

WASHINGTON STATE
MINORITY AND JUSTICE COMMISSION

COMMISSION MEETING



TVW: [HTTPS://WWW.TVW.ORG/WATCH/?
CLIENTID=9375922947&EVENTID=2021051072](https://www.tvw.org/watch/?CLIENTID=9375922947&EVENTID=2021051072)

FRIDAY, MAY 14, 2021
9:00 A.M.—12:00 P.M.

Minority and Justice Commission

2021 Meeting Dates

Virtual Meetings held via Zoom Videoconference

Date	Time	Location
Friday 01/15/21	9:00 AM – 12:00 PM	Zoom Videoconference
Friday 03/19/21	9:00 AM – 1:00 PM	Zoom Videoconference
Friday 05/14/21	9:00 AM – 1:00 PM	<i>Zoom Videoconference</i>
Friday 06/02/21 Supreme Court Symposium: <i>The Mass Incarceration of Women and Girls of Color</i>	8:45 AM – 1:00 PM	<i>Zoom Videoconference</i>
Friday 07/30/21	9:00 AM – 1:00 PM	<i>TBD</i>
Friday 09/24/21	9:00 AM – 1:00 PM	<i>TBD</i>
Friday 11/5/21	9:00 AM – 1:00 PM	<i>TBD</i>

Please contact Frank Thomas at Frank.Thomas@courts.wa.gov or 206-316-0607 if you have any questions.



MINORITY AND JUSTICE COMMISSION

BIMONTHLY GENERAL MEETING

MAY 14, 2021

9:00 A.M. – 12:00 P.M.

JUSTICE MARY YU, CO-CHAIR

JUDGE VERONICA GALVÁN, CO-CHAIR

[HTTPS://WACOURTS.ZOOM.US/J/95744757356](https://wacourts.zoom.us/j/95744757356)

AGENDA

CALL TO ORDER 9:00 – 9:05 a.m. (5 minutes)

- Welcome and Introductions
- Approval of March 19 Minutes

GUEST PRESENTATION 9:05 – 9:25 a.m. (20 minutes)

- **UW Law Student Research: WA State Regulation of Police Technology** – Professor William Covington, Cameron Cantrell, Zoe Wood

CHAIR & STAFF REPORT 9:25 – 10:15 a.m. (50 minutes)

- **Racial Justice Consortium**
 - Update on the latest work of the Racial Justice Consortium – Patty Lally
- **CLE Event: Qualified Immunity 360**
 - Discuss the May 7th CLE event and lessons learned for future MJC programs – Justice Mary Yu and Frank Thomas
 - Recording Available on TVW: [watch – TVW, Washington States' Public Affairs Network](#)
- **Staff Report**
 - **MJC Research Project Updates**
 - LFO Work Updates – Cynthia Delostrinos
 - Bail Data Research Update

BREAK 10:15 – 10:30 (15 minutes)

LAW STUDENT LIAISONS 10:30 – 11:00 (30 minutes)

- **Congratulations to Liaison Graduates** – Dalia Pedro Trujillo (GU), Rigo Garcia (GU), Israel Carranza (GU), Peggy Rodriguez (SU), Mary Ruffin (UW), and Furhad Sultani (UW)
- **Gonzaga University Law Project Report** – Dalia Pedro Trujillo, Rigo Garcia, Israel Carranza, and Maggie Esquivel Torres
 - *Multi-lingual MJC Informational and Digital Outreach Campaign*
- **Seattle U Law Project Report** – Denise Chen, Peggy Rodriguez, Jenny Wu, and David Armstead
 - *A Law Student's Toolbox for Social Justice Advocacy*

- **Education Committee** – Judge Lori K. Smith
 - **Completed: SCJA Spring Conference**
 - “Immigrant Families Tool Kit,” Judge Anthony Gipe
 - **Completed: DMCMA Training Series**
 - “Silence = Acceptance,” LaTricia Kinlow
 - **Upcoming: DMCMA Spring Conference**
 - “LFO Reconsideration Days: the Big Wave,” LaTricia Kinlow
 - **Upcoming: DMCJA 2021 Spring Conference**
 - “Marriage of Courts and Collection Agencies,” Judge Karl Williams

- **Fall Conference Colloquium Planning Group (2022):**
 - Discuss Colloquium on Facially Neutral Laws with Racialized Impact; Racial Disproportionality as Evidence of Racism and Systemic Racism – Judge Johanna Bender

- **Rules and Legislation Committee** – Judge Theresa Doyle (ret.) and Justice Mary Yu

- **Juvenile Justice Committee** – Annie Lee
 - Recap of Juvenile Justice Legislation Supported by MJC

- **Tribal State Court Consortium** – Judge Lori K. Smith
 - **MJC Liaisons**
 - **Gender Justice Study** – Judge Bonnie Glenn
 - **Access to Justice Board** – Esperanza Borboa
 - **Bar Licensure Task Force** – Frank Thomas

Next MJC meeting: Friday, July 30th, 2021 @ 9:00 a.m. (via Zoom).



MINORITY AND JUSTICE COMMISSION

ZOOM VIDEOCONFERENCE
FRIDAY, MARCH 19, 2021
9:00 A.M. – 1:00 P.M.
JUSTICE MARY YU, CO-CHAIR
JUDGE VERONICA ALICEA-GALVÁN, CO-CHAIR



MEETING NOTES

Commission Members

Justice Mary Yu, Co-Chair
Judge Veronica Alicea-Galván, Co-Chair
Judge Johanna Bender
Lisa Castilleja
Judge Linda Coburn
Theresa Cronin
Grace Cross
Judge Theresa Doyle (ret.)
Chad Enright
Professor Jason Gillmer
Judge Anthony Gipe
Judge Bonnie Glenn
Trish Kinlow
Judge LeRoy McCullough
Karen Murray
Brianna Ortega
Christopher Sanders
Judge Ketu Shah
Judge Lori K. Smith
Travis Stearns
Leah Taguba
Joshua Treybig
Judge Karl Williams

Liaisons

Esperanza Borboa, *ATJ Board*
Laura Edmonston, *Embedded Law Librarian*

Law Student Liaisons

Denise Chen
Mary Ruffin
Furhad Sultani
Israel Carranza
Rigo Garcia
Dalia Pedro Trujillo
Peggy Rodriguez
Jenny Wu
Margarita Esquivel Torres

Staff

Cynthia Delostrinos
Moriah Freed
Frank Thomas

Guests

Professor Bryan Adamson
Judge Sara Dannen
Judge Charnelle Bjelkengren
Tia Strozier
Judge Jennifer Forbes
Beverly Tsai

CALL TO ORDER

Welcome and Introductions

- Justice Yu welcomed everyone to the meeting and acknowledged that today's meeting is being recorded by TVW.

Approval of January 15 Meeting Minutes

- Minutes approved as presented.

Announcing Judge Veronica Alicea-Galván as Commission Co-chair

- Judge Galván has accepted the position as MJC Co-Chair. Justice Yu recognized the importance of having a trial judge co-chair the Commission.
- Judge Galván thanked everyone for their support and the opportunity to serve the Commission.

Solemn Acknowledgment of the Rise in Anti-Asian Hate Crimes and March 16 Atlanta Shooting

- When a community is harmed, many of us share deep personal pain. It is a particularly painful time for those of us who are members of the Asian community. These were individuals who were targets of these crimes - individuals with loved ones and families who are grieving.
- Justice Yu called for a moment of reflection.
- Judge Galván remarked that this is a problem of racism and white supremacy. The crime was racialized, despite what information might be circulated. If we don't acknowledge this, we don't get to the root of the issue. We are not removed from these issues, and are dealing with a problem in our own judiciary this week. Justice is justice – it should be for everyone.
 - Robert Chang's tweets this week eloquently laid out the history of anti-Asian sentiments in our country.
- Justice Yu spoke to the statements made by a Clark County judge. It is important that his own bench swiftly condemned his actions. This might not have happened even a year ago, and we should be proud that our judges stood up and rejected these statements.

GUEST PRESENTATION

State v. Gaines, Ct. App. Div. II (Jan. 26, 2021) – Professor Bryan Adamson

Decision holding trial court erred in not recognizing its discretion to remove LFO debt from collections.

Presentation by Professor Adamson

- Justice Yu excused herself from this section of the meeting, because the matter might come before the Supreme Court.
- This case presents a newer take on LFOs, especially when LFOs are transferred to a private collection agency.
- Professor Bryan Adamson gave a brief recap of State v. Gaines. By the time the client got out of prison, he owed nearly 3 million dollars in LFOs. He was told that if he did not make payment arrangements, they would be sent to a private collection agency. His LFO debt ballooned to nearly 4 million dollars.
- RCW 36.18.190 was interpreted by the trial court and court of appeals. The language states that the court maintains authority over LFO debt. The trial court did not agree, but court of appeals did.
- RCW 19.16.500 allows clerks to transfer LFOs to a private debt collection agency after 30 days of delinquency. By operation of this law, the debt collection agency can charge a contingent fee to the debt. This converts the fee that the debt agency charges into an LFO that must be paid off before one can be untethered from the criminal justice system.
 - Can also accrue statutory interest.
 - Debt collector does not have to take any steps to determine ability to pay. This extends time the debtor is involved in the system.
- LFOs create a sense of hopelessness for those who cannot pay.

- Professor Adamson shared the letter provided by Pierce County Superior Court. The letter does not provide opportunity for a hearing or explain the consequences of having debt turned over to a collections agency.
 - Believe it is a violation of due process to impose the additional LFOs without a hearing.
- Looked at constitutionality of excessive fines and proportionality.
- Professor Adamson summarized that there should be a push to determine the law unconstitutional.

Discussion

Professor Adamson opened the presentation open up to questions from Commission members.

- Washington State is not unique. These types of laws exist in almost every state.
- Has gender and race been examined in how collections are being used by courts?
 - Because of disproportionality in incarceration rates of citizens, we can infer that a high proportion of them will be subject to LFO debt collection. In research, Black and Latino individuals have high LFO debt, and black women have higher LFO debt than white counterparts.
- What are suggested changes for collection contracts?
 - Model uniform contract by state. Short of cancelling the contracts, curb unfair debt collections – they have to engage in ability to pay analysis, and cannot charge interest. There's no standard now for assessing true cost of collecting. Extend time for the transfer to debt collections.
 - Letters sent outlining consequences of debt transfer have to be clearer.
- Trish Kinlow shared that collection agency is an extension of the court. The way that they work with people and treat people is a reflection of the court.
- What actions are being taken to engage the community on these issues?
 - Education of community – need to work on folding this issue into community engagement.
- What can judges do to assist on LFO issues?
 - Judges can help educate on options. Many debtors might feel like the judge can't help them.
 - Can have a hearing before transferring them to collections. Figure out background circumstances - another reform idea worth considering.

CHAIR & STAFF REPORTS

Racial Justice Consortium

- As a result of the Supreme Court's June 4th letter, MJC has taken on a position to coordinate racial justice efforts within the judiciary. Fundraising goals for the Consortium were met and a full time staff member was hired.
- Now is a time to bring judiciary along on our racial justice mission. Now is our time to lead.
- Patty Lally, staff to the Consortium, has been interviewing Consortium members. The group will be doing intensive work, both personal and systemic.

CLE Event: Qualified Immunity 360

- Judge David Whedbee approached the Commission with an idea for a qualified immunity event featuring a scholarly panel. It is very difficult for judges to have the conversation surrounding qualified immunity, but there is movement across the country to create models of accountability in state courts.

- Panelists from across the country were invited to join. The Minority & Justice Commission will be sponsoring the event along with Seattle U Law, UW Law, Gonzaga Law and the Washington State Bar Association.
- The May 7th CLE is free and virtual. Please join us and distribute.

LFO Work Updates

- Cynthia Delostrinos is working with law students and Frank Thomas to finalize the LFO consortium final report. One new thing in review and finalization is a contract with Living with Conviction to supplement the report with stories of living with LFOs. We will add their stories and recommendations to the report because those directly living with LFOs should directly inform the work. The report will likely be finished by June 30th.
- The LFO calculator is currently in the court's budget. We are still waiting to see whether it makes the final cuts. We are continuing to work with Microsoft on partnering to work on the LFO calculator and make it more user friendly - not just for judges, but also the community. Other states have been reaching out hoping to implement similar tools. Washington is an innovator on the national issue.
- Judge Doyle added that MJC has been involved in LFO work since roughly 2013. Remarkable what can be accomplished.

Ongoing MJC Research Update

- **Bail Data Research Project**
MJC is trying to partner with counties to retrieve their data and analyze it for disproportionately in release remand decisions and amount of bail assigned. There has been some progress so far, such as a data agreement with King County. The original hope was for 10 counties to participate. With King County's participation, we are hopeful for the final report and to make some progress.
- **Prosecutorial Plea Bargain Process**
The focus will especially be on women's incarceration because of the symposium. Chad Enright has sent along the Kitsap County plea agreement. The goal is to expand the project to incorporate numerous jurisdictions, and maybe bring on a contracted scholar to coordinate the project.
 - A big problem for defense is that so many agreements require defense not to advocate for anything different. If judges want to go below the plea, judges must make it up.
- **Juvenile Detention Report**
Funding was gained to expand the look at the juvenile detention report. WSCCR partners will be continuing on in research of 5 years of juvenile detention data to add findings that might be presented at the symposium.

LAW STUDENT LIAISON PRESENTATIONS

University of Washington School of Law – Furhad Sultani and Mary Ruffin - *Social Justice Protests and the Historical Legacy of Racism in the Justice System*

Presentation

- Project Objective: Create a safe space to discuss unrest from over the summer. Make sure attendees know their rights, and inform on barriers to legal access.

- The proposed project addresses inherent racism in the justice system, supporting MJC's mission.
- Project Overview
 - Why there is a need to protest and discuss what happened during summer 2020.
 - Know your rights training with the National Lawyer Guild.
 - Panel discussion with attorneys and organizers that have been on the frontlines protesting and protecting protesters.
- The UW Law Liaisons are requesting feedback on whether to provide speakers fees to non-profit speakers and how to approach funding of food due to the virtual format.

Discussion

- Can the proposal be narrowed? The audience seems broad, and needs to be further defined.
 - Target is young protesters
 - Justice Yu added that the proposal has good content that can be directed towards college age, young lawyers, etc.
- Budget questions – The consultant fee and gift cards need logistical questions answered.
 - The gift cards would be provided in lieu of gathering in-person with food. This is a new practice because of COVID. Ordinarily, MJC would have paid for catering in-person, and the audience will still be gathering during meal times.
 - The consultant fee was included because non-profits have a limited budget and we should not be asking people to do labor for free.
 - Reasonable to pay speakers for their time.
 - Re-think consulting fee budget to pay towards marketing event.
- Commission members could be asked to serve as resources on the panel and presentation.
- Tia Strozier offered her assistance as a resource. She organized a dialogue between protesters, police, and businesses in LA.
- Virtual event could further reach to Eastern Washington.

MOTION: The Commission approved the project proposal by UW Law.

MOTION: The Commission approved up to \$1000 in expenditures for the project by UW Law, subject to prior approval. AOC has not approved the expenditure for food gift cards.

Gonzaga University School of Law – Dalia Pedro Trujillo, Rigo Garcia, Israel Carranza and Maggie Esquivel Torres - *Su Comision*

Presentation

- The project goal is to promote MJC by focusing on education and outreach to Spanish speaking communities in Washington through infographics, videos, and interviews.
- The GU students showed example infographics and a sample informational video in Spanish about the Commission.
- The project would include an intro video, highlight videos, infographics and social media engagement.
- The proposed timeline would be to complete the project in the next 4 weeks.
- Metrics will be used to measure community engagement.
- The group presented their budget in two different tiers – “law student edition” and “pro edition.”
- We are living in an era of social media. This remote world has shown us that we can reach these communities.

MOTION: The Commission approved the project proposal by Gonzaga Law.

MOTION: The Commission approved up to \$1000 in expenditures for the project by Gonzaga Law.

Seattle University School of Law – Denise Chen, Peggy Rodriguez, Jenny Wu and David Armstead

Presentation

- Civic engagement is not one size fits all. How can law students help?
- Part 1: Virtual Panel week of April 19th.
 - 12:00 – 1:00
 - Law students from all 3 WA schools as the audience
 - 4 categories will become topic points: mutual aid, accountability, education, self-reflection
- Part 2: Infographic
 - Four sections for four tools
 - QR Code – social media accessible
 - Cost – Base fee is \$150, \$50/hour capped at \$500.
- Asking for feedback on resources that should be included in toolbox.

Discussion

- Who will physically host the toolbox, pdfs, etc.?
 - Panel will stream on YouTube and will be available on the SU page.
 - Infographic will be permalinked and available.
- Long term goal is to house information on AOC website.
- What happens when documents needs to be updated?
 - Hopefully future liaisons would continue the practice.

MOTION: The Commission approved the project proposal by Seattle University Law.

MOTION: The Commission approved up to \$1000 in expenditures for the project by Seattle University Law.

COMMISSION LIAISON & COMMITTEE REPORTS

Education Committee – Judge Lori K. Smith

- **Recap Judicial College 2021**
 - Emerging Through Bias – Judge Veronica Alicea-Galván
 - Very well received – large class this year.
 - There will be some adjustments and changes for virtual format.
- **DMCJA 2021 Spring Conference**
 - “Legal Status” of LFO Collections, and Legal Debt as a Historical Means of Oppression
 - Judge Williams provided an update. The session will provide an all sides perspective to give judges a tool box of information on what they can do on LFOs.
 - Judge Adamson will be presenting at the conference.
- **SCJA 2021 Spring Conference**
 - 2020 Rollover: Immigrant Families Tool Kit
- **Fall Conference Colloquium Planning Committee (2022):**
 - A colloquium has been developed for proposal as a plenary session at fall conference to look at disparate outcomes. Look at systemic racism and how facially neutral laws have a disparate, racialized impact.

Rules & Legislation Committee – Judge Theresa Doyle (ret.) and Justice Mary Yu

Recap MJC published comment on proposed legislation related to improved justice.

- Judge Doyle reviewed the bills that MJC has supported this legislative session. Letters of support can be found on pg. 39 of the meeting packet.
- The Rules & Legislation Committee was founded in response to prior legislative engagement of previous years.
- The Committee has been meeting weekly and has submitted 7 letters of support thus far.

Juvenile Justice Committee – Judge Theresa Doyle (ret.)

- A large focus of the last few meetings has been juvenile justice bills. 5 of the 7 letters of support submitted by the Rules & Legislation Committee were related to juvenile criminal justice reform.
- A bill of interest related to juvenile record expungement will not proceed this session, but might be of interest to the Commission in the future.

Tribal State Court Consortium – Judge Lori K. Smith

- On April 16th the TSCC will host a virtual spring regional meeting to share ideas and build relationships. The meeting will be 3 hours and include the following topics:
 - Presentation by WomenSpirit Coalition on DV legal advocate survey findings.
 - POWER Act, which grants money to individuals who will be representing victims of DV.
 - Workgroup project on HB 1320. TSCC saw some gaps and provided suggestions to the bill.
- Judge Cindy Smith also recently presented before the BJA about the consortium.
- The TSCC will also be presenting at the Spring Clerk's program.

SCJA Self-Represented Litigants Workgroup – Judge Jennifer Forbes, Theresa Cronin and Joshua Treybig

- SCJA ad-hoc workgroup with a wide variety of stakeholders involved.
- The term 'unrepresented litigants' is used in the workgroup because it is a better assessment of how these individuals function within the justice system.
- There are three subgroups:
 - Statewide portal for unrepresented litigants. This portal would provide tips, forms, etc. and would be potentially hosted at the state law library.
 - Pilot project in Spokane for a resource center at the county courthouse.
 - Judicial education.
 - A proposed amendment to the judicial ethics rule was included in the packet. The proposed rule change will be brought before the Chief Justice soon. Support will be needed for the rule change in anticipation of pushback.
 - Additionally, there will be an education session proposal for judicial college.

ACTION: Judge Forbes will connect with Judge Doyle and the Rules & Legislation Committee regarding the proposed rule change.

MJC Liaisons

Gender Justice Study – Judge Bonnie Glenn

- Draft sections of the study are being distributed via email for feedback. 27 priority areas were distributed via pdf.

- The Gender Justice Study Advisory Committee has been meeting with members from MJC present to provide input.
- The report is nearly 800 pages long now.
- Workplace harassment survey has been distributed to all court employees. The survey will close at the end of the month and is collecting data based on various forms of harassment.

Sentencing Task Force – Judge Veronica Alicea-Galván

- There are several bills before the legislature stemming from the Task Force’s recommendations. Focus is on the sentencing grid.
- As the legislature looks at the “Blake fix,” is the fix best within the criminal legal system? What are tools to appropriately address underlying issues?

Access to Justice Board – Esperanza Borboa

- The ATJ conference is scheduled for August. Want a strong representation of community members to work with legal community.
- A community advisory panel was created to lead ATJ board in anti-racism work. The panel presented to the ATJ board.
- ATJ is doing board recruitment right now through a race equity and community engagement lens.
- ATJ is learning a lot from the community, and it would be beneficial to have a representative from the community advisory panel join on a MJC meeting.
- We are learning about reporting requirements for CARES act funding and learning how to support organizations who need support from funding sources.

ACTION: Esperanza Borboa will contact Frank Thomas about a guest presentation proposal from the ATJ Community Advisory Panel.

Bar Licensure Task Force – Frank Thomas

- The Task Force convened for its first meeting on March 17th. It is being led by Justice Raquel Montoya Lewis.
- The first meeting charted goals and expectations, and had a round table brainstorming session on workgroup topics such as:
 - Equity or economic impact
 - Character and fitness / ethics
 - Substantive testing – history of the bar and how other professional practices license
- Upcoming bar exam will be outside the purview of this group – thinking more of long term reform.

Charles V Smith Heritage Symposium – Judge Bonnie Glenn

- The event will take place on May 4th, 2021 and will be hosted by UW Law School
- Chief Justice González will present at the event.
- One student from each law school will receive an award.

The meeting was adjourned at 12:56 PM.

Connective Tissue: Governance Over Law Enforcement Technology Use in Washington and Elsewhere

Cameron Cantrell

Zoe Wood

UW School of Law



Catalyst

Law enforcement bodies at every level of government rely increasingly on technology to replace or aid analog work.

Most uses are hidden from the public eye, making regulation and accountability difficult.

The least is known about technology uses that arise when law enforcement (LE) interacts with an individual one-on-one .

Solution (1/2)

Our work is a response to this gap in knowledge. Seven types of technologies are especially prevalent:

1. Cell site simulators,
2. Automated license plate readers,
3. Predictive policing,
4. Facial recognition,
5. Unmanned aerial vehicles,
6. Body -worn cameras, and
7. Mobile device forensics.

Solution (2/2)

We surveyed and assessed the landscape of 50 states' and DC's regulation + law enforcement agency (LEA) use of these seven technologies.

Today we will present some of our findings, with a focus on where WA's governance leaves room for **judicial discretion** to promote equitable technology use and where **legislative growth** is necessary.

We will also explain how the collaborative nature of police technology use puts even the strongest regulations in WA at risk of being undermined by weaker regulations in other states.

Value

Technology compounds and amplifies biases that already exist. It can also introduce its developers' biases.

Compounding biases, amplified and left unregulated, pose complex and substantial risks to individual rights and liberties .

Groups historically marginalized by white cispatriarchy are disproportionately subject to LE interactions, so they are also disproportionately subject to the risks of LE technology use .

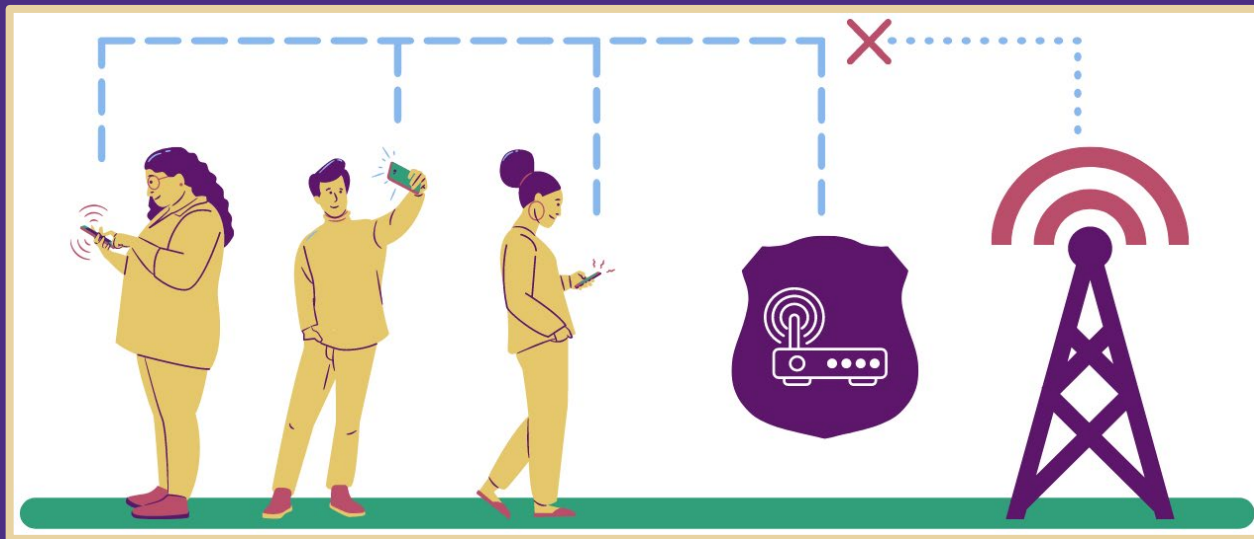
WA's Governance is Relatively Good

All technologies are in use in WA.

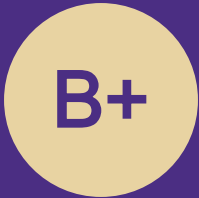
- > Cell site simulators: **B+**
- > Automated license plate readers: **D-**
- > Predictive policing software: **N/A**
- > Facial recognition software: **A**
- > Unmanned aerial vehicles: **D-**
- > Mobile device forensics: **A**
- > Body -worn cameras: **C**

Cell Site Simulators (CSSs)

A CSS emits a very strong, but phony, network signal so all nearby phones on a given cell provider network connect to it instead of to a real cell tower.



In WA: Tacoma PD uses CSSs.



Cell Site Simulators

WA is one of 13 states with a controlling LE authority (RCW § 9.73.260, .270). -CSS

WA law

Judicial discretion for equity

Subject only notified of CSS use if court orders	Order notice within 10 days of use ending, unless court finds good cause for delay (MD)
Initial authorization & each renewal can last up to 60 days	Authorize in 30 -day increments, reserving 60 days for extraordinary facts (AZ, CT, VA)
Mandated LEA → Court Admin. monthly reports, but not shared publicly	Court Admin. publicly reports annual summary of reports, e.g., aggregate use numbers (MN)
CSS can collect content <i>and</i> location data	Request separate justifications in court order application for location vs. content data sought (IL, MD, MN)

Automated License Plate Readers (ALPRs)

ALPRs capture pictures of every license plate that passes by. The pictures are automatically stored in a database, which can often be accessed by multiple, out-of-state LEAs.



In WA: 12 LEAs (including WA State Patrol) use ALPRs.

Automated License Plate Readers

ALPRs come up **just once** in WA law, which provides a definition and no further regulation (WAC § 478-116-024). **19 states** regulate more comprehensively.

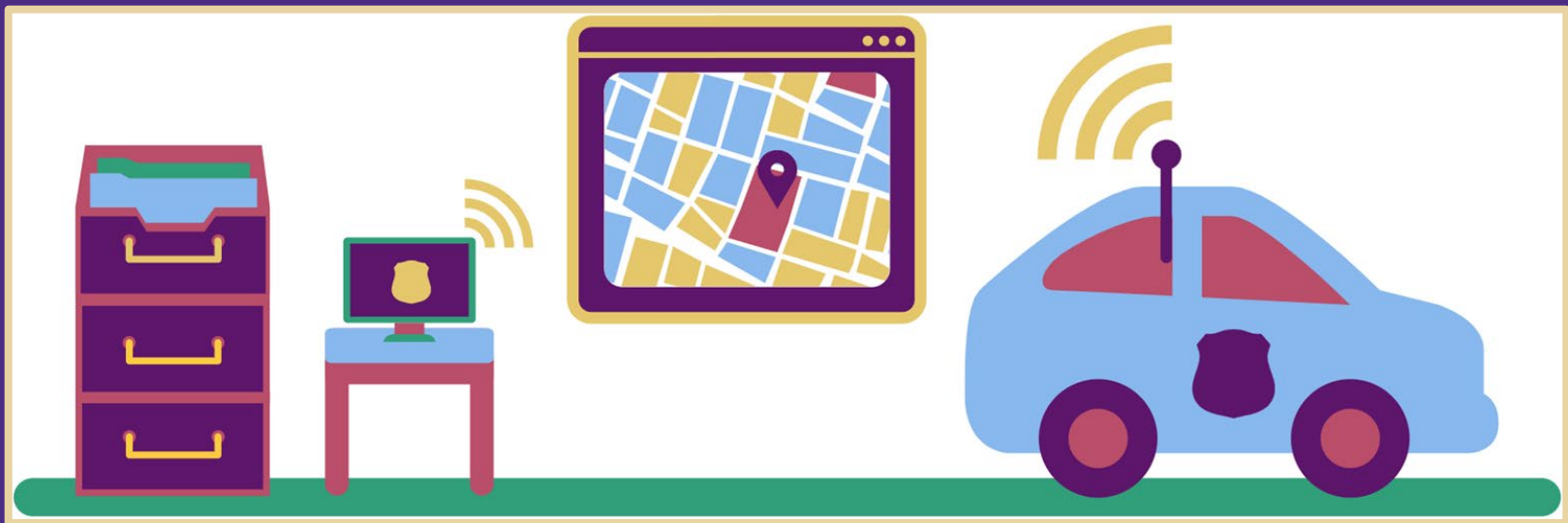
WA law

Some examples of stronger protections

(Unregulated use of device)	Restrict use to DPS, DoT, State Police (ME); local, county, and state LEAs (NH); “law enforcement purposes”
(Unregulated data retention)	Limit data retention to 21 days (ME); average is about 6 months
(Unregulated access to data)	In accordance with disclosure requirements for protected records, or pursuant to a state or federal warrant or a state disclosure order (UT)
(Unregulated use of data as grounds for a stop)	ALPR data ≠ reasonable suspicion as grounds for law enforcement to stop a vehicle (MT, NH)

Predictive Policing Software (predpol)

Predpol learns from past crime data to make **statistical predictions** about future crimes. These predictions direct LE to crime **“hotspots”** and intervene, preventing the crime’s occurrence.



In WA: Tacoma PD uses predpol.

Predictive Policing Software

LE predpol use is fully unregulated at the state level , nationwide (including DC).

Even at the local level, only one jurisdiction has acted: **Santa Cruz, CA** .

- > 2020: City council adopts ban on use because it is “disproportionately biased against people of color”
 - + Exception: showing, among other things, that use “will not perpetuate bias.”

Judicial discretion for equity: when faced with the RS/PC analysis for a seizure, use a critical eye to the extent predpol informed the encounter.

- > Complexities: *Wardlow*’s “high -crime areas”

Facial Recognition Technology (FRT)

FRT helps LEOs identify individuals by matching an **unidentifiable** image, like CCTV video, to an identified image, like a mugshot or driver's license.



In WA: Pierce County Sheriff's Office uses FRT.



Facial Recognition Technology

12 states, including WA, regulate FRT; WA's protections are among the strongest (RCW § 43.386.010).

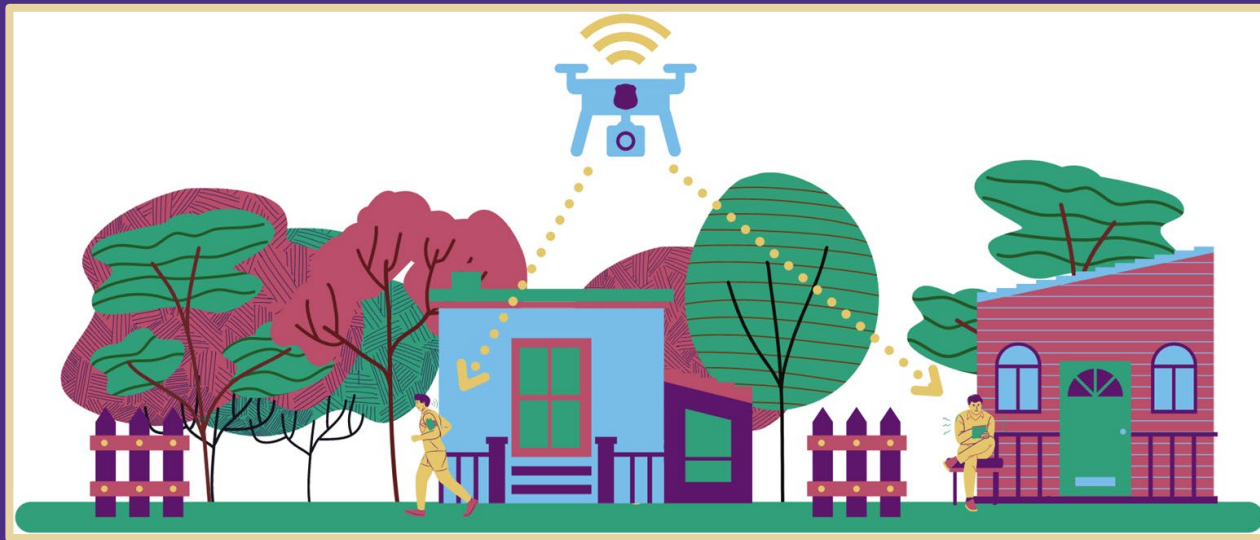
WA law

Comparison shows some stronger, some weaker protections elsewhere

Use = identifying or persistently tracking by collecting data	Use = identifying subject by collecting data and comparing it with other data (VA) (TX)
Can use for surveillance, id, or persistent tracking if authorized by warrant or exigent circumstances	Can use if expressly authorized by a warrant (MN); always, by default, to investigate criminal conduct (MO) (NH) (OR) (PA) (TX); if expressly authorized by statute (VA)
FRT results cannot serve as sole basis to establish probable cause in criminal investigation	-
LEA must write own policy regarding access	FRT data may only be accessible by a search, administrative, or inspection warrant (VA)

Unmanned Aerial Vehicles (UAVs)

UAVs speak for themselves: remotely -controlled aircrafts (with degrees of autonomy) . They feature cameras, which are often enhanced with further technology like night vision or FRT.



In WA: 25 LEAs (including WA State Patrol) use UAVs.

Unmanned Aerial Vehicles

WA is one of 30 states with a controlling LE -UAV authority (WAC § 200-250-030, 040). But of those 30, WA is one of 4 states where the only regulation is to exempt LEAs from the civilian -facing restrictions.

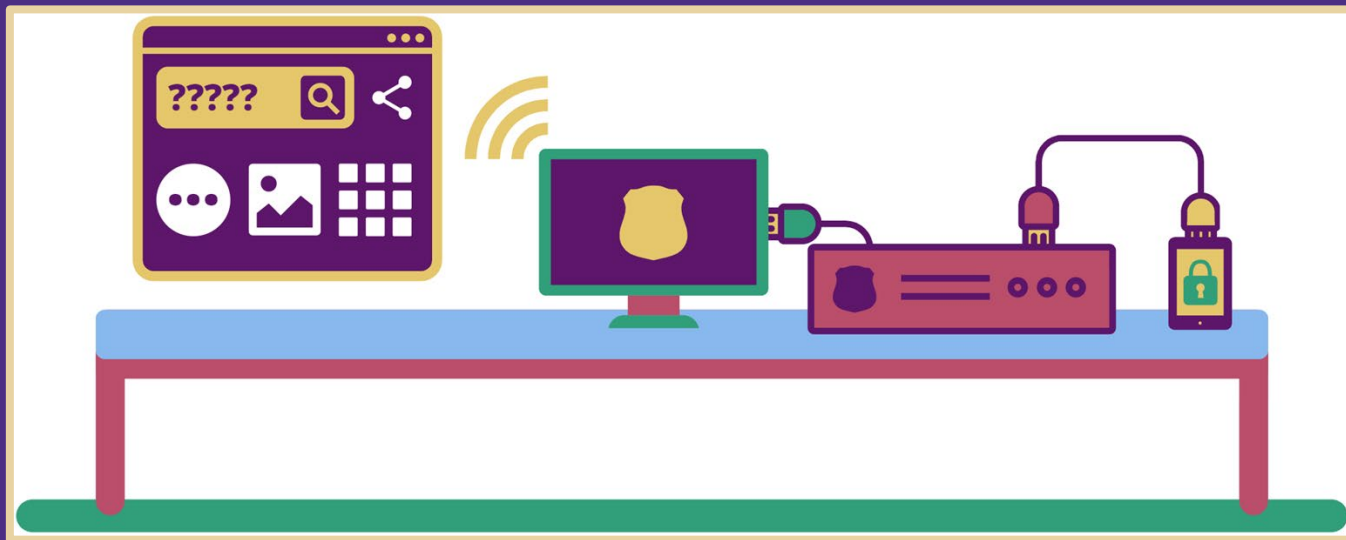
- > This means WA judiciary has no guaranteed role in UAV use.
- > 17/30 states require a warrant for LE-UAV use.

Judicial discretion for equity: when faced with claims/evidence related to UAV use, undergo analysis considering any offensive facets of use and WA's greater privacy protections.

- > Complexities: *Florida v. Riley*'s no-warrant plurality

Mobile Device Forensics (MDFs)

MDFs extract a complete copy of a phone's data, then sort the data into searchable, filterable, organized categories (e.g., photographs). MDFs can also analyze the data to create timelines, maps, and contact networks.



In WA: 9 LEAs (including WA State Patrol) use MDETs

Mobile Device Forensics

WA is one of 17 states with a controlling LE -MDF authority (State v. Keodara, 191 Wash. App. 305 (2015)). Of those 17, WA is one of 5 states where the authority **only concerns warrant standards** for MDF -assisted searches.

WA law

Judicial discretion for equity

Limit phone search warrants to topics, and/or data generated close in time to incidents, for which LEOs had PC.

Request that warrant return include search protocol undertaken; generally use heightened vigilance in issuing phone search warrants. (DE)

(Unregulated: additional barriers to assisting searches with MDFs)

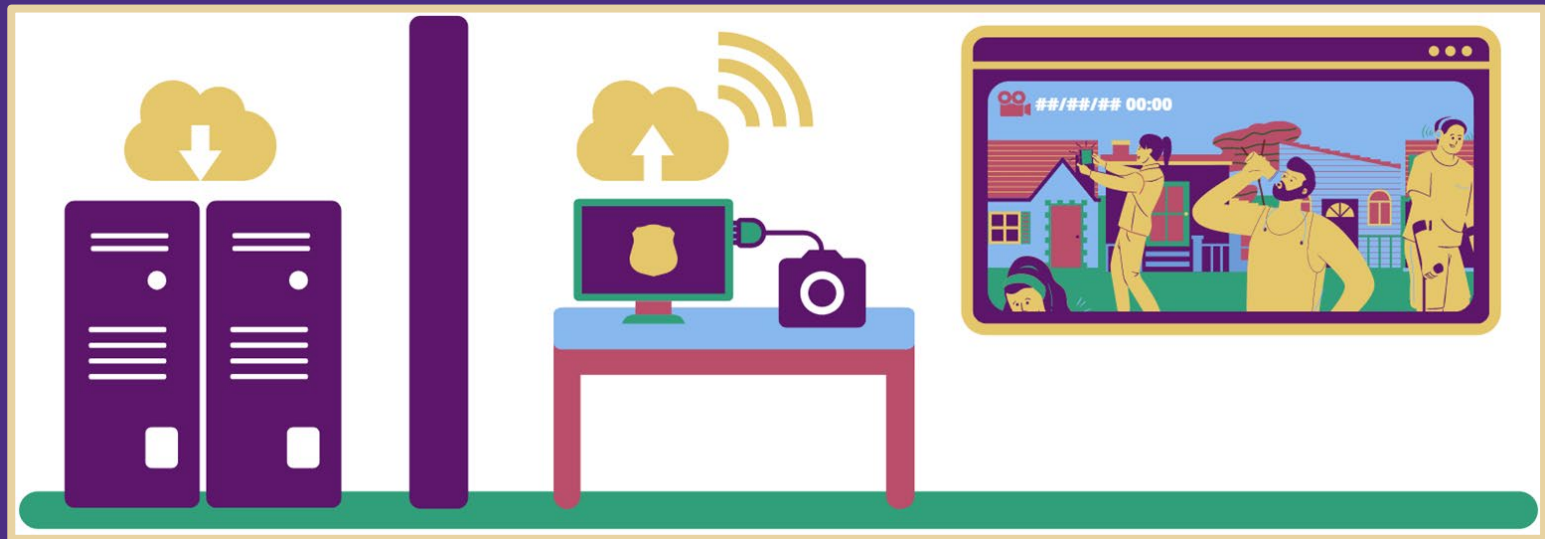
Request search warrant application specify whether MDF will assist search. (MT)

(Unregulated: consent to search as warrant exception)

In analyzing if consent to phone search was meaningful, consider subject's probable knowledge about MDFs. (no state reference, by one measure, consent authorized 1/3 of SPD's MDF-assisted searches)

Body -Worn Cameras (BWCs)

BWCs also speak for themselves: small cameras, mounted to LEO's bodies or helmets, record the LEO's point of view and can easily be turned on and off.



In WA: 6 LEAs use BWCs.

Body -Worn Cameras

BWCs are the most famous police technology, regulated in 28 states. Like the majority, WA does not mandate their use (RCW § 10.109.010–100).

WA law

Some examples of stronger protections

Policy required, but left up to the agency	LEAs must adopt a model policy established by an advisory board (VT)
Must retain for 60 days; then can destroy per applicable schedule	Retain until end of criminal investigation (MI); retain for 3 years if recording captures deadly force/restraint, discharge of firearm (NH) (TX); subject of complaint (NH); <u>has evidentiary value</u> (WI)
Presumption against disclosure; party seeking footage must “prevail”	Can be used as evidence of misconduct, if it depicts force, or as evidence in <u>any</u> proceeding (IL); on request, must be given to state LE division, AG, or circuit solicitor for <u>any criminal justice purpose</u>
Unregulated accountability	Permissive inference against LEO who fails to activate (CO); if LEO fails to activate, LEO must document why (NH) (TX) (UT)

Connective Tissue Between LEAs (1/2)

A given LEA collaborates with intra -state, inter -state, and federal LEAs. This results in:

- > inter -LEA technology hardware sharing (CSSs, MDFTs)
- > inter -LEA data sharing (ALPRs, FR, UAVs, BWCs)

Inter -LEA collaboration, coupled with lack of robust governance, enables WA LEAs to readily:

- > Borrow technology from other LEAs, **without going through public procurement**, and
- > Share data gathered from the technology with other LEAs, **without guarantee the data is safe from abuse**.

Connective Tissue Between LEAs (2/2)

Our findings are descriptive. We do not assert that WA LEAs or LEOs *will* borrow technology or share data in this manner. But the open possibility is too large to ignore.

Further: even where technology use by WA LEAs is appropriately regulated, inter-LEA collaboration means **WA's safeguards can be undermined by LE practices in other states.**

Judicial discretion for equity is **key** to ensuring not only that an individual's rights and liberties in WA are not undermined by LEA practices elsewhere, but also that WA's laws are given **maximum protective effect**.

Thank you for your time.

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Tribal State Court Consortium Update for May 2021

- The consortium held an online spring meeting on Friday, April 16th from 9:00 – 12:00. There were 41 attendees during the general meeting, 22 of the attendees were judicial officers.
 - Meeting highlights included:
 - Presentation by Annie Forsman Adams from Women Spirit on DV Legal Advocates survey findings and recommendations.
 - Presentation on POWER ACT training planned for September 2021. The topic will center on DV Pro Bono Attorney training.
 - Updates on workgroup projects, including re-energizing and planning for messaging about tribal courts, upcoming ICWA Court planning meetings and the DV protection order enforcement projects.
 - A discussion among judicial officers about HB 1320 (protection orders) and the inclusion of language to assist judges in being able to see tribal court orders better.
- The consortium plans to hold its Annual Meeting in conjunction with the Annual Judicial Conference in Spokane on September 12th. Plans may include a hybrid online and in-person format.
- Outreach and Partnerships:
 - TSCC presented at the BJA meeting on March 19th and the County Clerks Spring Program on March 23rd. Presentations included a general overview of the consortium and detailed discussion on HB 1320.
- The consortium is currently finalizing plans for a session during the 2021 DMCJA Spring Program in June.