



MINORITY AND JUSTICE COMMISSION

ZOOM VIDEOCONFERENCE
 FRIDAY, NOVEMBER 13, 2020
 9:00 A.M. – 1:00 P.M.
 JUSTICE MARY YU, CO-CHAIR
 JUSTICE. HELEN WHITENER, CO-CHAIR



MEETING NOTES

Commission Members

Justice Mary Yu, Co-Chair
 Justice G. Helen Whitener, Co-Chair
 Lorraine Bannai
 Jeffrey Beaver
 Judge Johanna Bender
 Annie Benson
 Professor Bob Boruchowitz
 Lisa Castilleja
 Judge Faye Chess
 Theresa Cronin
 Judge Grace Cross
 Judge Mike Diaz
 Judge Theresa Doyle
 Judge Anthony Gipe
 Judge Bonnie Glenn
 Kitara Johnson
 Trish Kinlow
 Anne Lee
 Judge LeRoy McCullough
 Justice Raquel Montoya-Lewis
 Brianna Ortega
 Christopher Sanders
 P. Diane Schneider
 Judge Ketu Shah
 Judge Lori K. Smith
 Travis Stearns
 Leah Taguba
 Joshua Treybig

Liaisons

Laura Edmonston, Washington State Law Library
 Esperanza Borboa, ATJ Board

Staff

Cynthia Delostrinos
 Moriah Freed
 Frank Thomas

Student Liaisons

Denise Chen
 Beverly Tsai
 Israel Carranza
 Rigo Garcia
 Dalia Pedro-Trujillo
 Jenny Wu
 Margarita Esquivel Torres

Guests

Judge Sara Dannen
 Russell Brown
 Courtney Chappell
 Malou Chavez
 Jonica Couweleers
 Leandra Crafte
 Matthew Fowle
 Antonio Ginatta
 Judge Gregory Gonzalez
 Kim Gordon
 Jaime Hawk
 Justice Charles Johnson
 Mynor Lopez
 Dontay Proctor Mills
 Riddhi Mukhopadhyay
 Sierra Rotakhina
 Jason Schwarz
 Rachael Seevers
 Kate Sigafos
 Gail Stone
 Marcus Stubblefield
 Vanessa Torres Hernandez
 David Trieweiler
 Andrea Valdez
 Edmund Witter
 TVW

CALL TO ORDER

Welcome and Introductions

- The meeting was called to order at 9:00 a.m.
- Attendance was taken via roll-call due to the full agenda.
- Justice Yu thanked TVW for being present, and reminded attendees that the meeting is being recorded and broadcasted live.

Approval of September 18th Minutes

The September 18th minutes were approved as presented.

Personnel and Membership Update

- Welcome Judge Ketu Shah (king county superior court) and WAPA Representative Chad Enright as newest Commission members
- MJC has now brought on 6 new members in 2020 – Justice Raquel Montoya-Lewis, Joshua Treybig, Briana Ortega, DMCMA Rep. LaTricia Kinlow, Judge Shah and Chad Enright.
- As of November 13, MJC has 33 of 35 Commission seats filled. Judge Diaz will depart the Commission at the end of the year and open another seat, and we are uncertain what will happen with Chief Diaz' member role. There are a group of members up for reappointment in 2021. MJC does not have any tribal representation at this time.
- Congratulations Justice Whitener and Justice Montoya-Lewis for winning their first re-elections to the Supreme Court.
- Diversifying the judiciary has always been a priority of this Commission. Last week Justice Gonzalez was elected as Chief Justice. He will be the first man of color elected to be Chief Justice. Congratulations!

LEGISLATIVE PRIORITIES - GUEST PRESENTATIONS

The Commission invited legal advocacy groups from throughout Washington to present at today's meeting. We are interested in hearing what their legislative agendas are for this session so that the new policy Committee may begin to develop their priorities for the 2021 legislative session.

The following groups were invited to present but could not attend the meeting:

- Washington Association of Sheriffs and Police Chiefs
- Civil Survival
- Washington Race Equity & Justice Initiative
- Black Prisoners' Caucus
- Seattle Urban League
- Washington State Coalition Against Domestic Violence
- Asian Pacific Directors Coalition
- Equal Justice Coalition

The following groups presented before the Commission and identified legislative priorities for the 2021 session:

Columbia Legal Services – Antonio Ginatta, Policy Director

Columbia Legal Services is working to dismantle and transform racist structures of justice in Washington.

They have identified 4 legislative priorities:

1. Addressing the unavoidable harms of debt
 - Concerned with the unavoidable piling of debt caused by the COVID-19 pandemic. As collections begin, we are concerned with how this will impact our communities. Debt collections disparately effect black Americans more than white Americans – addressing the harms of debt is a race equity issue.
 - Legislative proposal: Automatic protection of funds from garnishment. California has already implemented this policy.
2. Driver's license suspensions
 - CLS is working with a broad coalition to address this issue with legislative change.
 - Legislative proposal: End poverty as a reason to revoke licenses. Oregon removed failure to pay as grounds for license suspension this year, as have other states.
3. Legal Financial Obligations
 - Looking to expand upon 2018 LFO bill. LFO 2.0 bill would include components like waiving non-restitution interest, waiving restitution to non-victim entities, incarcerated people could receive relief, and reforming oppressive interest on LFO debt.
4. End statewide ban on distribution of civil legal aid funds to undocumented individuals
 - This policy was originally designed to take away political power from farm workers – the racist prohibition should be removed. The fix is a simple one line strikeout in OCLA's authorizing stature.

Housing Justice Project – Edmund Witter

The Housing Justice Project is prioritizing issues that impact rental housing in particular. Most evictions happen for one month of rent or less. Eviction and housing is racially disparate and impacts black Americans more than white Americans, with the racialized impact becoming more apparent due to COVID. With COVID, unemployment filings and areas with high rental housing intersect in more racially diverse areas. The majority of landlords are white, and the majority of those being evicted are BIPOC. The decision might be neutral on its face but impacts groups unevenly.

The Housing Justice Project will be targeting the following areas:

- Rental Assistance
 - Most rent assistance across Washington will be unavailable after December 30, 2020. The federal government could extend this deadline without passing a new stimulus bill. It would save lives. A small safety net makes a large difference.
- Payment Plans
 - The Governor's order does not currently provide for it.
- Right to Counsel in Eviction Cases
- Mandatory Mediation and Housing Court
 - It would greatly help to have more of a problem solving mentality from the judiciary on housing issues - This is how CA, OR, and NY does it. Shifting perspectives to see evictions as a social problem and not just a legal problem.
- Just Cause Eviction Protections
 - This bill has passed in four cities in Washington. We are currently the only state on west coast that does not have just cause protections statewide.

Northwest Justice Project – Vanessa Torres Hernandez, Director of Advocacy

Northwest Justice Project's primary practice areas are housing and family law, among others. They also serve the community through operation of the CLEAR legal aid hotline and the Washington Law

Help website. While NJP cannot actively lobby, they have identified 5 areas that will greatly improve race equity:

1. Housing Stability and Homelessness Prevention.
 - a. COVID has magnified existing disparities in housing. The priority is to prevent filings of evictions in the first place. There will need to be attention given to accessibility of legal services.
2. Foreclosure and Home Ownership.
 - a. A significant racial gap in home ownership exists in this country that disparately impacts black Americans, specifically in creating inter-generational wealth. This was very apparent for BIPOC during the last economic crisis. Nearly a decade after the last crisis, black American home ownership has not increased. The current COVID crisis will increase foreclosure amongst BIPOC communities. Washington is a non-judicial foreclosure state, with a program to support homeowners with foreclosure mediators effectively zeroed out. There is a significant likelihood that black and brown homeowners will disproportionately face eviction without any statewide funding for programs to assist homeowners.
3. Individual and Family Safety
 - a. There has been a rise in domestic violence, sexual assault, and intimate partner violence during COVID-19 – both in regards to frequency and severity, with a lack of supports due to people being stuck at home and WA statutes being confusing to navigate.
4. Consumer Protections
 - a. People use debt during periods of economic downturns, such as COVID, and that debt cycle spirals out of control. More needs to be done to protect people's basic existence.
5. Legal Financial Obligations
 - a. Washington has not done enough. For example, certain non-restitution LFOs like the victim penalty assessment are not eligible for waiving or reducing. Restitution cannot be waived or reduced. Older convictions that otherwise could be vacated are creating barriers to employment and housing that are disproportionality imposed in Washington.

ACLU WA – Jaime Hawk

ACLU WA has chosen to present on criminal and racial justice priorities to the Commission. ACLU WA's legislative agenda is still under development.

- Voting Rights Restoration
 - Proposed bright line rule will create automatic voter rights restorations when people are released from prison, instead of waiting until they complete community supervision.
- Sentencing Reform
 - ACLU WA released a report earlier this year called "[About Time](#)" that shows how long and life sentences have been a driver of mass incarceration in WA. A few legislative priorities are a post-conviction review bill, as well as several other sentencing reform bills that will help shorten sentences and decrease prison populations. There needs to be a mechanism to give people hope. ACLU WA will be partnering with Disability Rights Washington.
- Substance Use Disorder Assistance
 - The proposed Treatment and Recovery Act will increase state funding for treatment and recovery programs using existing marijuana tax revenues and will remove existing insurance barriers. The bill will reclassify personal use drug offenses from

crimes to civil infractions to connect people with resources to get back on track. The goal is to move Washington towards a public health approach.

- Policing Bills
 - These will include topics such as: collective bargaining, qualified immunity, repeal felony bar, data collection on use of force, etc.
- Juvenile Justice
 - ACLU WA will be partnering with other organizations like Team Child.

LegalVoice – Riddhi Mukhopadhyay, Courtney Chappell

LegalVoice is on the path towards becoming an anti-racist organization. This includes pivoting the way we approach work by making sure we are centering those impacted/marginalized voices, community lawyering through co-creating solutions, and believing that those closest to the problem are closest to the solution.

The legislative agenda will be drastically reduced from past years due to the virtual legislative session and refocus on community lawyering. Legislative priorities for 2021 include:

- Economic Justice
 - There needs to be systemic relief for workers, such as the 40 million dollar Immigrant Relief Fund for those shut out from CARES act funding and unemployment due to immigration status. Other opportunities are being explored for expanded funding – there is interest in creating a long term fund for economic justice.
- Maternal Health
 - Maternal death disproportionately impacts BIPOC women and they face more barriers in accessing quality care. It is being recommend to extend Medicaid coverage postpartum past the current 60 days to 12 months.
 - SB 6128 regarding maternal health was passed last session, then vetoed by Governor Inslee due to COVID. A similar bill will be introduced this upcoming session.
- Safety and Access
 - Align protection order statutes to make them more consistent because they currently are not consistent in how survivors are able to access them. Currently, there is a huge disparate impact with survivors of color. Courts implicitly expect more from BIPOC survivors, so the hope is that consistency across orders creates greater equity.
- Language Access
 - RCW 2.42 allows for interpretation in legal proceedings. It does not account for all the steps individuals must take to get to the court process. Example: law enforcement – interpretation is not required in this interaction. Language access is related to safety and access.

Access to Justice Board – Esperanza Borboa

The ATJ Board presented 8 priorities, which are included in the meeting packet:

1. Work with statewide partners to actively promote and secure state funding to achieve greater access to civil legal aid and stimulate new and effective innovations.
2. Address the civil legal needs of people without lawful immigration status.
3. Promote systemic and internal race-equity practices working toward a vision that race or color does not determine the availability and quality of services, fairness of outcomes, or the opportunities for communities and individuals.

4. Support and uplift partnerships among legal aid providers and with justice-related community-based organizations.
5. Support work designed to assist unrepresented litigants.
6. Promote, support and lead collaborative efforts to bridge the civil-criminal divide.
7. Support efforts to ensure the effective and appropriate use of technology in the justice system and within the Alliance for Equal Justice in order to provide meaningful and equitable access to justice.
8. Reevaluate organizational identity to develop stronger mission, vision and value statements that align with the current priorities.

Washington Association of Prosecuting Attorneys – Russell Brown

RCW 36.27 - Prosecuting Attorneys shall seek to reform and improve the administration of criminal justice and stimulate efforts to remedy inadequacies.

WAPA has identified the following legislative items of interest:

- Criminal Sentencing Task Force
 - Supervision – Washington currently utilizes a surveillance model of supervision where someone is surveilled waiting for them to make a mistake. Another model to consider is a “coach” model with an advocate.
 - Re-entry – Education, vacating crimes, assisting individuals as they re-enter society. WAPA is in support of many of these reforms.
 - Enhancement reforms – firearms and deadly weapons
 - Racial Disproportionality of weapon enhancements are even greater than comparable felony sentences
 - WAPA supports a proposal that would allow current weapon enhancements to be run concurrent
 - Support it being eligible for good time – currently it is not
- Officer Use of Force
 - Proposed independent agency to investigate and prosecute. Focused on not immunizing conduct worthy of investigation and possible prosecution. Concern about an actual new agency, which risks creating jurisdictional immunity.
- Voting Rights
 - WAPA supports the reintroduction of SB 6228 from 2020 to restore voting rights

TeamChild Juvenile Justice Bills – Judge Theresa Doyle and Anne Lee

TeamChild provides civil legal aid for young adults and teens. In 4 counties, they also work with incarcerated young people. The legal needs of young people are being met in a fragmented system of representation.

TeamChild supports the following legislative priorities:

- Raising the age of juvenile court jurisdiction
 - A health impact statement has been requested from the Board of Health. There is research recognizing that children are not adults and that the juvenile justice model should not follow the adult model. It is unclear if a bill addressing these issues will be introduced this session.
- Agency request by DCYF to expand electronic home monitoring for JR youth to finish sentences at home
 - Support initiatives to move young people out of carceral settings.
 - Not available to everybody, and youth with many community needs are not able to access these alternatives.
- Proposal to remove juvenile points in adult sentencing consideration

- The bill addressing this issue might be revived this year.
- Juvenile offenses should not be used in adult sentencing due to young people's development.

TeamChild recognized the following recent successes in Washington for juvenile justice:

- There has been movement around Washington's ability to expand diversion of young people. Shifting resources towards community diverging options; restorative community pathways. State level change can lead to local level advancements.
- Taking a hard look at incarceration, when and why we use it. Phasing out incarceration for status offenders. Incarceration rates at county level are drastically reduced due to COVID. Youth detention has decreased. What can we do to institutionalize the practice of keeping young people in the community and out of the carceral experience?
- JuCR 7.16 successfully passed by Supreme Court. Prohibits judges from issuing arrest warrants for probation or FTA violations, unless the youth presents a serious threat to public. 80% of such warrants in 2018 were issued against youth of color. Rule takes effect Feb 2021.

Washington Defender Association – Annie Benson

Washington Defender Association takes a collaborative approach of working with the community, other organizations, and impacted individuals.

WDA and WACDL priorities include the following:

- Protect Public Defense Funding
- Breaking Through Bias Legislation
 - Not debatable that legal actors and law enforcement have implicit and explicit biases. Studies cannot show the level of misconduct that contributes to disparities in lesser offense cases. Law enforcement bias can greatly impact the outcome of a case. These biases have a huge impact on BIPOC communities, the mentally ill, homeless, etc.
 - Breaking bias proposal – suggesting certain misdemeanors be repealed. Crimes in which law enforcement is both the defendant and reporting the crime. When the narrative is written and submitted, the terms of what happens is largely dictated by law enforcement that includes their own biases. *Repeal not reform*. Challenging a law enforcement narrative is nearly impossible.
 - If this is not palatable to the legislature, make them civil infractions instead of misdemeanors.
- 50/20 Sentencing Project
 - Intended to reverse damage of mass incarceration. Shown that victims of crime support more alternative sentencing and alternatives to incarceration instead of longer sentences. Increased incarceration has not served public safety.
 - Legislatively reverse sentencing laws:
 - 50% cut in sentence lengths
 - Cap sentence lengths at 20 years
 - Sentencing grids advisory only
 - Eliminate / severely curtail sentencing enhancements
 - Increase good time back to 33% for all crimes
 - Make all changes retroactive

WDA Resources on the health impacts of incarceration:

- <https://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2020-15-S-6720.1.pdf?ver=2020-10-06-095727-300>

- <https://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2020-15-S-6720.1-esum.pdf?ver=2020-10-01-113623-147>
- <https://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2020-15-S-6720.1.pdf?ver=2020-10-06-095727-300>
- <https://sboh.wa.gov/Portals/7/Doc/HealthImpactReviews/HIR-2020-15-S-6720.1-esum.pdf?ver=2020-10-01-113623-147>
- <https://www.courts.wa.gov/index.cfm?fa=home.sub&org=wsccl&page=publication&layout=2&parent=Publications>

Disability Rights WA – Rachael Seevers

Disability Rights WA has identified this year as an opportunity to take on mass incarceration, since DOC needs to reduce incarceration to capture necessary cost savings.

The following legislative priorities have been noted:

- Broad Based Earned Time Bill
 - DOC has put out proposed legislation that would increase earned time for certain prisoners without violent offenses, sexual offenses, etc. DRA is looking at a more increased model of earned time, and to step away from the distinction of violent vs. nonviolent offenses that is rooted in racism. Incarcerated population is interested in this earned time accrual rate reform bill, as is DRA.
- Aging Prison Population
 - There is a goal to enact some type of review system for people serving extended sentences and giving the older incarcerated population a chance to ask for review. This is a way to address long term disparity in sentencing, provide relief and hope – It is something people who are incarcerated are asking for, and would be assessed through an independent board. Roughly 1000 people would be eligible for review.
- Solitary Reform Legislation
 - DRA has been working on this issue for about 10 years. There are about 800 people currently in solitary in just prisons. About 400 people are in maximum security indefinitely – many with mental health problems. Real systemic change has not been seen for these people, despite work with partner organizations. Legislation action would be based on New Jersey reforms, and international standards that ban solitary past 15 days.
- Permanent Affordable Housing
 - In order to truly divert people from incarceration, affordable housing needs to be increased. Current placement system for committed offenders results in over placement in certain counties. Legislation must not limit people in the SCC who are eligible for release to have a real opportunity for release.

NW Immigrant Rights Project – Malou Chavez

NW Immigrant Rights Project has no legislative or policy director, and mainly participates legislatively through WAISN and other partners. Their legislative priorities will be consistent with WAISN.

- Advocate against any cuts to programs that support NWIRP client communities and continue to defend state funded programs.
- Make \$40m COVID relief fund a permanent system of assistance.
- Support OCLA bill to remove restrictions on funding to undocumented residents.
- Detention Bill – remove private prisons, including immigration detention facilities
- Continue to support communities in regards to police accountability.

MICROSOFT FELONY SENTENCING DASHBOARD - GUEST PRESENTATION

Seattle Clemency Project & Microsoft Felony Sentencing Dashboard – Kim Gordon, Kate Sigafoos and Jonica Couweleers

The effort is a public private collaboration seeking to provide new criminal justice information in the form of a collaborative online tool that makes Washington sentencing data available to the public and other stakeholders. The goal is to make this information transparent and available. The prototype tool combines 20 years of CFC sentencing data, census and population data, and information about legal and legislative changes that affect criminal sentencing. Future steps include the incorporation of data from other points in the criminal justice process. Over 30 people from Microsoft worked on this project during “hackathon,” with ongoing interest from the team at Microsoft to continue work on the tool. The team is seeking input and feedback from the Commission.

Staff from Microsoft shared their screen via Zoom to demonstrate the tool.

The following questions were posed from the Commission:

- How will the tool be maintained?
 - This depends on data sources and how data comes in, as well as who ultimately is in charge of maintaining the tool.
- When will tool be available?
 - Unsure. The tool is still private on the Microsoft dashboard. This partially depends on interest in stakeholder groups, and there has also been interest from other states as well.

ACTION: Frank Thomas will reach out to the Microsoft team to set up additional presentations for possibly the Supreme Court and SCJA. He will also put the Microsoft team into contact with the center for court innovation and WSCCR.

CO-CHAIR & STAFF REPORT

Racial Justice Initiative – A Judicial Branch Commitment to Race Equity in the Courts – Justice Yu and Cynthia Delostrinos

All of the court associations have expressed interest in joining a larger judicial branch effort to address systemic racism in the courts, under the MJC umbrella. This will likely have a structure similar to the LFO Consortium, with many members and entities coming to the table, and a steering committee. We are hoping that it will create a strategic plan for the judicial branch, and actions for each of the associations to take to get closer to racial equity in the courts.

We are looking into opportunities for funding for a full-time temporary facilitator position to help lead the work. Looking at true reform, not just education. MJC will be a key resource in moving work forward in this effort of the entire branch to look internally.

MJC Research Project Updates

- **LFO Reconsideration: A deeper look at Pierce County’s LFO Reconsideration Day** – Dr. Karin Martin & Matthew Fowle

Dr. Karin Martin and Matthew Fowle presented on their preliminary findings from their LFO Reconsideration Day research conducted at the Pierce County event 2019:

- Traffic offenses dominate LFOs.
- Repayment amounts do not differ substantially by race.
- Criminal cases have the lowest repayment rates, at 17%. Traffic infractions have the highest rate at 73%.

- Evidence suggests justice involved people are not representative of Pierce County's population at large.
- Most participants were the main earners of their household. More than half of survey participants were struggling to afford basic human needs.
- Data from the courts showed how much debt was waived during the Reconsideration Day event. At the beginning of the day, participants owed \$5.3m. The court that day reduced debt by \$3.3m, or 53%. There was a large disparity between court levels, where municipal court reduced 95% of debt, and the majority of district court debt was removed. A minority of superior court debt was removed, despite this accounting for most of the LFO debt.
- Full debt waiver is much more protective than a partial waiver.

The following policy recommendations stemmed from the LFO Reconsideration Day research:

- Extending COVID moratorium. Generally extending the time before punitive enforcement measures take place.
- Reduce the use of driver's license sanctions for non-payment. Possibly limiting sanctions to high offenses.
- Provide more information to individuals owing LFOs
- Expand support and financial counseling
- Preemptive cancellation of uncollectable debt – the court and state could take a proactive stance.

ACTION: Frank Thomas will follow up with Dr. Martin about presenting on the LFO research to other groups.

➤ **Incarceration Research Update** – Frank Thomas

Three incarceration projects from MJC and our AOC colleagues – Juvenile Justice Girls of Color report, Adult Incarcerated Women's report from GJC, and COVID-impact data prepared by WSCCR for the Supreme Court. The plan is to coordinate with AOC to produce a press release that ties together the findings of all three reports to paint a complete picture of incarcerated females in the state.

COMMISSION LIAISON & COMMITTEE REPORT

Education Committee – Judge Lori K. Smith and Justice G. Helen Whitener

- Judicial College 2021 – Emerging Through Bias, Judge Alicia-Galvan and Justice Whitener
- DMCJA 2021 Spring Conference – Proposed “Legal Status of LFO Collections, and Legal Debt as a Historical Means of Oppression”
- SCJA 2021 Spring Conference
 - 2020 Rollover: Immigrant Families Tool Kit
 - 2020 Rollover: Juvenile Justice Session
- Housing Justice Emergency Webinar with SCJA & Housing Justice Project

Outreach Committee – Lisa Castilleja and Judge Bonnie Glenn

- CZ Smith Award will be held virtually, hosted by UW. Possible March 2021 date.
- Time to solicit artwork for the 2021 MJC poster. Judge Gipe, our 2020 artist, will lead that initiative.
- The Gavel Gap Reception will continue virtually.
- Judges of Color Directory will be updated to reflect the recent election.

Jury Diversity Task Force – Cynthia Delostrinos

A flyer for the Jury Diversity & Community Engagements Pilot Project is included in the meeting packet. We are planning two separate days to conduct the event, but are waiting to see if we have ample participation. Contact Cynthia with any questions.

MJC Liaisons

- **Gender Justice Study – Judge Bonnie Glenn and Sierra Rotakhina**
 - The final report is due in June of 2021.
 - Four pilot projects are currently underway, including the evaluation of courthouse childcare centers, the workplace harassment survey, evaluation of CFC data, and the DV MRT evaluation.
 - CFC data is currently being analyzed at the intersection of race and gender, including beyond the binary.
 - 27 topic areas are all in the process of being written – currently working to get them out for broader stakeholder feedback.
- **Race and Criminal Justice System Task Force 2.0 – Lorraine Bannai**
 - The task force met today. More groups have joined since the last meeting.
 - The recommendations and implementation task force has met.
 - There are two new workgroups: one on policing, and one on alternatives to policing.

The meeting was adjourned at approximately 1:00 PM.

The next Minority & Justice Commission meeting will take place on Friday, January 15th at 9:00 AM.