



MINORITY AND JUSTICE COMMISSION

AOC SEATAC OFFICE
18000 INTERNATIONAL BLVD., SUITE 1106, SEATAC, WA
FRIDAY, JUNE 29, 2018
8:45 A.M. – 2:00 P.M.
JUSTICE MARY YU, CO-CHAIR
JUSTICE CHARLES W. JOHNSON, CO-CHAIR

Teleconference: 1-877-820-7831
Passcode: 358515#

AGENDA

CALL TO ORDER 8:45 – 8:50 a.m. (5 minutes)

- Welcome
- Approval of April 6, 2018 Meeting Minutes 1

CO-CHAIRS' REPORT 8:50 – 9:30 a.m. (40 minutes)

- 2018 MJC Symposium Debrief 9
- Judicial Branch Policy Goal
- Spokane Youth & Justice Forum
- LFO Recommendations from Sentencing Guidelines Commission 10
- MJC Court Program Analyst position

PRESENTATIONS AND Q&A 9:30 – 10:20 a.m. (50 minutes)

- **Administrative Juvenile Record Sealing Model Protocol** 9:30 – 9:50 a.m. (20 minutes) 12
– Diana Garcia, Columbia Legal Services
- **2018 National Consortium on Racial & Ethnic Fairness in the Courts Report** 9:50 – 10:20 a.m. (30 minutes) – Judge Bonnie Glenn and Judge Veronica Alicea-Galván

LAW STUDENT LIAISON REPORTS & UPDATES 10:20 – 10:50 p.m. (30 minutes)

- University of Washington Law Student Liaison Report

The 2018-2019 liaisons' first meeting will be September 28, with an orientation to follow.

STAFF REPORT 10:50 – 11:20 a.m. (20 minutes)

- **Staff Report – Cynthia Delostrinos**
 - FY 2017-2018 funds used and vote on FY 2018-2019 Draft Budget 15
 - LFO Bench Card and LFO Grant Update 16
 - September 28 MJC Meeting and Center for Civil and Human Rights Conference at Gonzaga Law
 - Monthly MJC Issue and Media Report from Law Library – **Elly Krumwiede** 20
 - Co-sponsorship updates:
 - Civics Day for Kent and Renton School Districts – May 2018
 - Tri-Cities Youth & Justice Forum (“Using Your Voice for Change”) 24
– November 2, 2018, Columbia Basin College, Pasco, WA
 - Shout-outs

LUNCH 11:20 a.m. – 11:40 a.m. (20 minutes)

PROJECT UPDATES 11:40 – 12:00 p.m. (20 minutes – 5 minutes each)

- **WPI Juror Orientation Video – Ben Santos 11:40 – 11:45 a.m.**
- **BJA Public Trust & Confidence Committee Public Service Announcement – Judge Mike Diaz and Judge Linda Lee 11:45 – 11:50 a.m.**
- **Past Youth Events 11:50 – 11:55 a.m.**
 - **Yakima Youth & Justice Forum – Lisa Castilleja**
 - **Seattle Youth & Justice Forum – Judge LeRoy McCullough**
- **Upcoming Youth Events:**
 - **Color of Justice – Judge G. Helen Whitener 11:55 a.m. – 12:00 p.m.**

COMMITTEE REPORTS 12:00 – 1:00 p.m. (60 minutes – 10 minutes each)

- **Jury Diversity Task Force – Judge Steve Rosen 12:00 – 12:10 p.m.**
- **Education Committee – Justice Debra Stephens and Judge Lori K. Smith 12:10 - 12:20 p.m.**
 - 2018 Spring Programs
 - Superior Court Administrator's Program – April 8, Chelan, WA
 - SCJA – April 9, Chelan, WA
 - DMCJA – June 4, Chelan, WA
 - District and Municipal Court Management Association Regional Trainings – April 2018, locations throughout Washington
 - Fall Judicial Conference – September 23 – 26, Yakima, WA
 - [Bail Law Bench Card](#) – **Judge Theresa Doyle**
- **Tribal State Court Consortium – Judge Lori K. Smith 12:20 – 12:30 p.m.**
 - Regional Meeting – June 1, 2018, Tulalip, WA
- **Outreach Committee – Lisa Castilleja 12:30 – 12:40 p.m.**
- **Juvenile Justice Committee – Annie Lee 12:40 – 12:50 p.m.**
- **Workforce Diversity Committee – Judge Bonnie Glenn and Judge Veronica Alicea-Galván 12:50 – 1:00 p.m.**
 - Justice C.Z. Smith Awards
 - WSBA Justice Charles Z. Smith Excellence in Diversity Award – APEX Award Dinner September 27, 2018
 - Follow up on April 6, 2018 presentation on Tacoma Northwest Detention Center

26

COMMITTEE MEETINGS 1:00 – 2:00 p.m.

Next MJC meeting: Friday, September 28, 2018, 8:45 am – 2 pm, Gonzaga University School of Law (721 N. Cincinnati St. Spokane, WA 99202)

Please complete, sign, and submit your travel reimbursement forms to staff before you leave. Reimbursement form included in the meeting packet, page 28.



**Washington State Minority and Justice Commission
(WSMJC)**
Friday, April 6, 2018
8:45 am – 2 pm
AOC SeaTac Office
18000 International Blvd., Suite 1106, SeaTac, WA
Teleconference: 1-877-820-7831
Passcode: 358515#



MEETING NOTES

Commission Members Present

Justice Charles Johnson, Co-Chair
 Justice Mary Yu, Co-Chair
 Judge Veronica Alicea-Galvan Professor
 Lorraine Bannai
 Ms. Diana Bob
 Professor Robert Boruchowitz (emeritus)
 Ms. Lisa Castilleja
 Magistrate Faye Chess
 Mr. Steve M. Clem
 Judge Linda Coburn
 Lieutenant Adrian Diaz
 Judge Lisa Dickinson
 Judge Theresa Doyle
 Mr. Anthony Gipe
 Judge Bonnie Glenn
 Ms. Annie Lee
 Judge LeRoy McCullough
 Ms. Kimberly Morrison
 Ms. Karen Murray
 Ms. Rosalba Pitkin
 Ms. Jasmin Samy
 Judge Lori K. Smith
 Mr. Travis Stearns
 Judge Helen Whitener

AOC Staff Present

Ms. Carolyn Cole
 Ms. Cynthia Delostrinos

Guests

Mr. Jorge Barón
 Ms. Jennifer Chan
 Ms. Elly Krumwiede
 Ms. Hamdi Mohamed
 Ms. Vy Nguyen
 Mr. Nick Straley
 Ms. Kiese Wilburn

Student Liaisons Present

Ms. Geraldine Enrico
 Mr. Peter Gale
 Mr. John Sather Gowdy

CALL TO ORDER

The meeting was called to order at 9:00 a.m.
 January 19, 2018 meeting minutes approved as presented.

CO-CHAIRS REPORT

LFO Bill

[Engrossed Second Substitute House Bill 1783](#) was signed into law on March 27, 2018 and becomes effective on June 7, 2018. It is the Commission’s hope that the new law moves Washington towards a fairer justice system. Justice Yu thanked the judges and prosecutors for coming to the table on this

bill. Judge Doyle hoped that the \$500 Victim Penalty Assessment could be addressed by the Legislature next session. Judge Coburn pointed out that the new law does not prohibit judges from imposing “costs” only “fines” upon a finding of indigency. Many do not understand that there is a distinction.

General Rule 37

The Washington Supreme Court adopted a new rule, [GR 37](#), to address the issue of racial/ethnic bias against jurors during jury selection. The rule is effective April 24, 2018. Justice Johnson shared that the rule is a first step that emphasizes the right of the juror to not be discriminated against and it is consistent with the Court’s cases. This makes the Washington Supreme Court the first in the nation to adopt a rule to address this issue. Judge Doyle and Judge Galvan thanked the Court for exercising leadership on this issue and helping judges engage in necessary conversations during jury selection. Justice Yu would like to see training on GR 37 at the judicial conferences and law schools.

Judge Whitener asked how the Court defines “ethnicity” in the rule. This may be something that needs more clarification. Kitara Johnson explained that “race” is the categorization of people along phenotypic features or biological traits while “ethnicity” refers to shared culture and practices. Anthony Gipe raised a concern that the rule does not include other categories and he hopes that GR 37 can be used to apply to other categories and judges would be prepared to entertain the arguments. Judge Smith agreed that GR 37 could be analogized to include other categories like gender identity.

2018 State of the Judiciary Report

The work of the Supreme Court Commissions is featured prominently in this year’s [report](#). Commission members are encouraged to read and share.

National Consortium on Racial & Ethnic Fairness in the Courts Conference

The Commission thanks Judge Galvan and Judge Glenn for volunteering to represent the Commission at the annual conference. They will give a report at the conference about the Commissions’ work and report back to the Commission about the conference. [This year’s conference](#) will be held in Minneapolis June 13-15. MJC is one of the four founding commissions of the Consortium. Justice Charles Z. Smith helped form the Consortium as a way for commissions across the country to exchange information and collaborate. Judge Galvan noted that the Consortium helped MJC connect with Judge (now Justice) Adrienne Nelson of the Oregon Supreme Court to organize last year’s Judges of Color Reception. Judge Doyle asked if there was a way to contact California to share resources and speakers on bail reform.

CO-SPONSORSHIPS

Civics Day for Kent and Renton School Districts – May 2018

Carolyn recommended approval of the request (meeting packet page 13) to support stipends for the youth panelists because the event is like the youth and justice forums the Commission already sponsors.

VOTE: Unanimous vote to approve co-sponsorship request \$300.

ADDITIONAL ACTION: Update the co-sponsorship request form to require an explanation of how the event relates to the Commission’s mission.

UW Law Academy Report – Lisa Castilleja

Approximately 165 students were in attendance and 40 volunteer attorneys and judges. Judge Richard Jones served as the keynote speaker and led a “mini-CLE” on persuasive oral arguments. The student feedback was very positive. Lisa urged the Commission to reconsider its approach to funding events like the UW Law Academy. She suggested that the Commission rotate funding between the law schools to ensure equal support of law academy events for each school.

PRESENTATIONS & REMARKS

Private Prisons in Washington

Jorge Barón, Executive Director, Northwest Immigrant Rights Project

Nick Straley, Columbia Legal Services Institutions Project

Jennifer Chan, Office U.S. Representative Pramila Jayapal

Judge LeRoy McCullough explained that the topic of private prisons should be of interest to the Commission because of the racial disproportionality of private prison populations for profit. He believes it is an incredible abuse of the system and increases recidivism.

Nick Straley shared that private prisons provide fewer services to gain more profit. The only private prison in Washington is the Northwest Detention Center in Tacoma. They have been known not to provide cancer treatments and engage in practices like “slow walking,” which is the slowing down of the immigration hearing process, so the detainee is deported before the detention center has to give them any treatment. [Attorney General Ferguson has filed a lawsuit](#) against the detention center for paying detainees \$1 per day arguing that the detention center is not exempt from Washington wage and hour laws and are in violation. Mr. Straley believes that litigation is not going to solve the problem because all it can do is make the situation more “humane.” The undocumented activists speaking up about this issue even at the risk of deportation are the true heroes.

Jorge Barón reminded the Commission that immigration violations are civil matters and many of the individuals detained are being held based on an alleged violation of immigration law and have not been convicted of any crimes. These individuals have no right to appointed counsel. Eighty percent of cases are unrepresented. Initially, those who were being detained were mostly recent arrivals seeking asylum, but now ICE has started to detain longtime Washington residents by increasing local patrol at locations like bus terminals. Bond amounts set are very high and certain mandatory detention categories cannot seek bond. [The U.S. Supreme Court last month reversed and remanded a 9th Circuit decision](#) that held that bond hearings have to take place by six months. Many individuals are being held indefinitely without a hearing and some of them give up on their cases. The government is always represented in bond hearings.

Jennifer Chan presented on [HR 3923 Dignity for Detained Immigrants Act of 2017](#), a bill sponsored by U.S. Representatives Adam Smith and Pramila Jayapal. The bill did not pass. It would have created due process, eliminated profit motive, and increased transparency by requiring state contracts with private prisons to be public. The bill would have also created presumption of release, a probable cause requirement, eliminated mandatory detention, required ability to pay determination when setting bond, unannounced inspections, and resources for alternatives to detention pilot projects with the goal of phasing out private prisons completely. She urged the Commission to address aggressive immigration at the courthouses and not support the expansion of private prisons in the state.

ACTION: The Workforce Diversity Committee will discuss ways that the Commission can address this issue and present it to the Commission for consideration.

STAFF REPORT

2018 LFO Symposium (“Legal Financial Obligations (LFOs): Beyond Defining the Problem; Advancing Solutions”) and Conference with Dr. Alexes Harris – June 6, 2018, 9 am – 12 pm, Seattle University School of Law

Carolyn shared that planning is underway. Speakers and program have been confirmed. Program will include an overview of the use of LFOs in Washington by Dr. Harris, updates on the LFO Consortium, including an LFO Calculator demonstration by Judge Coburn, a panel of community members living with LFOs, and presentations from Trish Kinlow on the King County Unified Payment Program, and Judge Kimberly Walden on community service conversion of LFOs. The emcee will be Judge David Keenan.

LFO Consortium

Judge Coburn shared that the LFO Calculator will incorporate the new changes to the law and the link will be released by the summer. The LFO Calculator will help judges see the impact of imposing a particular amount on the defendant. Judge Chess is grateful for the LFO Calculator because judges lack an understanding about the “domino effect” that even license suspension for failure to pay parking tickets has on individuals. The Calculator will help judges ask questions to learn more about the individual’s circumstances.

The LFO Consortium is collecting data on the cost of imposing and collecting LFOs. The Washington State Auditor is conducting an audit on pretrial detention. It could be helpful if the State Auditor did an audit on LFOs.

Pretrial Reform Task Force

A full Task Force meeting was held on February 28th, 9 am – 12 pm, at the AOC SeaTac Office. The meeting included a presentation on the results of the Yakima system improvements and the results are promising. One notable result is that there was no significant difference between pretrial release rates between different race/ethnicity groups post-implementation. Pre-implementation, White defendants were being released at a higher rate than non-White defendants. In addition, there was no negative impact on public safety as pretrial release increased. Justice Yu was enthusiastic about the results and hopes that Yakima could be a model. Judge Doyle shared that the Race & Ethnic Considerations Statement from her workgroup was submitted to the Risk Assessment Subcommittee. There is new research every day about the topic and there isn’t consensus that risk assessment tools do not perpetuate disparities. The workgroup would like to see if fairness could be incorporated into the tool in some way to account for systemic inequalities that produce the data being used in the tools.

Annie Lee shared that a needs assessment approach is used more for juveniles. The literature and tools are shifting away from the risk assessment approach.

At the end of 18 months, the Task Force plans to produce a comprehensive report outlining the data collected and recommend best pretrial practices to be used throughout Washington State.

Eliminating the Pipeline School Discipline Series

The last workshop was held March 15, 2018. The panelists included Judge Wesley Saint Clair, Prosecuting Attorney Samaneh Alizadeh, Willard Jimerson (Urban League), Richard Davenport (TeamChild) and Maria Marshall, a community advocate. The conversation was very frank about the court’s inability to adequately address the youth’s needs. The group discussed ways that court leadership could help dismantling the pipeline by supporting more diversion and communication with

schools. It was a great workshop series and our partnership with Equity in Education Coalition allowed us to reach more community members.

Youth Events

- *Yakima Youth & Justice Forum (“Technology and the Law”) – April 20, 2018, Heritage College, Toppenish, WA*
- *Seattle Youth & Justice Forum (“What’s the CODE? Technology, Law, and Justice!”) – April 21, 2018, 8 am – 1:30 pm, First A.M.E. Church (1522 14th Avenue, Seattle, WA 98122)*
- *Power of Dissent Spoken Word – April 23, 2018, 5:30 – 7:30 p.m., Rainier Beach Community Center*
- *Civics Day for Kent and Renton School Districts – May 2018*

The Commission will be able to cover travel costs for up to 10 members to volunteer at the Yakima and Seattle Youth & Justice Forums.

Budget Update

MJC has spent \$24,919 of its \$70,000 as of February 2018. We are not expected to go over budget at this rate.

Shout-outs:

- Judge Smith and Judge Galvan for their work on SCJA Conference sessions and serving as faculty.
- Judge Whitener for working with SCJA to expand Color of Justice statewide.
- Gonzaga and SU law student liaisons for successfully organizing their events.
- Cynthia Delostrinos organizing the DMCMA regional poverty simulation trainings.
- Lisa Castilleja for her work on youth forums.
- Gonzaga liaison Sather Gowdy for his [Heal Spokane initiative](#).

LAW STUDENT LIAISON PRESENTATIONS

Each year, the law student liaisons from each school organize an event or project to further the Commission’s mission in their law school and greater community. Liaisons presented their submitted co-sponsorship requests. Commission members asked questions and gave suggestions for content and speakers.

Gonzaga University School of Law

Sanctuary Cities, DACA, and Immigrants’ Rights
February 27, 2018, 5-7 pm
Gonzaga University School of Law, Barbieri Courtroom

Approximately 44 people were in attendance, including representatives from community organizations. Judge Dickinson shared that the presentations were high caliber. Attendees were able to hear from Megan Ballard about how equal protection applies in education for undocumented immigrants. Students were able to connect with the panelists about their own immigration issues.

Seattle University School of Law

Immigration Issues in Civil and Criminal Litigation and Administrative Proceedings
February 28, 2018, 5-8 pm
Seattle University School of Law

Approximately 36 people were in attendance. The event featured a very engaging panel of immigration experts. Their goal was to show all of the ways that state courts are impacted by immigration and it is not just an immigration court issue. Professor Boruchowitz praised the liaisons for helping Seattle University School of law engage in these conversations.

University of Washington School of Law

Just for Kids: Discussing Ongoing Efforts, Innovations, and Challenges in the Washington Juvenile Justice System

April 12, 2018, 4-7 pm

University of Washington School of Law

Update from the liaisons: The UW liaisons are very excited for their upcoming MJC event on April 12th. Our last update included plans to host a keynote speaker, however we were unable to have a speaker knowledgeable on Washington juvenile justice commit. We instead decided to localize our panel and create a two-prong schedule. First, we will be hosting youth involved in restorative justice. For the second half, we will be hosting the honorable Judge Saint Clair, community organizers, defenders, and prosecutors. Our budget has allowed us to provide food and drinks, parking validation, materials, and printing. We are anticipating about 90 students from various departments and graduate schools. We are very excited to bring MJC to UW on an issue very pressing for our community. Catalina Saldivia Lagos will be presenting a follow-up report at the next MJC meeting.

COMMITTEE REPORTS

Education Committee – Judge Smith

Appellate Conference - March 28, 8:30 am – 12 pm, Suncadia Resort, Cle Elum, WA

Response from the judges on the collateral consequences of criminal convictions session was very positive. Several judges remarked that it was one of the most important sessions they have attended because they were able to hear directly from those living with convictions.

SCJA Spring Conference

- SCJA Batson Session (April 9, 1-2 pm plenary, 2:15-3:30 pm choice)

The first part of the program hopes to show through scenarios how bias can appear in different judicial determinations and information provided to the court by CASAs. Judges will use responder units to make rulings and discuss. The second part of the program will be the mock Batson hearing and address GR 37.

- SCJA Joint Commissions Immigration Session (April 9, 8-9:30 am plenary)

Superior Court Administrator's Program – April 8, Campbell's Resort, Chelan, WA

DMCJA Spring Conference – June 4, 8-10:15 am, Campbell's Resort, Chelan, WA

DMCJA Batson Session

The session will need to include GR 37.

Fall Judicial Conference – September 23-26, Yakima, WA

Proposals submitted and accepted:

- Poverty as a Barrier to Justice – How Courts Can Stop Being Part of the Problem and Help Create Solutions - MJC
- A Fair System for LEP Children and Connected Adults: The Importance of Linguistic and Cultural Competency – IC, MJC, ATJ Board
- Immigration’s Impact on the Judiciary: Implementing New Evidence Rule 413 – GJCOM, MJC, IC
- Combating Muslim Bias in Washington Courts: Equipping and Empowering Judges – BJA Public Trust & Confidence Committee and MJC

District and Municipal Court Management Association Regional Trainings – April 2018, locations throughout Washington

Cynthia reported that the registration numbers were low for some of the sites, so the trainings will only occur in 3 locations: Des Moines, Gig Harbor, and Bremerton.

Juvenile Justice Committee – Annie Lee

The Committee would like to see a broader presentation to the Commission on public health responses from courts. She also shared that [Senate Bill 6550](#) was signed into law, which allows prosecutors to divert almost any juvenile offense except a narrow class of violent offenses. [Senate Bill 6160](#), which revises conditions under which a person is subject to exclusive adult jurisdiction and extends juvenile court jurisdiction over serious cases to age twenty-five. The Committee would like Diana Garcia from Columbia Legal Services to present on a juvenile record sealing model protocol at the next MJC meeting.

Annie would like to invite juvenile court judges to join as members and add a co-chair to help with the work. Judge Whitener said she would reach out to her court administrator, Chris Gaddis, to see if he would be interested in joining. If so, the Commission should extend a formal invitation.

Outreach Committee – Lisa Castilleja

The Outreach Committee has received some great artwork submissions. They are in the process of selecting the artwork that they will recommend to the Commission. Law student liaison Rina Bozeman’s article on jury diversity will be featured in the annual report, in addition to an excerpt from Judge Whitener’s Black Women Rise Conference speech. Washington Appleseed also plans to submit an article on the history of jury diversity efforts in the state.

Workforce Diversity Committee – Judge Bonnie Glenn and Judge Veronica Alicea-Galvan

Justice C.Z. Smith Awards

- Law School Award Ceremony – Black Law Students’ Association Alumni Reception, SU School of Law, February 22, 2018.

Judge Glenn reported that the ceremony went well and there were many applicants for the award. The award winners were: Ben Asare (Gonzaga Law), Archie Roundtree (SU Law), and Nico Quintana (UW Law).

- WSBA Justice Charles Z. Smith Excellence in Diversity Award – APEX Award Dinner September 27, 2018.

Cynthia announced that she nominated Judge Bonnie Glenn for the award because of her efforts to establish the award and for all of the years she has supported workforce diversity, youth forums, community initiatives, and provided mentorship.

- Judicial Institute at SU Bridging the Gavel Gap – April 24, 2018, SU School of Law, 5 – 7 p.m.

Tribal State Court Consortium – Judge Lori K. Smith

The TSCC Regional Meeting will be held at the Tulalip Tribal Court, June 1, 8:30 – 2:30 p.m. Jennifer Walter from the California Tribal State Court Forum will be the keynote presenter. TSCC will discuss its work developing a court rule that could improve communication between state and tribal courts and cross-jurisdictional issues in the transfer of ICWA cases.

Jury Diversity Task Force – Carolyn Cole

Carolyn shared that the three workgroups (Summons, Economic Hardships, and Jury Service Eligibility) have all met and are narrowing down the final list of reforms that the Task Force will act on. The Summons workgroup has had a lot of interesting conversations looking at possible legal challenges to using targeted re-summonsing based on zip codes with lower return rates and weighted random selection. The Jury Diversity Task Force would like to develop a data collection plan to make the collection of juror demographic data permanent.

Meeting adjourned at 1:00 p.m.

NEXT COMMISSION MEETING:		
Friday, June 29, 2018	8:45 a.m. – 2 p.m.	AOC SeaTac Office 18000 International Blvd. Suite 1106 SeaTac, WA 98188

***PRINCIPAL POLICY GOALS OF THE
WASHINGTON STATE JUDICIAL BRANCH***

"Justice in all cases shall be administered openly, and without unnecessary delay."
Washington State Constitution, Article I, Section 10.

Washington State's judicial branch is a constitutionally separate, independent and coequal branch of government. It is the duty of the judicial branch to protect rights and liberties, uphold and interpret the law, and resolve disputes peacefully through the open and fair administration of justice in the state.

The judicial branch in Washington State is a local and state partnership where local courts, court managers and court personnel work in concert with statewide courts, judicial branch agencies and support systems.

The judicial branch maintains effective relations with the executive and legislative branches of state and local governments, which are grounded in mutual respect.

The principal policy goals of the Washington State Judicial Branch

1. ***Fair and Effective Administration of Justice.*** Washington courts will openly, fairly, efficiently and effectively administer justice in all cases, consistent with constitutional mandates and the judiciary's duty to maintain the highest level of public trust and confidence in the courts. Washington courts will affirmatively identify and eliminate bias-based practices and procedures that deny fair treatment for persons due to their race, gender, ability or other personal characteristics unrelated to the merits of their cases.
2. ***Accessibility.*** Washington courts, court facilities and court systems will be open and accessible to all participants regardless of income, language, culture, ability, or other access barrier.
3. ***Access to Necessary Representation.*** Constitutional and statutory guarantees of the right to counsel shall be effectively implemented. Litigants with important interests at stake in civil judicial proceedings should have meaningful access to counsel, legal representation.
4. ***Commitment to Effective Court Management.*** Washington courts will employ and maintain systems and practices that enhance effective court management.

Judicial Branch Principal Policy Goals and BJA Mission and Vision 1.12.2018, approved by the Washington State Supreme Court June 7, 2018.

To: Sentencing Guidelines Commission

From: Legal Financial Obligations Work Group

Re: SRA Reform Recommendations

Dated: June 1, 2018

The LFO Work Group for the ongoing SGC effort to consider proposed reforms of the Washington Sentencing Reform Act (SRA) met by telephone today.

The following are the recommendations of the Work Group to the SGC:

1. The Work Group supports the revised provisions of ESSHB 1783, which become effective on June 7, 2018, and recommends they be incorporated into any reform or revision of the SRA. These include the following:
 - a. ESSHB 1783 provides that only restitution shall bear interest, at the prevailing civil judgment rate. Interest is not imposed on any other legal financial obligation.
 - b. ESSHB requires that discretionary costs not be imposed on indigent defendants.
 - c. ESSHB provides that indigent defendants can be given the option to pay mandatory legal financial obligations (i.e. restitution, the victim penalty assessment and the DNA fee) over time. In addition, it sets forth the following priority of payment: first, restitution owing to victims; second, restitution owing to subrogated insurers; third, the victim penalty assessment; and finally, any other amounts or costs.
 - d. ESSHB provides that defendants cannot be sanctioned for failure to pay unless the government demonstrates that the defendant at issue is acting willfully, meaning that the defendant has the current ability to pay and has refused to do so. Defendants who are homeless or mentally ill cannot be adjudicated to be acting willfully in failing to pay.
2. The work group further recommends that the SRA be revised to require a showing to the judicial officer before an LFO (legal financial obligation) warrant can issue that the offender does in fact have the ability to pay and is simply deciding not to do so. This would cut local costs in enforcing warrants and prevent detentions of people who are not eligible to be sanctioned in any event.
3. The Work Group has ongoing consensus that crime victim restitution is a key component of Washington sentencing, and should be carried over to any reform or revision of the SRA as a financial priority obligation for qualifying offenders.

4. The Work Group recommends that any SRA revision continue the requirements of ESSHB 1783, which now routes 100 % of the victim penalty assessment to the county treasurer into a fund exclusively for “the support of comprehensive programs to encourage and facilitate testimony by the victims of crime and witnesses to crime. A program shall be considered ‘comprehensive’ only after approval of the department [Commerce] upon application by the county prosecuting attorney.” Although some may question why an assessment against defendants at sentencing is the route to help support victim advocate programs in local communities, the Work Group thinks it is not feasible to get the State to pick up this financial cost for local victim support.

5. The Work Group recommends that the DNA fee, which is used to maintain the DNA data base and, in small part, to support the crime laboratory, be eliminated for criminal defendants at sentencing. The data base and the crime lab are both essential criminal justice resources, but they should not be dependent on criminal sentencings for support, and their costs are not generated by most of the defendants who are required to pay the fee. Rather, maintenance of the data base and adequate funding of the crime lab are part of the basic state obligation to provide an adequate criminal justice system. It is recommended that the SRA revisions include a clear mandate to the State itself to fully meet this obligation.

MODEL PROTOCOL GOVERNING ADMINISTRATIVE JUVENILE RECORD SEALING, RCW 13.50.260(1)

Open juvenile records cause substantial barriers to former juvenile offenders in their ability to obtain employment, housing and educational opportunities. The intent of the model protocol is to protect juveniles against the obstacles stemming from open juvenile records.

Pursuant to the administrative hearing process in [RCW 13.50.260](#), youth who have completed the terms of their disposition, have fully paid restitution (excluding restitution owed to insurance companies), and whose offense is not a “most serious offense”, “drug offense”, or “sex offense” must have their record sealed. The administrative hearing process requires courts to hold regular sealing hearings in which the court must “administratively seal an individual's juvenile record...unless the court receives an objection to sealing or the court notes a compelling reason not to seal, in which case, the court shall set a contested hearing to be conducted on the record to address sealing.” RCW 13.50.260(1).

However, there are courts that are not holding contested hearings after deciding not to seal juvenile records. Not holding contested hearings prevents youth from receiving notice that their record continues to be open to the public and from challenging the reason why their record was not sealed. In some instances, courts distinguish “eligibility requirements” from “an objection” or “a compelling reason not to seal.” If the court is informed that the youth is ineligible for sealing, then the court does not hold a contested hearing. This occurred to two youth in *State v. Cofield*, 1 Wn. App. 2d 49 (2017). The *Cofield* Court held that “the plain language of RCW 13.50.260(1) requires that the juvenile court set a contested record-sealing hearing upon any objection to a juvenile offender’s record being sealed, including an objection because the juvenile has not completed the conditions of his or her disposition order.” *Id.* at 56. The case was remanded to the juvenile court to conduct contested record-sealing hearings. *Id.* at 58.

Even though the *Cofield* case clarified that a contested hearing must be held whenever a court refuses to seal a record at a scheduled administrative sealing hearing, there are attorneys and courts that are unaware of the decision and administrative sealing procedures continue to vary. This model protocol will bring this issue to the courts’ attention and will provide the courts with a clear procedure to follow in all administrative sealing cases so that the statute is implemented uniformly throughout Washington.

MODEL PROTOCOL GOVERNING ADMINISTRATIVE JUVENILE RECORD SEALING, RCW 13.50.260(1)

Section I: Purpose

Open juvenile records cause substantial barriers to former juvenile offenders in their ability to obtain employment, housing and educational opportunities. The model protocol is intended to protect juveniles against the obstacles stemming from open juvenile records.

Section II: Scope

The model protocol governs the administrative sealing of juvenile records. The administrative process is available to youth who have completed their terms of disposition and have paid full restitution, excluding restitution owed to insurance companies. Administrative sealing hearings are not available for juvenile records involving a "most serious offense", "drug offense", or "sex offense".

Section III: Definitions

- 1) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombuds, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW [72.05.415](#).
- 2) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, notices of hearing or appearance, service documents, witness and exhibit lists, findings of the court and court orders, agreements, judgments, decrees, notices of appeal, as well as documents prepared by the clerk, including court minutes, letters, warrants, waivers, affidavits, declarations, invoices, and the index to clerk papers.
- 3) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.
- 4) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

Section IV: Disposition Hearings

- 1) At the disposition hearing of a juvenile offender, the court must schedule the juvenile sealing hearing for the first regularly scheduled sealing hearing after whichever of the following events occurs last:
 - a) The youth turns 18 years old;
 - b) The anticipated completion of the youth's probation, if ordered;
 - c) The anticipated release from confinement at the juvenile rehabilitation administration, or the completion of parole, if the youth is transferred to the juvenile rehabilitation administration.

Section V: Administrative Hearings

- 1) The court will hold regular administrative sealing hearings.
- 2) Juvenile records must be sealed at the administrative sealing hearing unless the court:
 - a) Receives an objection to seal the record; or
 - b) The court notes a compelling reason not to seal the record.
- 3) Youth are not required to attend the administrative hearings but are entitled to notice of the court's order.
- 4) If a juvenile record is not sealed, notice must be sent to the youth and the youth's attorney of record in the case. If there is no attorney of record, it is recommended that notice be sent to the Public Defender agency, the firm of the last attorney of record or the agency handling contested sealing hearings for juveniles.
- 5) Contested hearings must be scheduled anytime the record is not sealed at the administrative hearing, including when there are any objections to sealing the record because the juvenile has not completed the conditions of his disposition order.
- 6) If an objection is made regarding the eligibility of the juvenile to have his record sealed, a contested hearing must be set to make a factual determination as to whether the juvenile is eligible to seal his record.

Section VI: Contested Hearing

- 1) Contested hearings must be held on the record with full due process protections including, if necessary, appointment of counsel.
- 2) Notice of the hearing and the opportunity to object must be sent to the youth, the victim (if any), and the youth's attorney at least 18 days before the contested hearing.
- 3) Youth may attend the contested hearings in person or through an attorney.
- 4) The court shall enter a written order sealing the juvenile record unless the court determines that sealing is not appropriate.

Section VII: Effective Date

This protocol takes effect on _____.

Draft Budget FY 18-19

MJC Budget Code 16301

Starting available funds	\$70,000.00	\$70,000.00
Estimated Funds used to date		\$0.00

Item (PROJECT CODE-SUB-PROJECT CODE)	Description	Allotted	Spent	Remaining	Notes
M&J Overhead					
Commission Meetings (1600-01)	ALL travel costs (i.e., mileage reimbursement, flights, car rentals, lodging, and per-diem) AND meeting/event catering	\$34,000.00			Use this code for catering costs that aren't already accounted for in an MOU
General Operating Expenses (1600-02)	Printing, teleconferences, office supplies, software, etc.	\$5,000.00			
Commission Staff & Member Continuing Education (1600-03)	National Consortium & other conference registration	\$2,000.00			
EDUCATION - not travel and food expenses (i.e., HONORARIA)					
Judicial College (1601-01)		\$1,000.00			
Institute for New Court Employees (1601-02)		\$1,000.00			
Fall Conference (1601-03)		\$1,000.00			
Spring Conference - DMCJA (1601-04)		\$1,000.00			
Spring Conference - SCJA (1601-05)		\$1,000.00			
Spring Conference - Appellate Courts (1601-06)		\$1,000.00			
DMCMA Conference (1601-07)		\$1,000.00			
WASCLA Conference		\$0.00			No honoraria funding. Travel reimbursements only. Use Commission meeting code 1600-01
Other Education Programs		\$1,000.00			
LAW STUDENT LIAISON PROJECTS					
Gonzaga project (1602-01)		\$1,000.00			MOU with the school required
SU project (1602-02)		\$1,000.00			MOU with the school required
UW project (1602-03)		\$1,000.00			MOU with the school required
YOUTH PIPELINE PROGRAM SPONSORSHIP					
Yakima Youth & Justice Forum (1603-01)		\$1,000.00			
Tri-Cities Youth & Justice Forum (1603-03)		\$0.00			\$1000 disbursed from FY 2017-2018 funds
Seattle Youth & Justice Forum (1603-04)		\$1,000.00			
Color of Justice (1603-05)		\$1,500.00			
SYMPOSIUM - not travel and food expenses (1604-00)					
INITIATIVES					
Tribal State Court Consortium (1606-02)		\$1,000.00			
Pretrial Task Force (1606-03)		\$500.00			
RESEARCH					
Jury Survey Project (1607-01)		\$10,000.00			
Total		\$70,000.00	\$0		

WA State Superior Courts: 2018 Reference Guide on Legal Financial Obligations (LFOs)

**Disclaimer: Check statutory and case law cites to confirm law is current*

Imposing LFOs at Sentencing

LFOs include restitution, fees, fines, assessments, and costs imposed as part of a criminal judgment upon conviction. In some cases, costs may be imposed for pretrial supervision. State law authorizes both mandatory and discretionary LFOs, and each statute may differ in setting standards for imposition and waiver:

- **Mandatory LFOs** shall be imposed in every case or for every conviction for a certain type of offense regardless of the defendant's ability to pay (although some mandatory LFOs can be partially waived);
- **Discretionary LFOs** may be imposed or waived at the court's discretion.

Mandatory LFOs Include:

- **Victim Penalty Assessment (VPA):** \$500 for each case that includes one or more felony or gross misdemeanor convictions; \$250 for each case that includes misdemeanor convictions. *RCW 7.68.035*.
- **DNA Collection Fee:** The first sentence imposed in a defendant's lifetime for a crime specified in *RCW 43.43.754* must include a fee of \$100. *RCW 43.43.7541*; but see *RCW 9.94A.777* (not mandatory for defendants with mental health conditions).
- **Restitution:** Shall be ordered whenever a felony offense results in injury to any person or damage to or loss of property, unless extraordinary circumstances make restitution inappropriate. *RCW 9.94A.753(5)*; but see *RCW 9.92.060(2)(b)* and *City of Seattle v. Fuller*, 177 Wn.2d 263 (2013) (restitution discretionary for misdemeanors).
- **Crime-Specific LFOs:** Some LFOs are mandatory based on the type of offense. See, e.g., *RCW 9.68A.105* (requiring court to impose fee assessments for convictions for commercial sex abuse of a minor related offenses, although 2/3 of assessment may be waived if court finds, on the record, that the defendant lacks the ability to pay); but see *RCW 9.94A.777* (court must determine person with mental health condition has means to pay even mandatory LFOs, except for VPA and restitution).

Discretionary Costs are expenses specially incurred by the state in prosecuting the defendant or in administering pretrial supervision. *RCW 10.01.160*. These include, but are not limited to jury fees and costs of incarceration.

Caps for Certain Costs: Pretrial supervision (other than alcohol and drug monitoring) (\$150); warrants for failure to appear (\$100); costs of incarceration (actual cost – no more than \$100 per day). *RCW 10.01.160(2)*.

Imposing Costs: The court shall not impose costs, including the cost of incarceration, if the defendant is indigent at the time of sentencing. *RCW 10.01.160(3)*; *9.94A.760(3)*. "Courts should also look to the comment

in . . . GR 34 for guidance" to determine a defendant's ability to pay costs. *State v. Blazina*, 182 Wn.2d 827, 839 (2015). A court should "seriously question the ability to pay LFOs" if a defendant meets the GR 34 standard for indigence. *Id.* In determining the amount and method of payment for costs for defendants who are not indigent, the court shall consider the financial resources of the defendant and the nature of the burden that payment of costs will impose. *RCW 10.01.160(3)*. This includes consideration of factors such as incarceration and a defendant's other debts. *Blazina*, 182 Wn.2d at 838.

Time Payments of LFOs are required if the defendant is indigent. *RCW 10.01.170(1)*.

Imposing LFOs on Defendants with Mental Health Conditions: Before imposing any LFOs other than restitution or the VPA, the court must find that a defendant with a "mental health condition" has the means to pay the additional sums. *RCW 9.94A.777*.

Imposing Fines: Fines are generally discretionary. Some fines are mandatory but can be waived in full or in part on a finding of indigence. See, e.g., *RCW 69.50.430(1)* (fines for VUCSA offenses mandatory unless court finds indigence); *RCW 69.50.401(2)(b)* (court may impose fines for convictions for manufacture, possession, or delivery of amphetamines, \$3000 of which may not be suspended). Trial judges are strongly urged to consider a defendant's ability to pay before imposing fines. *State v. Clark*, 191 Wn. App. 369, 376 (2015).

Collection of LFOs

Monthly Payment Schedules: A monthly payment towards LFOs is a condition of sentence. *RCW 9.94A.760(11)*. The schedule can be set by (1) the court at sentencing, (2) DOC (if the person is on active supervision with DOC), or (3) the county clerk's office. *RCW 9.94A.760(1)*.

Persons Receiving Social Security Disability: Federal law prohibits courts from ordering defendants to pay LFOs if the person's sole source of income is social security disability benefits. *City of Richland v. Wakefield*, 186 Wn.2d 596, 609 (2016); 42 U.S.C. § 407(a).

Sanctions for Non-Payment

Requirement to Pay: The court may issue a summons or a warrant to guarantee the appearance of a defendant who has failed to pay. *RCW 9.94A.6333(3)(a)*; *9.94B.040(4)(b)*. The better practice may be to issue a summons for non-payment and a warrant upon any failure to appear. If using contempt procedures, the court must find that a person is in *willful* default prior to the issuance of a warrant: "A defendant sentenced to pay any fine, penalty, assessment, fee

or costs who willfully defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW.” *RCW 10.01.180(1)*. “The court may issue a warrant of arrest for his or her appearance.” *Id.*

Right to Counsel: Whenever a modification of sentence may result in jail, an indigent defendant has a right to appointed counsel at public expense. *State v. Stone*, 165 Wn. App. 796, 814-15 (2012).

Factors Court Must Consider Before Jailing a Defendant for Failure to Pay: A defendant may not be sanctioned for non-payment unless the court finds that the failure to pay is willful. *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). This applies to all LFO debt, whether mandatory or discretionary. Failure to pay is willful if the individual has the current ability to pay but refuses to do so. *RCW 9.94A.6333(3)(c)*. An individual who is indigent as defined by *RCW 10.101.010(3)(a)-(c)* is presumed to lack the current ability to pay. *Id.*; *9.94B.040(4)(c)*. If the court finds the defendant is homeless or mentally ill, it cannot sanction the defendant for willful noncompliance. *RCW 9.94A.6333(3)(d)*; *9.94B.040(4)(d)*.

Burden of Proof: The state must show noncompliance by a preponderance of the evidence. *RCW 9.94A.6333(3)(b)*; *9.94B.040(4)(c)*. The court must determine, after a hearing and on the record, whether the failure to pay is willful, considering the defendant’s income and assets, basic living costs, other liabilities including child support and other LFOs, and bona fide efforts to acquire additional resources. *RCW 9.94A.6333(3)(c)*; *9.94B.040(4)(c)*.

Incarceration for Failure to Pay: Persons incarcerated for contempt for willful non-payment of LFOs receive credit towards the LFOs for each day served at the rate specified by the court in the commitment order. *RCW 10.01.180(4)*. Persons incarcerated for willful non-payment of felony LFOs have violated a condition of sentence and do not receive credit toward LFOs. *State v. Nason*, 168 Wn.2d 936, 946-47 (2010). These individuals may be sanctioned by the court with up to 60 days’ confinement for each violation or by DOC with up to 30 days’ confinement as provided in *RCW 9.94A.737*. *RCW 9.94A.633(1)*. Alternatives to incarceration may also be ordered. *Id.*

Post-Sentencing Relief

Interest Relief: As of June 7, 2018, interest shall not accrue on non-restitution LFOs. *RCW 10.82.090(1)*. Upon release from total confinement, a defendant may petition for waiver of non-restitution interest that accrued before the effective date, and the court shall grant the motion. *RCW 10.82.090(2)(a)*. The statute only applies to adult offenders. *RCW 10.82.090(3)*.

Remission of Discretionary and Appellate Costs: After release from total confinement, a defendant who is not in contumacious default may petition for remission of costs. If the court is satisfied that payment would impose manifest hardship on the defendant or the defendant’s immediate

family, the court may remit all or part of the costs, modify the method of payment under *RCW 10.01.170*, or convert unpaid costs to community restitution hours (if the jurisdiction operates a community restitution program) at no less than the state minimum wage for each hour of community restitution. Manifest hardship exists where the defendant is indigent as defined in *RCW 10.10.010(3)(a)-(c)*. *RCW 10.01.160(4)*; *10.73.160(4)*. Courts can and should use GR 34 as a guide for determining whether someone can pay costs. *Wakefield*, 186 Wn.2d at 606. If a person has no present or future ability to pay amounts that will satisfy his or her LFOs, remission in accordance with *RCW 10.01.160(4)* is a more appropriate and just option. *Id.* at 607.

Other Options for Conversion, Modification, Waiver:

- If the court finds that a violation for failure to pay was not willful, it may (1) modify the terms of payment, (2) reduce or waive non-restitution LFOs, or (3) convert the non-restitution LFOs to community restitution at a rate of no less than the state minimum wage. *RCW 9.94A.6333(3)(f)*; *9.94B.040(4)(f)*. If the court finds that the violation was not willful and the defendant is indigent as defined in *RCW 10.101.010(3)(a)-(c)*, it shall address the LFOs through one of the above listed options. *Id.*
- The VPA shall not be waived, modified, or converted to community restitution hours. *Id.*

Determining Indigence

RCW 10.101.010(3)(a)-(c) is used to define indigence.

Under that statute, a person is indigent if he or she:

- **Currently receives benefits from TANF**, aged, blind or disabled assistance, medical care services, pregnant woman assistance, SSI, federal poverty-related veterans’ benefits, refugee resettlement, Medicaid or food stamps; or
- **Is involuntarily committed** to a public mental health facility; or
- **Has income at or below 125% of the federal poverty level (FPL)**, which for 2018 is:
 - \$15,175 for individuals
 - \$20,575 for a family of 2
 - \$25,975 for a family of 3
 - \$31,375 for a family of 4
 - \$36,775 for a family of 5
 - \$42,175 for a family of 6

For updates to the FPL, visit:

opd.wa.gov/documents/00531-2018_PovertyRate.pdf



Provided by the Washington State Supreme Court
Minority and Justice Commission
June 2018

WA State Courts of Limited Jurisdiction (CLJs): 2018 Reference Guide on Legal Financial Obligations (LFOs) in Criminal Cases

**Disclaimer: Check statutory and case law cites to confirm law is current*

Imposing LFOs at Sentencing

LFOs include restitution, fees, fines, assessments, and costs imposed as part of a criminal judgment upon conviction. In some cases, costs may be imposed for pretrial supervision. *RCW 10.01.160*. State law authorizes both mandatory and discretionary LFOs, and statutes may differ in setting standards for imposition and waiver.

Mandatory LFOs in CLJs

- **DNA Collection Fee:** \$100, limited to specified crimes and imposed only once in a lifetime. *RCW 43.43.7541*.
- **Public Safety & Educational Assessments:** Two separate assessments, which together equal 105% of any fines, forfeitures, or penalties imposed. *RCW 3.62.090*. Note that, per statute, the PSEA is applied slightly differently for DUI/Physical control cases.
- **Offense-Specific Fines:** Some offenses carry additional mandatory penalties. *See, e.g., RCW 26.50.110* (\$15 mandatory fine for Violation of a DV Protection Order).

Discretionary LFOs in CLJs:

- **Fines** are generally discretionary. *See RCW 3.62.010; 35.20.255*. Courts have the discretion to waive or suspend some “offense-specific” fines on a finding of indigence. *See, e.g., RCW 46.64.055(1)*.
- **Restitution** is permitted but not mandatory for non-felony offenses. *See RCW 9.92.060(2)(b); Seattle v. Fuller*, 177 Wn.2d 263 (2013).
- **Criminal Conviction Fee** of \$43 may not be imposed on indigent defendants. *RCW 3.62.085*.
- **DUI Fines, Fees and Costs** are all discretionary. *RCW 46.61.5055* specifies minimum fines that a court must impose as part of a DUI sentence “unless the court finds the offender to be indigent.” *See, e.g., RCW 46.51.5055(1)(a)(ii)*. The PSEA 1 of 70% is applicable to that fine; but the PSEA 2 of 35% is not. *RCW 3.62.090(1), (2)*. A court must impose a \$250 fee on a person originally arrested for DUI or physical control, but “[u]pon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.” *RCW 46.61.5054(1)*.
- **Criminal Justice Funding Penalty** of \$50 must be imposed on Title 46 crimes, but the court can waive or reduce that amount if the defendant is indigent. *RCW 46.64.055(1)*. The PSEA is applicable to the criminal justice funding penalty. *RCW 3.62.090(1), (2)*.

Discretionary Costs in CLJs: Costs may not be imposed if a defendant is indigent. *RCW 10.01.160(3)*. Even in the absence of a statutory finding of indigency, courts are required to inquire into a defendant’s ability to pay costs. Courts should “look to the comment in...GR 34 for

guidance” to determine a defendant’s ability to pay costs, even in the criminal setting. *State v. Blazina*, 182 Wn.2d 827, 839 (2015). A court should “seriously question a person’s ability to pay LFOs” if that person meets the GR 34 standard for indigence. *Id.* In determining the amount and method of payment for costs for defendants who are not indigent, the court shall consider the financial resources of the defendant and the nature of the burden that the payment of costs will impose. *RCW 10.01.160(3)*. This includes consideration of factors such as incarceration and a defendant’s other debts. *Blazina*, 182 Wn.2d at 839.

Allowing Time to Pay: The court must allow an indigent defendant to pay LFOs within a certain time or in installments. *RCW 10.01.170(1)*.

Determining Indigence: *RCW 10.101.010(3)(a)-(c)* defines indigence. A defendant is indigent if he or she:

- Currently receives benefits from TANF, aged, blind or disabled assistance, medical care services, pregnant woman assistance, SSI, federal poverty-related veteran’s benefits, refugee resettlement, Medicaid or food stamps; or
- Is involuntarily committed to a public mental health facility; or
- Has a net (or take-home) income at or below 125% of the federal poverty level (FPL), which for 2018 is:
 - \$15,175 for individuals
 - \$20,575 for a family of 2
 - \$25,975 for a family of 3
 - \$31,375 for a family of 4
 - \$36,775 for a family of 5
 - \$42,175 for a family of 6

For latest updates to the FPL, visit:

opd.wa.gov/documents/00531-2018_PovertyRate.pdf

Collection of LFOs

Referral to Collection Agencies: CLJs may use collection agencies under Chapter 19.16 RCW to collect LFOs. *RCW 3.02.045(1)*. No debt may be assigned to a collection agency unless 30 days have passed since the debtor was notified that the debt may be assigned to a collection agency. *RCW 19.16.500(2)*. Once assigned, the court may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred. A contingent fee of up to 50% of the first \$100,000 of the unpaid debt per account is presumptively reasonable. *Id.* Costs, fees, fines, forfeitures, and penalties imposed in CLJs for criminal offenses do not accrue interest. *RCW 3.62.020; 3.62.040; 35.20.220; 3.50.100*.

Persons Receiving Social Security Disability: Federal law prohibits courts from ordering defendants to pay LFOs if the person’s sole source of income is social security

disability benefits. *City of Richland v. Wakefield*, 186 Wn.2d 596 (2016); 42 U.S.C. § 407(a).

Sanctions for Non-payment

Issuing or Warrant for Non-payment: A court must find that a defendant is willfully defaulting on required payments prior to issuing a warrant. “A defendant sentenced to pay any fine, penalty, assessment, fee, or costs who *willfully* defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW.” *RCW 10.01.180(1)* (emphasis added). The court may then issue a warrant of arrest for his or her appearance. *Id.*

Willful Failure to Pay: Before issuing sanctions, the court must find that a defendant “willfully refused to pay” LFOs. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983). A failure to pay is willful if the defendant has the current ability to pay but refuses to do so. *RCW 10.01.180(3)(a)*. Mentally ill and homeless defendants cannot be held in willful contempt. *RCW 10.01.180(3)(c)*.

Assistance of Counsel: A defendant is entitled to assistance of counsel when facing a contempt proceeding that could result in incarceration, and counsel must be appointed if the defendant is indigent. *Smith v. Whatcom Cnty. Dist. Ct.*, 147 Wn.2d 98, 113 (2002).

Factors the Court Must Consider before Sanctioning a Defendant for Non-payment: A defendant may not be jailed for non-payment of a fine unless there is a finding, following a hearing on the record, that the failure to pay is willful. *RCW 10.01.180(3)(a)*. Any defendant who is indigent as defined by *RCW 10.101.010(3)(a)-(c)*, is presumed to be unable to pay. *RCW 10.01.180(3)(b)*. The court must inquire into a defendant’s ability to pay, and consider income, assets, basic living costs and other liabilities, including child support and other LFOs, as well as the defendant’s bona fide efforts to acquire additional resources (see sample questions). *Id.* The defendant may bear the burden of proving inability to pay, but the court still has a duty to inquire. *Smith*, 147 Wn.2d at 112.

Alternatives to Incarceration for Non-payment: Only if “no reasonable or effective alternatives are available,” should the court use its contempt power to incarcerate for non-payment. *Smith*, 147 Wn.2d at 113. *See also Bearden*, 461 U.S. at 672. As an alternative to incarceration, the court can reduce the amount of LFOs, modify its previous orders regarding payment of LFOs, or convert LFOs to community restitution at a rate of no less than the state minimum wage. *RCW 10.01.180(5)*.

Post-Sentencing LFO Relief

Interest Relief: As of June 7, 2018, interest does not accrue on non-restitution LFOs. *RCW 10.82.090*. To address interest that accrued on non-restitution LFOs prior to that date, the defendant, upon release from total confinement, may petition the court for waiver of the non-restitution interest. The court shall grant this motion. *RCW 10.82.090(2)(a)* (“[t]he court shall waive all interest on the

portions of the legal financial obligations that are not restitution that accrued prior to the effective date of this section”) (emphasis added). The court may reduce interest on the restitution portion only if the principal has been paid in full. *RCW 10.82.090(2)(b)*.

Remission of Discretionary Costs: A defendant, after release from total confinement, may petition the court for remission of costs. *RCW 10.01.160(4)*. The defendant must show that he/she is not in “contumacious default” in payment of the costs and that the costs will impose “manifest hardship” on the defendant or his/her immediate family. *Id.* If so, the court may 1) remit all or part of the amount due in costs; 2) modify the method of payment under *RCW 10.01.170*, or 3) convert the costs to community restitution hours (if the jurisdiction operates such a program) at a rate of no less than the state minimum wage. **Manifest hardship** exists where the defendant is indigent as defined in *RCW 10.101.010(a) – (c)*. *Id.*

Other Options for Conversion, Modification or Waiver: If the court finds that a defendant is not in willful contempt for failing to pay LFOs, it may enter an order 1) allowing the defendant more time for payment; 2) reducing the amount of each installment; 3) revoking the LFOs in whole or in part; or 4) converting the LFOs to community restitution hours at a rate of no less than the state minimum wage. *RCW 10.01.180(5)*. If the defendant is indigent as defined in *RCW 10.101.010(3)(a) – (c)*, the court shall enter an order addressing the LFOs through one of the above-listed options. *Id.*

Sample Questions: Determining Ability to Pay

- **Income:** What is your monthly take-home income before taxes? Do you receive any government benefits (SSI, disability benefits, TANF, food stamps, or veteran’s benefits)?
- **Employment History:** Are you working? When did you last work? What have you done to find work? Do you have any medical or other conditions that limit your ability to work? Have previous periods of incarceration limited your ability to work?
- **Monthly Expenses:** How much does your household spend on basic living costs, including housing and utilities, food, health care or medical costs, transportation, clothing, payment of LFOs/fines to other courts, child support, and other necessities?
- **Assets and Other Financial Resources:** Do you own property that you could use to pay LFOs? Do you have any credit or ability to borrow money?
- **Other Debts:** Do you have other debts, including other LFOs, healthcare/medical care/hospital costs, education loans?

Provided by the Washington State Supreme Court
Minority and Justice Commission
June 2018

**Minority & Justice Commission Issue & Media Report
May 2018**

Jury Diversity

Following Oregon's Trail: Implementing Automatic Voter Registration to Provide for Improved Jury Representation in the United States (Note)

59 Wm. & Mary L. Rev. 2575

From the article: Overall, this Note shows that in providing for increased jury diversity, expanding access to the vote, and preventing problems with fraud and voter security, automatic voter registration will help to ensure the U.S. justice system lives up to its democratic ideals, without threatening the safety or integrity of its people.

Has the "Last Petal" Fallen? The Beauty of the Modern Jury Trial and the Beast Known as the Peremptory Challenge

63 S.D. L. Rev. 193

From the article: ...the real danger with peremptory challenges and discrimination is that these discriminatory decisions stem from implicit biases, or unconsciousness.

[If Jury Racism Isn't OK, Neither is Homophobia](#)

Law360

May 30, 2018

* May require log-in; contact State Law Library to request full article.

Implicit Racial Biases in Prosecutorial Summations: Proposing an Integrated Response

86 Fordham L. Rev. 3091

From the article: When trials involve Black defendants, prosecutors' summations increasingly include racial themes that could trigger jurors' implicit biases, lead to the perpetuation of unfair stereotypes, and contribute to racial injustice and disparate outcomes.

["In the Dark" Podcast Examines the 6 Trials of Curtis Flowers](#)

Colorlines

May 1, 2018

* "In the Dark" season 2 is available [here](#).

Race in the Courtroom

29 S.C. Law. 15

From the article: Undoubtedly racial prejudice or bias, like strongly held religious views, carries the inherent potential to sway a witness's testimony for or against a party. Views about race also may provide an explanation or motive for a party's conduct in the case.

[Racist Jury Selection at the Heart of a 1977 Murder Conviction](#)

ALCU.org/blog

May 30, 2018

The Unconstitutionality of Criminal Jury Selection

26 Wm. & Mary Bill Rts. J. 1059

From the article: This article asks whether the jury selection process is consistent with the defendant-protection justification for the Sixth Amendment right to a trial by jury. Currently, the prosecution and defense share equal control over jury selection. Looking to the literal text of the Sixth Amendment, the landmark case on the right to a jury trial, and the Federal Rules of

Criminal Procedure for guidance, this Article explains that jury selection procedures undermine the defendant-protection rationale for the Sixth Amendment right to a jury trial.

[Too “Woke” for the Jury Box?](#)

MarshallProject.org

May 2, 2018

Legal Financial Obligations

Capitalizing on Criminal Justice

67 Duke L.J. 1381

From the article: Much criminal law scholarship focuses on the problem of excessive punishment. Yet for the low-level offenses that dominate state court workloads, much of the harm caused by arrests and convictions arises outside the formal criminal sentence. It stems from spiraling hidden penalties and the impact of a criminal record.

[Court Fees, Restitution Put People in Dire Straights...](#)

WHNT.com

May 18, 2018

Day Fines: Reviving the Idea and Reversing the (Costly) Punitive Trend

Crim. L. Rev. 333

From the article: ...the right time has come to revive the discussion about day-fines. Frustration regarding the increasing prison population in the last several decades has led the American public to doubt the correctness of the strict punitive approach. The "tough on crime" approach is falling out of favor as "smart on crime" policies gain popularity. This new strategy supports, among other reform efforts, the efficient use of limited enforcement resources and a fairer criminal justice system. Under these circumstances, day-fines might now receive public support in the U.S. and could begin reversing the costly and punitive trend.

Highway Robbery: Due Process, Equal Protection, and Punishing Poverty with Driver's License Suspensions

26 Wm. & Mary Bill Rts. J. 1213

From the article: The practice of suspending driver's licenses for unpaid court debts is not unique to Virginia; many states have similar schemes. In recent years, however, some states have been working towards reforming their systems. The State of Washington stopped its practice of suspending driver's licenses for failing to pay debts originating from nonmoving violations, such as expired registrations. Other states have practices that have proven less burdensome to drivers.

[How the Municipal Court Money Machine Burdens City Residents](#)

Curbed.com

May 24, 2018

[In Pennsylvania, Advocates Warn of Debtors' Prison for People Who Owe Court Fees](#)

The Morning Call

May 12, 2018

[Lawsuit Challenges Court Fees 4 Central Indiana Counties Charge](#)

Associated Press

May 2, 2018

[More Than 7 Million People May Have Lost Driver's Licenses Because Of Traffic Debt](#)

The Washington Post

May 19, 2018

[New Washington Law Aims to Ease the Sting of High Court Fees](#)

Spokane Public Radio

May 10, 2018

[San Francisco Looks to End Certain Court Fees](#)

U.S. News & World Report

May 23, 2018

[States across the Nation are Criminalizing Poverty](#)

The Washington Post

May 27, 2018

Pretrial Reform

[Bail Reform's Complex Relationship with Tech](#)

TechCrunch.com

May 20, 2018

[Bail Reform Could Be Coming to New York State](#)

WNYT.com

May 3, 2018

[California Supreme Court to Review SF Bail Reform Decision](#)

San Francisco Examiner

May 23, 2018

Defining Flight Risk

85 U. Chi. L. Rev. 677

From the article: This article calls for nuance in the definition of nonappearance and flight, both in actuarial risk-assessment tools and in bail reform efforts more broadly. Constitutional and statutory requirements demand precision about these distinctions.

[Disrupting Bail: An Innovation Criminal Justice Reform Idea Gains Momentum – And Funders](#)

Inside Philanthropy

May 22, 2018

Punishing Poverty: California's Unconstitutional Bail System

70 Stan. L. Rev. Online 167

From the article: California has one of the highest pretrial detention rates in the country, which has significant consequences for both individual defendants and the system as a whole.

Rethinking Bail Reform

52 U. Rich. L. Rev. 795

From the article: The policies and practices around pretrial detention have contributed to the country's mass incarceration numbers; created a crisis for local jail management; generated unsustainable budgets; and raised important questions about race, class, and the constitutional

implications of incarcerating people because they are too poor to pay a money bond. Legal scholars have written about the issue, highlighting the inequities and constitutional difficulties with such a system.' Much of the discussion has surrounded solutions involving the implementation of and reliance on evidence-based practices to determine pretrial detention, rather than solutions involving reliance on money.

Will We Ever Succeed in Fulfilling Gideon's Promise?

51 Ind. L. Rev. 39

From the article: *This article's title asks if the so-called "promise of the Gideon decision" will ever be achieved. Before attempting to answer this ultimate question, we should define several terms and consider a few preliminary ones. Most importantly, what is meant by "Gideon's promise"? Also, why does the title of these remarks assume that "Gideon's promise" has not been achieved? And, finally, even if "Gideon's promise" is unfulfilled, how, if at all, can it ever be realized?*

15th Annual
Tri-Cities Youth and Justice Forum

Friday, November 2, 2018
Columbia Basin College, Pasco, WA

June 11, 2018

Carolyn Cole
Washington State Minority and Justice Commission
PO Box 41170
Olympia, WA 98504-1170

Dear Ms. Cole,

Each year, for the past 14 years, the Washington State Supreme Court's Minority and Justice Commission, in a joint effort with the Educational Service District 123, Columbia Basin College, and other professional groups and local businesses, have brought together approximately 200 middle and high school students from the Tri-Cities and surrounding areas for a full-day Youth and Justice Forum. The principal mission: to create a pipeline for racial and ethnic diversity in justice system professions, so that our profession reflects the diversity of the people it serves.

This year, the 15th Annual Tri-Cities Youth and Justice Forum will be held on November 2, 2018, 8 a.m. to 2 p.m., at Columbia Basin Community College in Pasco, WA. The forum, open to all 8th through 12th grade students in the Tri-Cities and surrounding areas, accomplishes its mission by encouraging students, especially those of color and from communities historically underrepresented in justice system professions, to pursue careers in the justice system. Every year we have volunteers from every area of the justice system, including some of our Washington Supreme Court justices, judges, attorneys, law enforcement officers, probation officers, court clerks, court interpreters, and many other justice system professionals, all of whom come to the Forum with a strong desire to encourage, inspire, and become mentors to the youth.

Our goal is for students to leave with a real sense of the possibilities for a future career in the justice system, a deeper sense of what "justice" means to them, and an understanding of the ways that technology intersects with the law and how it can be used to advance justice.

We are writing to you because the Forum needs your help. Although the forum relies as much as possible upon the generous donations of facilities, materials and time by our volunteers, expenses must be incurred to transport students from their schools to the forum and back, provide box lunches, and prizes for activities throughout the day.

Any contribution you are able to give will help us sustain this valuable youth program. **Please see the attached SPONSORSHIP form.**

We hope you are able to help us continue this important program for the young people of our community. Contributions may be made to **Educational Service District 123; Attn.: Dana Camarena.** If you have any questions or would like more information about the Tri-Cities



Youth and Justice Forum, please contact Sarah Perry, Tri-Cities Youth and Justice Forum Planning Committee Chair, at sarah.h.perry@gmail.com.

Sincerely yours,

Edwardo Morfin

Tri-Cities Youth and Justice Forum Planning Committee

Washington Bail Law

Washington is a right to bail state. Article I, section 20: criminal defendants “shall be bailable by sufficient sureties.” Except if:

- charge is a capital crime (“when the proof is evident or the presumption great”) OR:
- crime punishable by possibility of life (if “clear and convincing evidence of a propensity for violence”)

Criminal Rule (CrR) 3.2 and Criminal Rule for Limited Jurisdictions (CrRLJ) 3.2 were amended in 2002, due to concerns that the prior court rule had disparate racial and economic impacts.

PRESUMPTION OF RELEASE under CrR 3.2(a) and CrRLJ 3.2(a) unless:

- Likelihood of court nonappearance(FTA); OR
- Likely interference with witnesses, administration of justice; OR
- Likely commission of a violent crime
 - “violent crime” not limited to SRA definition, RCW 9.94A.030
 - but see Blomstrom v. Tripp, 189 Wn.2d 379 (2017) – DUI is not a “violent crime”

Showing of likely failure to appear (FTA)

Relevant factors under CrR 3.2(c) and CrRLJ 3.2(c) for assessing likely FTA:

- Prior bench warrants
- NOTE:** The number could include warrants unrelated to court FTA, i.e., DOC warrants for noncompliance, warrants issued to ensure transport from another jurisdiction, arrest warrants for new charge when defendant is already in custody
- Employment, family/community ties
 - Enrollment in school, counseling, treatment, or volunteer activities
 - Reputation, character, mental condition
 - Length of residency
 - Criminal record
 - Willingness of responsible community member to vouch for reliability and assist in compliance with release conditions
 - Nature of the charge if relevant to risk of nonappearance

If FTA risk found, CrR 3.2(b) and CrRLJ 3.2(b) require least restrictive conditions:

- Placement with designated person or organization agreeing to supervise accused
 - No contact orders with persons, places, geographical areas
 - Restrictions on travel or place of abode
 - Pretrial supervision- e.g., day reporting, work release, electronic monitoring, etc.
 - Any condition other than detention to reasonably assure appearance
 - Bond with sufficient solvent sureties or cash in lieu thereof
 - But no “cash only” bail – State v. Barton, 181 Wn.2d 148 (2014)
 - NOTE: Bond can be forfeited only for FTA - State v. Darwin, 70 Wn. App. 875 (1993)
 - Bonding company keeps fee
 - Appearance bond - bond in specified amount, and deposit in the court registry in cash or other security. Deposit:
 - not to exceed 10% of bond amount
 - can be forfeited for noncompliance with any condition, i.e., a new crime
 - returned upon performance of conditions
 - Unsecured bond - basically a written promise to appear, without any security
- NOTE ON MONEY BAIL:** Court must consider accused’s financial resources in setting a bond that will reasonably assure appearance. CrR 3.2(b)(6), CrRLJ 3.2(b)(6)

Showing of substantial danger

Relevant factors under CrR 3.2(e), CrRLJ 3.2(e) for assessing substantial risk of violent reoffense or interference with administration of justice:

- Nature of charge
- Criminal record
- Past or present threats or interference with witnesses, victims, administration of justice
- Past or present use or threatened use of deadly weapon, firearms
- Record of committing offenses while on pre-trial release, probation or parole
- Reputation, character and mental condition
- Willingness of responsible community member to vouch for reliability and will assist in compliance with conditions

Accord RCW 10.21.050

If court finds substantial risk of violent re-offense or interference with justice, CrR 3.2(d), CrRLJ 3.2(d) allow:

- Placement with designated person or organization agreeing to supervise accused
- No contact order with persons, places, geographical areas
- Restrictions on travel or place of abode
- No weapons or firearms, abstain from alcohol or non-prescribed drugs
- Pretrial supervision- e.g., day reporting work release, electronic monitoring, etc.
- No criminal law violations
- Any condition other than detention that will assure justice noninterference, reduce danger
- Unsecured bond – basically a written promise to appear, without security
- Bond with sufficient solvent sureties or cash in lieu thereof
 - No “cash only” bail – State v. Barton, supra
 - NOTE: Bond be forfeited only for FTA - State v. Darwin, supra
 - Bonding company keeps fee
- Appearance bond – bond in a specified amount, and deposit in court registry cash or other security. Deposit:
 - not to exceed 10% of bond amount
 - can be forfeited for noncompliance with any condition, i.e., a new crime
 - returned upon performance of conditions

NOTE ON MONEY BAIL: Court must consider accused’s financial resources in setting bond that will reasonably assure community safety, prevent justice interference. CrR 3.2(d)(6), CrRLJ 3.2(d)(6); accord RCW 10.21.050(3)(a)

The court must find no less restrictive condition(s) than money bail will assure public safety and/or noninterference with justice. CrR 3.2(d)(6), CrRLJ 3.2(d)(6).

Delay of release authorized when:

- Person is intoxicated and release will jeopardize safety or public safety.

- Person has mental condition warranting possible commitment. CrR 3.2(f), CrRLJ 3.2(f)

Review of Conditions

Right to reconsideration after preliminary appearance if unable to post bail. CrR 3.2(j)
NOTE: There is no parallel CrRLJ to CrR 3.2(j).

Revoking or Amending Release Order

Change of circumstances or new information or good cause. CrR 3.2(j)(k), CrRLJ 3.2(j)(k); accord RCW 10.21.030

- Revocation requires clear and convincing evidence. CrR 3.2(k)(2), CrRLJ 3.2(k)(2)

Cases and Statutes

- Individualized determination; no blanket conditions - State v. Rose, 146 Wn. App. 439 (2008); accord RCW 10.19.055 (individualized basis for class A, B felonies)
- Condition must relate to CrR 3.2, CrRLJ 3.2 goals, preventing FTA or violent crime or justice interference - State v. Rose, supra (random UAs not causally connected to court appearance); cf., “Blomstrom “fix” below
- Condition must not authorize unlawful search - Blomstrom v. Tripp, 189 Wn.2d 379 (2017)-random UAs as a first-time DUI condition is unlawful search; not authorized by CrRLJ 3.2 or statute. But see “Blomstrom “fix”- RCW 10.21.030 authorizes UAs as pretrial condition for misdemeanors, gross misdemeanors (DUI), felonies.
- Condition must be least restrictive condition - Butler v. Kato, 137 Wn. App. 515 (2007) (alcohol treatment and sobriety meetings not least restrictive condition to assure court appearance and hence violate CrRLJ 3.2; also unconstitutional search and violated Fifth Amendment)
- RCW 10.21.015 – no work release, electronic monitoring, day monitoring or other pretrial supervision program if violent or sex offense and violent or sex offense in last 10 years, unless person has posted bail
- RCW 10.21.055 – ignition interlock or SCRAM required where charge is DUI, physical control, vehicular homicide or vehicular assault and prior conviction that involved alcohol

