.A.D.) reports;
            - Jail calls;
            - Past police reports involving the same defendant;
            - Prior arrests and convictions of the same defendant;
            - Input from victim or victim advocate if the victim has given the victim advocate permission;[4]
            - Petitions for civil protection orders and any supporting documents;
            - Prior pre-sentence investigation reports; and
            - Any probation status and/or compliance.

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[1] PRAXIS INTERNATIONAL ET AL., THE ST. PAUL BLUEPRINT FOR SAFETY: AN INTERAGENCY RESPONSE TO DOMESTIC VIOLENCE CRIMES, 82 (2009); J.P. GREIPP & R.L. MARTINSON, Monograph: Witness Intimidation, AEquitas: The Prosecutors' Resource on Violence Against Women, Washington, DC: (*forthcoming* 2010).

[2] See T. Kuennen, *Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much*, 22 BERKELEY J. GENDER, L. & JUST. 2 (2007) (discussing batterers' coercion of domestic violence victims seeking protection orders).

[3] GREIPP & MARTINSON, supra n. 1.

[4] Due to confidentiality requirements, an advocate from a community-based domestic violence program may only speak with a prosecutor upon the informed consent of the victim. Prosecutors should not, as a general rule, attempt to force advocates to share information obtained from a victim. For more information, see J. KUNCE FIELD AT AL., CONFIDENTIALITY: AN ADVOCATE'S GUIDE, Battered Women's Justice Project, Minneapolis, MN (rev'd Sept. 2007).

- Encourage the victim to meet with a community-based advocate prior to modifying or terminating the no contact order as a means of linking the victim with appropriate assistance and helping her assess the level of risk she may be facing.

- Consider input from the victim or, if the victim has given the advocate permission, the advocate to assist in determining: circumstances of the case; context and severity of the offense; and bail/pretrial release conditions most likely to ensure the safety of the victim, witnesses, their families and the public.
    - Use all available sources of background information (as listed earlier) to understand the severity of the offense and danger that defendant poses to the victim.[5]
    - Do not compel the advocate to provide testimony or information to the court about the victim or the case.[6]

3. In some circumstances, terminating or modifying the no contact order may not be advisable, despite a victim's objections. The following factors[7] indicate a case/defendant that poses an increased risk to the safety of the victim, suggesting that the no contact order should remain in place.

    - **Severity of Offense Alleged**
        - Nature of violence/injury to victim
            - Strangulation
            - Burning
            - Permanent physical damage
            - Head injuries
            - Weapons involved
        - Nature of threats[8]
            - Threats of future injury or death (the more specific the threat, the greater the risk)
            - Threats to use a weapon
            - Threats of child abduction or denial of visitation rights
            - Threats made openly and in presence of others

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[5] THE ST. PAUL BLUEPRINT, supra n. 1, 82.

[6] See KUNCE FIELD ET AL., supra n. 5; REPORT TO CONGRESS: THE CONFIDENTIALITY OF COMMUNICATIONS BETWEEN SEXUAL ASSAULT OR DOMESTIC VIOLENCE VICTIMS AND THEIR COUNSELORS, FINDINGS AND MODEL LEGISLATION, *available at* http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=169588 (discussing the importance of victim advocate confidentiality).

[7] Adapted from Milwaukee, WI District Court, GUIDELINES GOVERNING IMPOSITION OF NO CONTACT ORDERS IN MISDEMEANOR DOMESTIC VIOLENCE CASES (2007) (on file with the authors).

[8] GREIPP & MARTINSON, supra n. 1.

- Child abuse
  - Child injured during the incident
  - Children witness offense
  - Other violence or threats made in the presence of children
- Evidence of escalating violence
  - Use of weapon
  - Sexual abuse
  - Animal abuse
  - Property damage or threats of future property damage
  - Stalking
  - Hostage-taking
  - Recency of any such conduct
  - Victim's increased vulnerability due to age, disability, pregnancy

- **Severity of Defendant's Other Conduct**
  - Prior criminal history
  - History of violence in prior relationships
  - Other pending charges
  - Previous DV charges dismissed
  - Previous DV contacts with police or prosecutor's office
  - Other evidence of violence or threats to victim or others

- **Defendant's Proclivity to Respect Court Rules**
  - Record of violation of court orders
  - Record of failure to follow pretrial release or probation rules
  - Previous participation in batterer treatment program

- **Other Background Factors of Defendant**
  - Evidence of suicide threats
  - Evidence of depression
  - Evidence of paranoid thinking
  - History of mental health or emotional problems
  - Substance abuse
  - Availability of weapons

- **Situational Factors**
  - Imminent break-up, separation or divorce initiated by victim
  - Imminent change in child custody
  - Imminent change in victim's residence
  - Imminent change in victim's employment
  - Defendant's loss of employment

4. Guidelines for Modifications

- Consider adjusting the duration of the no contact order to provide for victim safety while reducing collateral burdens on the victim.
  - A short no contact order (10 - 30 days) may enable a victim to file for a civil protection order if she wishes, to locate alternative housing, and to make decisions about the charges and no contact order without influence from the defendant.

- If a victim requests contact, consider the request, keeping in mind that, in some cases, a prolonged no contact order may result in hardship for the victim.[9]
  - Obtain specific information about the victim and implications of the no contact order on the victim and her family.[10]
  - Evaluate the case in context while considering the totality of circumstances, including victim opposition, economic impact, offender intimidation, victim fear, and danger posed by defendant.[11]
  - Be sensitive to victim's reliance on defendant for child care, transportation or income and permit collaboration with advocates/agencies to fill gaps created by restrictions on contact with defendant in order to provide victim with necessary resources and assistance.

- Consider options that allow contact under limited conditions in cases where risk factors indicate minimal risk, the victim has requested contact and there is no evidence of coercion or intimidation.[12] At an absolute minimum, an order should preclude defendants from abusing, harassing, intimidating, retaliating against/tampering with or committing any other crimes or acts against any victim or witness in a criminal domestic violence case.[13] Because every case is unique, however, courts should not routinely issue "protection only" orders simply because a victim has voiced opposition to a no contact order.
  - Contact should be limited and monitored; communication could be limited to email, letters or phone calls (subject to recording if possible) or to public places.
  - Topics of communication could be limited, e.g., discussions about children.

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[9] THE ST. PAUL BLUEPRINT, supra n. 1, 82.
[10] *Id.* at 86.
[11] *Id.*
[12] *Id.*
[13] Such "protection only" orders still provide for rapid enforcement (i.e., mandatory arrest) and comparatively quick sanctioning by contempt powers, as compared to proceeding with any such acts as traditional.criminal charges.

- Prohibit assaultive, harassing, threatening and stalking behaviors and communication.
- Prohibit firearms possession and require immediate surrender of any firearms in defendant's possession.
- Request random drug testing when abuse is indicated.
- Request compliance with batterer treatment and/or alcohol treatment programs.
- Allow contact but exclude defendant from victim's residence.

o Victim presence in court. Any modification of the no contact order should only be considered when a victim in present in court and requests modification. However, as any statements made in open court may be designed to protect or mollify the defendant, the best information about the victim's wishes and needs will be obtained by victim/witness staff or the prosecutor.

o Amendments in writing. All changes to existing no contact orders should be done in writing in clear, simple language to ensure certainty, fairness and predictability for all parties. All parties should receive a copy of any modifications to court orders.

5. No Contact Order Enforcement

o Defendants should not be eligible for bond/bail until personally advised by court of any conditions to be imposed, which may include a criminal no contact order. Defendants must acknowledge an understanding of any conditions imposed.

o When a no contact order is issued, it is important to clearly state to the defendant the possible consequences for any violation, including arrest, incarceration or revocation of bail/bond. The court must specifically emphasize to the defendant the heightened scrutiny being imposed by the court orders.[14]

o Take prompt action upon report of any violation
- Consider commitment of defendant to jail pending any hearing.
- Consider greater restrictions on any release, revocation of any bail/bond posted and revocation of any release or probation.

[14] J. LONG & S. TIBBETTS MURPHY, Courtroom Langauge for Judges in Domestic Violence Cases, AEquitas: The Prosecutors' Resource on Violence Against Women, Washington, DC, and Battered Women's Justice Project, Minneapolis, MN (*forthcoming* 2010).

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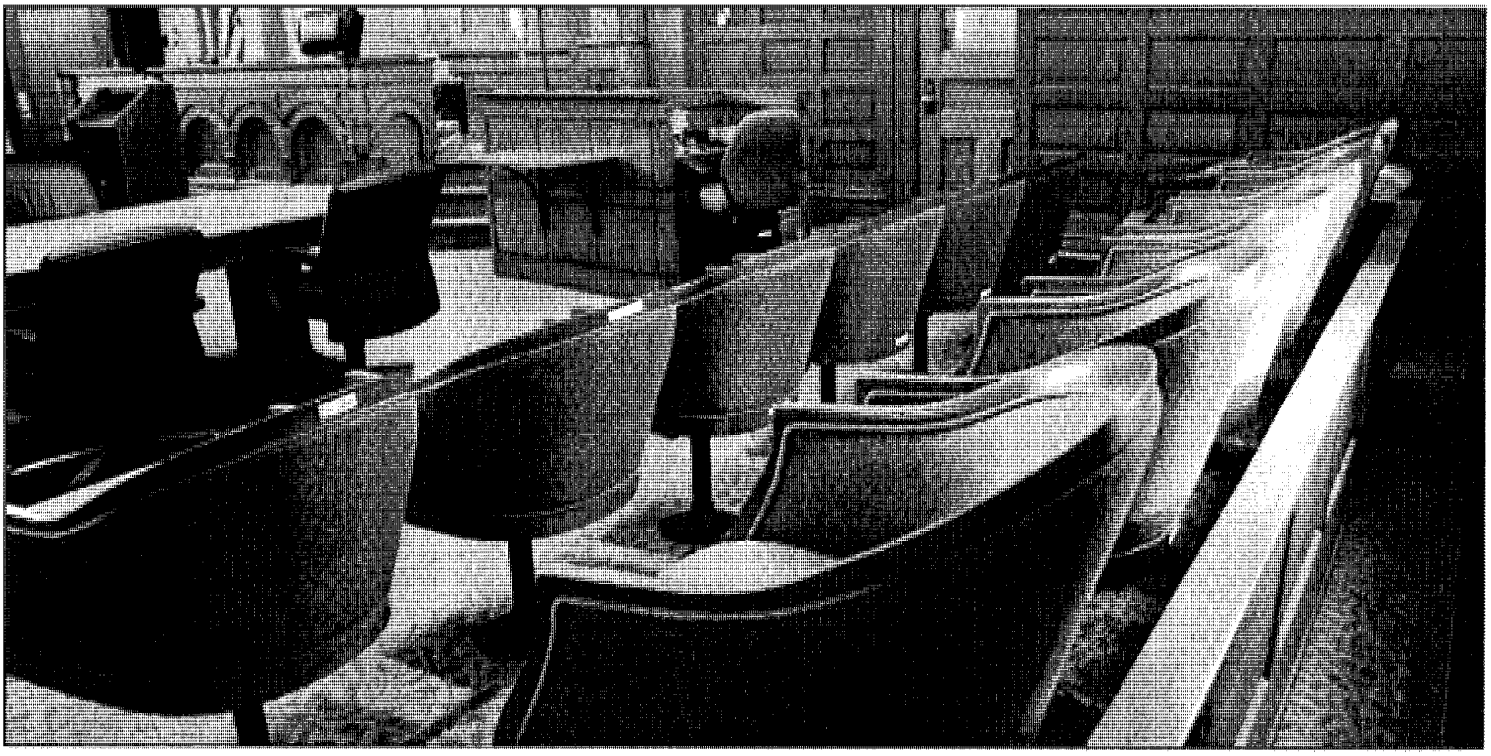

Educating Juries in Sexual Assault Cases

Part I: Using Voir Dire to Eliminate Jury Bias

By Christopher Mallios, JD and Toolsi Meisner, JD[1]

Crimes of sexual violence continue to be misunderstood even though there has been significant research surrounding the dynamics of sexual assault and its impact on victims during the last three decades.[2] We now understand much more about these crimes, the people who commit them, and the way victims respond to trauma. Unfortunately, we cannot assume that the results of this research have infiltrated the minds of the average layperson, juror, or judge.

Too many people still believe the outdated and disproved mythology that surrounds sexual violence.[3] Rape myths shift the blame for the crime from the rapist to the victim.[4] When a fact-finder in a sexual assault case accepts a rape myth as true, the prosecutor faces tremendous barriers to achieving justice for victims and holding offenders accountable for their crimes.

This article is the first in a series that will explain strategies to educate juries about sexual violence facts and overcome common misconceptions. In addition to providing data-driven information about sexual assault based on research, journal articles, and authoritative publications, this article will suggests ideas to improve jury selection techniques. Future articles in this series will provide additional material to provide prosecutors with information and strategies to educate, dispel common misconceptions, and convey the truth to fact finders through other aspects of trial practice, including opening statements, direct examination, calling expert witnesses, and closing arguments.[5]

To be effective in prosecuting crimes of sexual violence, prosecutors must understand the research and statistics about sexual assault in order to educate judges and juries about sexual assault dynamics and common victim responses. Although much of the data in this area is not generally admissible in a criminal case, prosecutors can benefit from a thorough understanding of the dynamics of sexual assault because it will aid them when devising trial strategies, anticipating defenses, preparing victims, and developing effective cross-examinations and arguments.

Further, prosecutors who truly understand sexual violence can better identify jurors who might harbor mistaken beliefs and accept false mythology about sexual assault and poison the rest of the jury with misinformation. When the prosecution selects jurors who have a more realistic understanding of the dynamics of sexual assault, they are more likely to be fair and perhaps even help educate other jurors during deliberation.

VOIR DIRE PRACTICE AND LEGAL AUTHORITY

Voir dire practice can differ depending on what state, county, and judge has jurisdiction over the case. Most jurisdictions have appellate case law addressing the defendant's right to conduct voir dire of jurors regarding their ability to be fair and follow the law. Appellate courts, however, have few opportunities to address the prosecutor's right to question jurors about the mistaken beliefs about rape they possess that would interfere with their ability to follow the law.[6] Prosecutors can make a persuasive argument that jurors with firmly held but mistaken beliefs about rape are unlikely to be able to follow the court's instructions in the law[7] and that specific questioning in this area is the only way to determine the prevalence of rape myths in the jury panel.[8] "Despite considerable research and publications in professional and popular journals concerning rape, [rape] myths continue to persist in common law reasoning."[9]

Traditional voir dire questions regarding jurors' abilities to follow the law, assess witness credibility, understand the burden of proof, and other common areas of inquiry might not sufficiently address potential jurors' emotional reactions to sexual assault cases. An increasing number of jurisdictions are curtailing the ability of prosecutors and defense attorneys to conduct meaningful voir dire of jurors in the name of "judicial economy." The prevalence of rape myths, however, weighs in favor of judges creating exceptions to the general rule of strictly limiting juror voir dire in sexual assault cases.[10]

GOALS OF VOIR DIRE IN SEXUAL ASSAULT CASES

In the general sense, the goal of voir dire is to select a jury that can be fair to both sides and render a verdict based on an application of the facts as the jury finds them and the law as the judge instructs them. Through a process where each side questions potential jurors and strikes jurors that appear to be biased against them, a fair jury emerges. In sexual assault cases, however, there are additional goals. For example, jurors do not harbor "robbery myths" that stand in the way of justice for robbery victims. In a sexual assault case, another goal of jury selection is to delve into juror rape myth acceptance and begin to redefine these problematic beliefs into juror competence. Jury selection should also begin to prepare the jury for the evidence, touch on difficult facts, and prepare the jury for the use of graphic terminology and evidence. Another goal, when possible, is to use a jurors' life experiences to educate the other jurors about friends or family members who have been victims of sexual assault and discuss their reactions to being victimized. This can set the stage for later evidence and arguments about victim behavior.

SUGGESTIONS FOR VOIR DIRE IN SEXUAL ASSAULT CASES

A victim is more likely to be sexually assaulted by someone s/he knows - friend, date, intimate partner, classmate, neighbor, or relative - than by a stranger.[11] Sexual violence can occur at any time and there is no way to adequately predict who might be a perpetrator. Unfortunately, non-strangers and familiar places are often the most dangerous to victims. According to a large study of women who were raped or sexually assaulted during 2002, sixty-seven percent identified the perpetrator as a non-stranger.[12] Another study found that 8 out of 10 victims know the people who raped them.[13] Another study found that nearly 6 out of 10 sexual assault incidents occurred in the victim's home or at the home of a friend, relative, or neighbor.[14] These studies, which are all based on statistics compiled by the U.S. Department of Justice, conclusively support the fact that most rapists are non-strangers.

There is no racial, socio-economic, professional, or other demographic profile that typifies a rapist. This type of criminal is not physically identifiable and often appears friendly and non-threatening.[15] Researchers and sexual violence experts spend considerable time attempting to educate the public about the danger of stereotyping rapists, but their messages are often undermined by the images perpetuated by popular media coverage of sexual assault cases. It is understandable, therefore, that jurors are commonly reluctant to convict attractive and sociable sexual assault defendants who are known to their victims.

Sexual assault defendants commonly appear in court well groomed and well dressed. They might also be married and have children. Jurors confronted with this image may be reluctant to convict without a constant reminder that the defendant is purposeful and dangerous. When the defendant is also a friend or family member of the victim and uses that relationship to gain, and then betray the victim's trust, jurors may need to be informed in order to recognize and understand the defendant's predatory behavior.[16]

In jurisdictions where prosecutors are permitted to ask questions of potential jurors during voir dire, it might be appropriate to ask whether a potential juror would be less likely to convict a defendant of rape if that defendant were a partner, friend, or acquaintance of the victim. The answer to this question provides insight into whether the juror knows that the majority of rapists are non-strangers and whether they view non-stranger rapes as seriously as those committed by strangers. A juror who understands the prevalence of non-stranger sexual assaults can also educate ill-informed jurors on the panel.

Another question to pose to jurors deals with their abilities to follow the judge's instructions regarding the definition of rape regardless of their personal beliefs. If the victim and defendant were in a relationship prior to or during the rape, tell prospective jurors that they will hear evidence about that relationship and ask whether the existence of a prior relationship would concern them when deciding the case. As always, follow-up questions regarding whether the juror expects rapists to be strangers and whether they can follow the law in this area would be useful to probe the beliefs behind the jurors' answers.

Sexual violence is never the victim's fault. No other crime victim is looked upon with the degree of blameworthiness, suspicion, and doubt as a rape victim. Victim blaming is unfortunately common and is one of the most significant barriers to justice and offender accountability.

Victim blaming can be expressed in several themes: victim masochism (e.g., she enjoyed it or wanted it), victim precipitation (e.g., she asked for it or brought it on herself), or victim fabrication (e.g., she lied or exaggerated).[17] In a criminal trial, the defense might appeal to some or all of these common victim-blaming biases to help the defendant avoid accountability. Further, it can translate into jurors blaming victims for their choices in an attempt to distance themselves from the victim and the crime thereby preserving the perception that they are safe if they do not make the same choices as the victim.

When allowed, prosecutors may consider asking questions to determine whether potential jurors understand the importance of holding the offender and not the victim accountable for crimes of sexual violence. For example, prosecutors could ask jurors whether they believe that a victim can be raped even if that victim consented to some other measure of intimate contact before the rape occurred.

In some cases it may be important to gauge whether jurors will still follow the law when the facts do not present the most sympathetic victim. Prosecutors may need to ask questions to determine whether jurors believe that a defendant can commit the crime of rape even if the victim was drinking, using drugs, dressed in a way that the jurors perceive as provocative, being prostituted, or engaged in any other behavior that may inappropriately cause victim blaming. Prosecutors should directly address victim behavior that jurors might consider problematic by preparing them for such behavior during the voir dire process. Through certain voir dire questions, prosecutors can also inform jurors that they will hear evidence regarding the victim's behavior before or after the assault that might cause jurors concern. For example, prosecutors may consider asking whether certain behaviors would cause the jurors unease and interfere with their ability to follow the court's instructions and render a fair verdict.

Prosecutors can counter victim-blaming myths throughout the trial by stressing that without consent, "No" means "No," no matter what the situation or circumstances. It doesn't matter if the victim was drinking or using drugs, out at night alone, gay or lesbian, sexually exploited, on a date with the perpetrator, or if the jurors believe the victim was dressed seductively. No one asks to be raped. The responsibility and blame lie with the perpetrator who took advantage of a vulnerable victim or violated the victim's trust to commit a crime of sexual violence.

Rape is an act of violence and aggression in which the perpetrator uses sex as a weapon to gain power and control over the victim. It is a common defense tactic in rape trials to redefine the rape as sex and try to capitalize on the mistaken belief that rape is an act of passion that is primarily sexually motivated. It is important to draw the

legal and common sense distinction between rape and sex.

There is no situation in which an individual cannot control his sexual urges.[18] Sexual excitement does not justify forced sex and a victim who engages in kissing, hugging, or other sexual touching maintains the right to refuse sexual intercourse. Rapists do not rape because they want to have sex and many rapists also may have partners with whom they engage in consensual sex. Sexual deviance and character traits form the motives for rapists' behaviors.[19] Their sexual deviance may cause them to be aroused by exploiting the physical and/or psychological vulnerabilities in their victims, whether they result from intoxication or physical or mental disabilities. Rapists are also motivated by character traits common to many criminals.

> When an offender has a criminal, narcissistic, or otherwise interpersonally and socially compromised personality, he can be motivated to offend for a variety of reasons. He may lack the internal barriers that prevent offending, like guilt, remorse, empathy, or compassion. He may maintain a belief system, which devalues the rights of others and overvalues his rights. He may be indifferent to, or aroused by, the pain, suffering, injury, or humiliation of others. The offender also may feel that the rules of society do not apply to him.[20]

When conducting voir dire, prosecutors should look out for any answers that indicate that a potential juror might confuse sex with sexual violence and aggression. If a juror harbors attitudes that excuse sexual violence as something that men "simply can't control", they will not be able to deliberate fairly.

There is no "typical" sexual assault victim. Sexual violence can happen to anyone, regardless of sex, race, age, sexual orientation, socio-economic status, ability, or religion. Prosecutors might come across jurors who think that "real" sexual assault victims are attractive, young or sexually inexperienced. This particular stereotype of sexual assault victims is often related to the mistaken belief that rape is about sex, rather than violence, and that the attractiveness of the victim is one of the "causes" of the assault.

Although there is no typical sexual assault victim, studies indicate that certain groups are victimized at higher rates than others. One study found that people with disabilities have an age-adjusted rate of rape or sexual assault that was more than twice the rate for people without disabilities.[21] For individuals with psychiatric disabilities, the rate of violent criminal victimization including sexual assault was two times greater than in the general population.[22] American Indian and Alaska Native women and girls are victims of rape or sexual assault at a rate that is double that of other racial groups.[23]

The elderly, boys and men, sexually exploited women, or persons with disabilities challenge many jurors' beliefs about rape. Questioning potential jurors about their expectations of rape victims and whether they would be able follow the law and render a verdict of guilty, even if the victim does not fit their idea of what a "typical" rape victim should be, will help identify misinformed jurors who may need to be eliminated or educated.

Most victims do not incur physical injuries from sexual assaults. Many of the unwanted and forced acts that take place during a sexual assault do not result in visible non-genital injuries. Most adult rape victims do not have any non-genital injuries from sexual assaults. According to a study examining the prevalence of injuries from rape, only 5 percent of forcible rape victims had serious physical injuries and only 33 percent had minor injuries.[24] This study also showed that most victims of rape, attempted rape, and sexual assault do not receive medical treatment for their injuries. Furthermore, the presence or absence of genital injuries following a rape is not necessarily significant when evaluating a case. Early studies of rape examinations found that most rape victims did not have any genital injuries.[25] Those initial studies, which relied on direct visualization without any magnification or staining techniques, found genital injury rates between 5 and 40 percent.[26] In jurisdictions where forensic sexual assault examiners use only direct visualization techniques without magnification or staining, injury rates would be expected to fall within the range of those studies.

Using the latest examination techniques, including direct visualization, colposcopy, staining techniques, and digital imaging, studies indicate the occurrence of genital injury after rape to be between 50 and 90 percent.[27] These newer examination techniques allow examiners to document

many more minor injuries; however, more research is necessary to determine the prevalence of genital injuries after consensual sexual activity and the relevance, if any, of injury patterns in sexual assault examinations.

Jurors must understand that rape is a life-threatening event and victims make split-second decisions about how to react to sexual violence in order to survive. Some victims respond to the severe trauma of sexual violence through the psychological phenomenon of dissociation, which is sometimes described as "leaving one's body," while some others describe a state of "frozen fright," in which they become powerless and completely passive. Physical resistance is unlikely in victims who experience dissociation or frozen fright or among victims who were drinking or using drugs before being assaulted.[28] To a rape victim, a threat of violence or death is immediate regardless of whether the rapist uses a deadly weapon. The absence of injuries might suggest to some jurors that the victim failed to resist and, therefore, must have consented. The fact that a victim ceased resistance to the assault for fear of greater harm or chose not to resist at all does not mean that the victim gave consent. Each rape victim does whatever is necessary to do at the time in order to survive. The victim's decisions about whether to resist during a sexual assault can lead to jurors victim-blaming or perceiving the victim as less credible and must therefore be directly addressed by prosecutors.

In conducting voir dire, prosecutors may be able to ask questions to probe potential jurors' expectations that sexual assault victims must have suffered serious injuries. In cases involving a victim who has minor or no injuries, prosecutors may consider asking potential jurors whether they would not believe that a victim had been raped if the rapist did not use a deadly weapon or inflict serious injuries. To gain additional insights into the beliefs of potential jurors in this area, prosecutors may even consider asking whether jurors believe that a certain level of resistance is necessary for the crime of rape to occur. Furthermore, if the prosecution intends to call an expert to explain the lack of injuries, it may be important to ask whether potential jurors might be inherently distrustful of expert testimony.

A related issue pertains to jurors' unrealistic expectations and demands for other types of forensic evidence such as fingerprints and scientific testing such as criminalistics and DNA tests. Many prosecutors believe based on first-hand experience that the "CSI Effect" is one of the most significant barriers to justice in sexual assault cases.[29] In cases in which jurors might have heightened expectations regarding the availability of scientific evidence, it might be appropriate during voir dire to inquire into those expectations and begin to educate the jurors about why such evidence might not be available or probative based on the facts of the case.

Most rape victims delay reporting their victimization to law enforcement or never report at all. Victims of sexual assaults respond in various ways, including the manner in which they report incidents, if at all. Many victims choose not to report their victimization because they believe that it is a private or personal matter, fear the defendant, or believe the police are biased against them.[30] Some victims may be embarrassed or distrust law enforcement or the court process. The same reasons cause many victims who do file police reports to do so after some time has passed.

Studies show that sexual assault is one of the most underreported crimes, with 60 percent still being unreported.[31] The closer the relationship between the victim and the perpetrator, the less likely the victim was to report the crime to the police.[32] When the perpetrator is a current or former husband or boyfriend, that rate of reporting drops to approximately 25 percent.[33] Males are the least likely to report a sexual assault, though males make up approximately 10 percent of all victims.[34]

Victims may exhibit a range of emotional responses to assault: calm, hysteria, laughter, anger, apathy, or shock. Each victim copes with the trauma of the assault in a different way. Victims of sexual assault are three times more likely than the rest of the population to suffer from depression, six times more likely to suffer from post-traumatic stress disorder, thirteen times more likely to abuse alcohol, twenty-six times more likely to abuse drugs, and four times more likely to contemplate suicide.[35]

Depending on the facts of the case and how the victim acted after the assault, prosecutors may need to question jurors to ascertain whether specific victim behaviors would concern them and cause them to make adverse prejudgments about victim credibility. Additional questions about whether jurors could fairly consider expert testimony regarding victim behavior might be appropriate in cases in which the prosecution will introduce expert testimony.

Victim credibility is often the primary issue in sexual assault prosecutions and this is especially so in non-stranger cases. Some people are so skeptical of sexual assault allegations that they assume that most victims are lying when they report their victimization to law enforcement. The mistaken belief that most sexual assault allegations are false is unfortunately common. Significantly, methodologically reliable research indicates that only 2 to 8 percent of sexual assault cases involve false reporting.[36] This research conclusively disproves a common myth that most rape victims lie about being raped; nevertheless, defense attorneys may design a defense strategy to appeal to jurors who believe the oft-repeated myth that most rape victims lie. Expert testimony about the credibility of a witness is inadmissible and prosecutors will unlikely be allowed to ask potential jurors about their pre-conceived ideas about the credibility of a witness. Nevertheless, to the extent that the court will permit the prosecution to explore whether potential jurors harbor a general belief that most rape allegations are false, some questioning in this area could reveal anti-victim biases that could interfere with the juror's ability to be fair. Questions about whether a juror will wait until hearing all of the evidence – including expert testimony regarding common victim reactions to sexual assault – to decide the credibility of a witness can help reveal biased potential jurors and identify those who may be able to educate other members of the jury.

CONCLUSION

The jury selection process is the first opportunity for a prosecutor to begin educating jurors in a sexual violence case and allows prosecutors to identify and strike jurors whose biases will interfere with their ability to follow the law and render a fair verdict. Using deliberate and thoughtful language when explaining the facts of the case, providing context for victim behavior, and inquiring about jurors' life experiences can help prosecutors dispel myths and counter the defense strategies that seek to exploit them.

Successful juror education begins with voir dire, continues throughout the entire trial, and culminates with a strong closing argument. An appreciation of the facts about sexual violence is key to that success. A skillful jury selection is only the initial step in an effective prosecution strategy that will yield the best possible result in prosecuting these difficult cases. An effective strategy in these cases must continue with the collection and presentation of all corroborating evidence, application of solid trial advocacy skills, and the use of expert witnesses, when appropriate, to maximize offender accountability, and achieve justice.

Forthcoming articles in this series will further discuss the topic of juror education. In the meantime, please visit www.aequitasresource.org for additional information and resources related to the prosecution of sexual assault and other violence against women related cases.

UPCOMING TRAINING EVENTS

National Institute on the Prosecution of Sexual Violence II
November 16-19, 2010
in Washington, DC

This Institute is presented in partnership with the Pennsylvania Coalition Against Rape and the U.S. Department of Justice, Office on Violence Against Women. Seating is limited, so please apply early.This course is open to all prosecutors and attendance is free of charge; however, priority will be given to OVW grantees who have previously attended NIPSVI. There is no limit to the number of attendees from any jurisdiction.

National Institute on the Prosecution of Sexual Violence I
January 11-14, 2011
in Washington, DC

This Institute is presented in partnership with the Pennsylvania Coalition Against Rape and the U.S. Department of Justice, Office on Violence Against Women. Seating is limited, so please apply early. This course is open to all prosecutors and attendance is free of charge; however, priority will be given to OVW grantees. There is no limit to the number of attendees from any jurisdiction.

For additional information please visit:
http://www.aequitasresource.org/training.cfm

(Endnotes)

1 Christopher Mallios and Toolsi Meisner are Attorney Advisors at AEquitas: The Prosecutors' Resource on Violence Against Women.

2 *See e.g.* William L. *Assessment, Treatment, and Theorizing about Sex Offenders: Developments during the Last Twenty Years and Future Directions*, 23 CRIM. JUST. & BEHAV. 162 (1999); EDNA B. FOA & BARBARA OLASOV ROTHBAUM, TREATING THE TRAUMA OF RAPE: COGNITIVE BEHAVIORAL THERAPY (The Guilford Press 1998); SUSAN ESTRICH, REAL RAPE (Harvard University Press 1987).

3 See generally, Sarah Ben-David & Ofra Schneider, *Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance*, 53 SEX ROLES 385, (2005).

4 *See generally* Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review* 18 PSYCHOL. OF WOMEN Q. 133 (1994).

5 More information and resources are available at www.AEquitasResource.org, and at http://www.pcar.org/aboust_sa/faq_sa.html.a (Pennsylvania Coalition Against Rape).

6 Following a conviction, the defendant in a criminal case can raise numerous claims, including legal challenges to the manner in which the trial court conducted jury selection; however, the Double Jeopardy Clause of the United States Constitution prevents the prosecution from filing an appeal after an acquittal in a case in which the trial court permitted biased jurors to be seated.

7 "Many jurors bring to the courtroom the myths about rape which had long influenced [the] courts as they applied 'special' rules of evidence only to rape cases." Commonwealth v. Gallagher, 547 A.2d 355, 360 (Pa. 1988) (Larsen, J., dissenting).

8 "[R]ape mythology persists, and recent studies reveal that rape myths insidiously infect the minds of jurors, judges, and others who deal with rape and its victims." State v. Robinson, 431 N.W.2d 165, 173 (Wis. 1988) (quoting Toni M. Massaro, *Experts, Psychology, Credibility, and Rape: The Rape Trauma Syndrome Issue and Its Implications for Expert Psychological Testimony*, 69 MINN. L. REV. 395, 402-10 (1985)).

9 Sarah Ben-David & Ofra Schneider, *Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance*, 53 SEX ROLES 385 (2005).

10 More information and resources are available at http://www.pcar.org (Pennsylvania Coalition Against Rape), and http://www.nsvrc.org (National Sexual Violence Resource Center).

11 *See generally* Kimberly A. Lonsway & Louise F. Fitzgerald, *Rape Myths in Review* 18 PSYCHOL. OF WOMEN Q. 133 (1994).

12 Callie Rennison, *National Crime Victimization Survey: Criminal Victimization 2000, Changes 1999-2000 with Trends 1993-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST.

13 Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey*, NAT'L INST. OF JUST., U.S. DEPT. OF JUST. (2000), *available at* http://www.ncjrs.gov/pdffiles1/nij/183781.pdf (last visited June 28, 2010).

14 Lawrence Greenfeld, *Sex Offenses and Offenders*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (1997).

15 *See* Veronique N. Valliere, *Understanding the Non-Stranger Rapist*, 1 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 4 (2007), *available at* http://www.ndaa.org/publications/newsletters/the_voice_vol_1_no_11_2007.pdf (last visited June 28, 2010) ("Another powerful tool [sex] offenders use to groom and manipulate their audience is to be nice. A 'nice' offender does not fit society's image of a rapist...Most non-stranger rapists use their social skills to gain control of and cooperation from the victim with little effort.").

16 *Id.* ("Nice comes through to juries and judges, as well as to the victim. Offenders often produce character witnesses to testify that they are good citizens/fathers/workers/church members. The defendant is counting on society to perpetrate the belief that niceness cannot coexist with violence, evil or deviance; consequently, the 'nice' guy must not be guilty of the alleged offense.").

17 *See* Sarah Ben-David & Ofra Schneider, *Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance*, 53 SEX ROLES 385, 386 (2005).

18 *See* Barbara E. Johnson, Douglas L. Kuch & Patricia R. Schander, *Rape Myth Acceptance and Sociodemographic Characteristics: A Multidimensional Analysis*, 36 SEX ROLES 693, 696 (1997).

19 Veronique N. Valliere, *Understanding the Non-Stranger Rapist*, 1 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 2 (2007), *available at* http://www.ndaa.org/publications/newsletters/the_voice_vol_1_no_11_2007.pdf (last visited June 28, 2010).

20 *Id.*

21 Michael Rand and Erika Harrell, National Crime Victimization Survey, Crime Against People with Disabilities, BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE (2007), *available at http://www.nsvrc.org/sites/default/files/Crimes-against-people-with-disabilities-2007.txt*

22 Virginia Aldigé Hiday, et al., *Criminal Victimization of Persons with Severe Mental Illness*, 50 PSYCHIATRIC SERVICES 62 (1999).

23 Steven W. Perry, *American Indians and Crime: A BJS Statistical Profile, 1992-2002*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2004), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/aic02.pdf (last visited June 28, 2010).

24 Callie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2002) (assuming that every rape victim suffers injury from the commission of the rape and referring to victims who suffered additional injuries in addition to the rape itself).

25 Marilyn Sawyer Sommers, *Defining Patterns of Genital Injury from Sexual Assault: A Review*, 8 TRAUMA, VIOLENCE & ABUSE 270, 271 (2007).

26 *Id.*

27 *Id.*

28 Kimberly Lonsway, Joanne Archmbault & David Lisak, *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, 3 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 8 (2009) *available at* http://www.ndaa.org/publications/newsletters/the_voice_vol_3_no_1_2009.pdf (last visited June 28, 2010).

29 See generally, Donald Shelton, *The "CSI Effect:" Does it really exist?*, 259 NAT'L INST. OF JUST. 1, (2008), *available at* http://www.ncjrs.gov/pdffiles1/nij/221500.pdf (last visited June 28, 2010).

30 Callie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2002).

31 Michael Rand & Shannan Catalano, *Criminal Victimization, 2006*, BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE (2007), *available at* http://www.rainn.org/pdf-files-and-other-documents/News-Room/press-releases/2006-ncvs-results/NCVS%202006-1.pdf (last visited June 28, 2010).

32 Callie Rennison, *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST. (2002).

33 *Id.*

34 *Id.*

35 *Rape-Related Posttraumatic Stress Disorder*, National Center for Victims of Crime (2009), *available at* www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32366 (last visited June 28, 2010).

36 Kimberly Lonsway, Joanne Archmbault & David Lisak, *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, 3 THE VOICE, NAT'L DISTRICT ATTORNEYS ASS'N NEWSLETTER, 2 (2009) *available at* http://www.ndaa.org/publications/newsletters/the_voice_vol_3_no_1_2009.pdf (last visited June 28, 2010).

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Definition of Terms

Labor means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

Physical restraint means the use of any bodily force or physical intervention to control an offender or limit a pregnant offender's freedom of movement in a way that does not involve a mechanical restraint.

Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, with the aid of a mechanical restraint, accomplished with limited force and designed to:

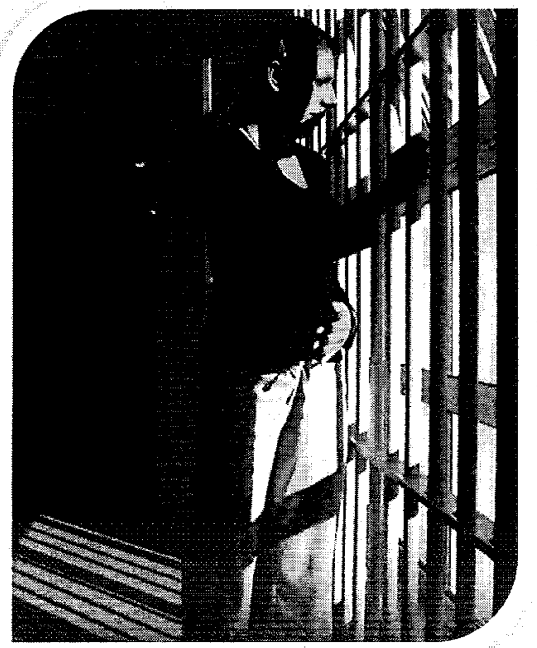
(a) Prevent a pregnant offender from completing an act that would result in potential bodily harm to self or others or damage property; (b) Remove a disruptive pregnant offender who is unwilling to leave the area voluntarily; or (c) Guide a pregnant offender from one location to another.

Restraints means anything used to control the movement of a person's body or limbs and includes: physical restraints or mechanical devices including but not limited to metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

Postpartum recovery means (a) the entire period a female is in the hospital, birthing center, or clinic after giving birth, and (b) an additional time period, if any, a treating physician determines is necessary for healing after the female offender leaves the hospital, birthing center, or clinic.

Transportation means the conveying, by any means, of an incarcerated pregnant offender from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant offender from the correctional facility to a transport vehicle to the other location.

Substitute House Bill 2747



Using Restraints on Pregnant Offenders

Substitute House Bill 2747

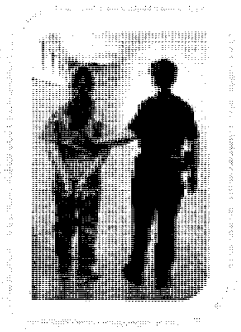
Substitute House Bill 2747 is an act relating to the use of restraints on pregnant offenders. The bill limits the use of restraints on any pregnant offenders in a jail as defined in RCW 70.48.020, during transports during the third trimester of her pregnancy, while in labor, during delivery or postpartum recovery.

Requirements of the Law

The jail must provide the requirements of the law to all pregnant offenders at booking or intake or at the time an offender receives information regarding other facility rules, rights and obligations according to current agency policy.

Use of Restraints

Whenever restraints are used on a pregnant offender during any stage of pregnancy, the restraints must be the least restrictive available and most reasonable under the circumstances. If a health care provider requests that restraints used be removed, they must be removed immediately. No waist chains or leg irons may be used at any time during any stage of pregnancy on any offender known to be pregnant.



Labor or In Child Birth

While a pregnant offender is in labor or in child birth no restraints of any kind may be used whatsoever. However, the treating physician licensed under Title 18 RCW may request the use of hospital restraints for the medical safety of the patient. If a health care provider requests that restraints be removed, they must be removed immediately.

The jail will ensure that the appropriate personnel are aware of which health care providers are treating physicians licensed under Title 18 RCW. No correctional personnel are to be present during labor or childbirth, unless requested by medical personnel, and if so requested, the personnel are to be female if practicable.

During Transportation

During transportation to and from visits to medical providers and court proceedings during the third trimester of pregnancy, or during postpartum recovery no restraints of any kind maybe used on any pregnant offender except under extraordinary circumstances.

Extraordinary Circumstances

Extraordinary circumstances exist when restraints are necessary to prevent a pregnant offender from escaping, or from injuring herself, medical or correctional personnel, or others.

For jails, the determination of extraordinary circumstances may be made by the corrections officer or jail employee on a case by case basis and the resulting use of restraints must be documented.

HB 2747 Model Policy
Draft 2.0 6/10
Arlow

I .Policy Purpose

The model policy is intended to fulfill the requirements of ESHB 2747, Chapter 181, Laws of 2010, specifically section 13 which directs the Washington association of sheriffs and police chiefs, the department of corrections, the department of social and health services, juvenile rehabilitation administration, and the criminal justice training commission to jointly develop an informational packet on the requirements of this act to be ready for distribution no later than September 1, 2010.

II. Definitions/Terms

*HB 2747, Chapter 181, Laws of 2010, uses various terms or combinations of terms when referring to offenders in the custody of the institutions or facilities. For the purposes of this policy, where the law refers to "pregnant women or youth," or "women" or "youth," the term "female offender" or "pregnant offender" has been used for clarity. This is to inform the applicable agency/facility that the policy applies to any female in their custody who is pregnant, or to all females in custody depending on the provision. Additionally, in some sections of the law that address treatment of juvenile offenders, both the terms "youth" and "juvenile" and "pregnant woman" are used in the same section but only "juvenile" is defined. For the purposes of this policy, "youth" and "pregnant woman" and "juvenile" are all referred to as "female offender" or "pregnant offender" for clarity.

The following definitions apply to all affected institutions, facilities and agencies

- "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.
- "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit a pregnant offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

  (a) Prevent a pregnant offender from completing an act that would result in potential bodily harm to self or others or damage property;

  (b) Remove a disruptive pregnant offender who is unwilling to leave the area voluntarily; or

  (c) Guide an pregnant offender from one location to another.
- "Restraints" means anything used to control the movement of a person's body or limbs and includes:

  (a) Physical restraint; or

  (b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.
- "Postpartum recovery" means (a) the entire period a female offender is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after female offender leaves the hospital, birthing center, or clinic.

- "Transportation" means the conveying, by any means, of an incarcerated pregnant offender from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of

the pregnant offender from the correctional facility to a transport vehicle and from the vehicle to the other location.

The following definitions apply to the Department of Corrections under RCW 72.09

- "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.
- ***Given the requirement that DOC provide notice of the requirements of the law to female offenders at the time the Department assumes custody of the offender, the Department should apply the requirements of the model policy to community corrections officers and any DOC employee.

The following definitions apply to the Department of Social and Health Services

- "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility.
- "Department" means the department of social and health services.
- "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

The following definitions apply to local/county juvenile facilities under RCW 13.40.202

- "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring
- "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110, unless the individual was convicted of a lesser charge or acquitted of the charge for which he or she was previously transferred pursuant to RCW 13.40.110 or who is not otherwise under adult court jurisdiction;
- "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

The following definitions apply to city and county facilities governed by RCW 70.48

- "Jail" means any holding, detention, special detention, or correctional facility as defined in RCW 70.48.020

III. Procedures:

Use of Restraints

- Whenever restraints are used on a pregnant offender DURING ANY STAGE OF PREGNANCY, the restraints used must be the least restrictive available and most reasonable under the circumstances. HOWEVER, NO waist chains or leg irons may be used AT ANY TIME DURING ANY STAGE OF PREGNANCY on any offender KNOWN TO BE PREGNANT.
    - Each agency shall determine by policy the method for determining what restraints are the least restrictive available and most reasonable under

circumstances and identification of the appropriate personnel responsible for making those determinations.

- While a pregnant offender is in labor or in child birth NO RESTRAINTS OF ANY KIND may be used whatsoever. However, treating physicians licensed under Title 18 RCW may request the use of hospital restraints for the medical safety of the patient.
    - Each agency shall ensure that the appropriate personnel are aware of which health care providers are treating physicians licensed under Title 18 RCW.

- During transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy, or during postpartum recovery no restraints of any kind may be used on any pregnant offender EXCEPT IN EXTRAORDINARY CIRCUMSTANCES.

- "Extraordinary circumstances" exist where an individualized determination is made that restraints are necessary to prevent an incarcerated pregnant woman or youth from escaping, or from injuring herself, medical or correctional personnel, or others.

    - For jails: determination may be made by a corrections officer or employee of the correctional facility or any facility under RCW 70.48.020
    - For DSHS/JRA: determination may be made by an employee of an institution or community covered by RCW 72.05
    - For DOC: determination may be made by the corrections officer
    - For local/county juvenile facilities: determination may be made by an employee at an institution or detention facility

- Each agency shall adopt policies and train the appropriate personnel regarding how to determine whether extraordinary circumstances exist.

Documentation of use of restraints

If it is determined that extraordinary circumstances exist and restraints are used, the reasons that it was determined to be extraordinary circumstances must be fully documented. As part of this documentation, the kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances must be included/explained.

- For jails: documentation is to be made by the corrections officer or employee
- For DSHS/JRA: documentation is to be made by the corrections officer or employee
- For DOC: documentation is to be made by the corrections officer
- For local/county juvenile facilities: documentation is to be made by the employee of the institution or detention facility

Other

- If a doctor, nurse, or other health professional treating a pregnant offender requests that restraints not be used, the officer accompanying the pregnant offender must immediately remove all restraints.
- No correctional personnel shall be present during the pregnant offender's labor or childbirth while she is being attended to by medical personnel, unless specifically requested by medical personnel. If the employee's presence is requested by medical personnel, the employee should be female if practicable.

Notice to Staff/Training

- The head of the respective agency must provide this model policy and any other information deemed appropriate (the "informational packet") to all medical staff and nonmedical staff involved in the transportation pregnant offenders, as well other staff deemed appropriate by the agency head.

- The designated parties responsible for ensuring the information is provided are:
    - DOC and DSHS/JRA: the secretaries;
    - County juvenile facilities: the director of a juvenile detention facility;
    - Jails: the jail administrator or his or her designee or chief law enforcement executive or his or her designee.

- For DOC, because the law applies to all pregnant female offenders in DOC custody, community corrections officers and any DOC employee involved in the transportation of pregnant offenders should be provided notice and trained on the requirements of the law and model policy.

Notice to Offenders

Generally, the requirements of the law must be provided to all pregnant offenders at the time the department assumes custody of the person, i.e. booking or intake. See below for the requirements specific to the individual agency or facility.

Suggested format for providing the information to female offenders/pregnant offenders: (1) provide as a new sheet of information or additional information to accompany other current information provided to offenders regarding access to medical care or facility regulations or (2) provide in a stand-alone brochure or other format that includes other information regarding pregnancy and prenatal care.

The requirements of the law must also be posted in areas where medical care is provided, and depending upon the facility, in other conspicuous locations. See below for the requirements specific to the individual agency or facility.

DOC

The requirements of the law must be provided to all pregnant offenders at the time the department assumes custody of the person. The information should be provided at booking or intake or at the time an offender receives information regarding other facility rules, rights and obligations according to current agency policy.

In the case of a pregnant offender being taken into custody by a community corrections officer, the information should be provided as soon as feasible upon taking the offender into custody.

A notice or poster containing the requirements of the law must be posted in conspicuous locations in the correctional facilities, including but not limited to where medical care is provided.

DSHS/JRA

The requirements of the law must be provided to all pregnant offenders at the time the department assumes custody of the person. The information should be provided at booking or intake at the time an offender receives information regarding other facility rules, rights and obligations according to current agency policy.

A notice or poster containing the requirements of the law must be posted in conspicuous locations in the correctional facilities, including but not limited to where medical care is provided.

County Juvenile Facilities

The requirements of the law must be provided to all pregnant offenders at the time the facility assumes custody of the person. The information should be provided at booking or intake at the time an offender receives information regarding other facility rules, rights and obligations according to current agency policy.

A notice or poster containing the requirements of the law must be posted in conspicuous locations in the facilities, including but not limited to where medical care is provided.

Jails

The requirements of the law must be provided to all female offenders at "intake." *(note that the law directs the information be given to *all* offenders, not just those who are pregnant.) The information should be provided at the time an offender receives information regarding other facility rules, rights and obligations according to current agency policy.

A notice or poster containing the requirements of the law must be posted in locations where medical care is provided.

Determination of Pregnancy

The law does not define what "known to be pregnant" means. Therefore each agency should adopt a policy regarding determination or confirmation of pregnancy of an offender, as it relates to the ban on use of leg irons and waist chains on any offender "known to be pregnant."

Policies should address the procedures for verifying pregnancy when an offender declares she is pregnant, appears to be pregnant, or responds to health questions in a manner that leads facility staff to question pregnancy status. An agency or facility may establish a policy that all female offenders shall be tested for pregnancy as part of a facility's regular health screening process.

Policies should address the procedures for determining or verifying that an offender is in the third trimester of a pregnancy, particularly as it relates to the ban, except in extraordinary circumstances, on the use of restraints during transport to court or medical care during this time.

Policies should address the procedures for determining or verifying that an offender is in labor, as it relates to the absolute ban on any restraints during labor.

Retroactivity

It is prudent to provide the information in this model policy to all women known by the facility to be pregnant at the time of the effective date of the act, June 10, 2010, regardless of the date the facility assumed custody.