

WASHINGTON STATE
MINORITY AND JUSTICE COMMISSION

COMMISSION MEETING



TVW: [HTTPS://WWW.TVW.ORG/WATCH/?
EVENTID=2021101029](https://www.tvw.org/watch/?EVENTID=2021101029)

FRIDAY, OCTOBER 1, 2021
9:00 A.M.—12:00 P.M.



MINORITY AND JUSTICE COMMISSION

BIMONTHLY GENERAL MEETING

OCTOBER 1ST, 2021

9:00 A.M. – 12:00 P.M.

JUSTICE MARY YU, CO-CHAIR

JUDGE VERONICA GALVÁN, CO-CHAIR

[HTTPS://WACOURTS.ZOOM.US/J/91630889238](https://wacourts.zoom.us/j/91630889238)

AGENDA

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

- Welcome and Introductions
- Approval of July 30 Minutes
- Welcome newest Commission member, Minority Bar Association Liaison Jeremy Walker

GUEST PRESENTATION 9:05 – 9:35 a.m. (30 minutes)

- **Jury Diversity Survey Report** – Judge Steve Rosen, Brooke Gialopsos, Chris Gaddis, and Peter Collins
 - Judge Steve Rosen and colleagues present findings of multi-county jury diversity survey.

CHAIR & STAFF REPORT 9:35 – 10:00 a.m. (25 minutes)

- **Racial Justice Consortium**
 - Update on the latest work of the Racial Justice Consortium – Patty Lally
- **Staff Report**
 - LFO Stakeholder Convening, October 6th – Cynthia Delostrinos and Frank Thomas

BREAK 10:00 – 10:15 (15 minutes)

2021-2022 Law Student Liaisons Introductions 10:15 - 10:30 (15 minutes)

- **Gonzaga University School of Law** – Maggie Esquivel Torres, Gloria Herrera, Whitney Wakefield, Alicia Chaudry
- **Seattle University School of Law** – David Armstead, Denise Chen, Sarah Max
- **University of Washington School of Law** – Wendy Martinez Hurtado, Priyanka Menon, Kenneth Nelson, Angel Torres Mann

- **Education Committee** – Judge Lori K. Smith
 - Discuss Open Proposals – DMCJA Spring Conference, Appellate Spring Conference, Judicial College
 - Discuss Opportunities for Non-judicial Education Programs
 - Discuss Education Retreat Plan
 - Judge Smith is planning to be in and out of Friday’s meeting, so this may be only a brief report out or we can pass on it. Judge Smith and Judge McCullough want to discuss a plan for a half-day educational retreat.

- **SCJA Spring Conference Colloquium 2022** – Judge Johanna Bender
 - Colloquium Judicial Education Series on Facially Neutral Laws with Racialized Impact; Racial Disproportionality as Evidence of Racism and Systemic Racism
 - Update Colloquium Plans and SCJA Spring Conference 2022 Program – Judge Johanna Bender

- **Rules and Legislation Committee** – Judge Theresa Doyle
 - Discuss Sponsorship of Proposed Rule Changes to GR 31 and CrR 2.1 related to GR 9 concerning captioning and use of initials in juvenile court proceedings.

- **Outreach Committee** – Judge Bonnie Glenn and Lisa Castilleja
 - Update on Ongoing Outreach Projects – Judges of Color Directory; Annual Report; Annual Artwork; Youth and Law Forum Events; Gavel Gap Reception 2022.

- **Tribal State Court Consortium** – Judge Lori K. Smith
 - Update on TSCC Activities

- **MJC Liaisons**
 - **Access to Justice Board** – Esperanza Borboa
 - **Race and Criminal Justice Task Force 2.0** – Professor Lori Bannai

Next MJC meeting: Friday, November 5th, 2021 @ 9:00 a.m. (via Zoom).

Minority and Justice Commission

2021 Meeting Dates

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

Virtual Meetings held via Zoom Videoconference

Date	Time	Location
Friday 01/15/21	9:00 AM – 3:00 PM	Zoom Videoconference (KCBA MLK luncheon at noon)
Friday 03/19/21	9:00 AM – 1:00 PM	Zoom Videoconference
Friday 05/14/21	9:00 AM – 1:00 PM	Zoom Videoconference
Friday 06/02/21 Supreme Court Symposium	8:30 AM – 1:00 PM	Zoom Videoconference
Friday 07/30/21	9:00 AM – 1:00 PM	Zoom Videoconference
Friday 10/01/21*	9:00 AM – 1:00 PM	Zoom Videoconference
Friday 11/5/21	9:00 AM – 1:00 PM	Zoom Videoconference

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

Approval of May 14 Meeting Minutes

- The minutes were approved as presented.

Welcome Newest Commission Member Professor Mark A. Chinen and Acknowledge Service of Professor Loraine Bannai

- Justice Yu recognized Professor Bannai for her work on the Commission in establishing the law student liaison program and ongoing work on racial equality.
- Professor Bannai introduced Professor Chinen and his work at Seattle University, including his commitment to issues of diversity and inclusion at the law school.

GUEST PRESENTATIONS

Gender Justice Study Report – Justice Sheryl Gordon McCloud and Dr. Dana Raigrodski

- Justice Gordon McCloud gave a brief overview of the last 3 years of the Gender Justice Study. The final report is nearly 1000 pages.
- 5 overall goals were identified in the study and can be found on page 12 of the meeting packet. They include improving data collection, increasing access to courts, addressing the increase in convictions and detentions, reducing reliance on revenue from court users, and determining what evidence-based curricula work for judicial and legal education on gender and race bias
- Part of the research was done through 5 pilot projects. One such pilot project highlighted jury selection, using formerly collected Minority and Justice Commission data.
- Many of the recommendations call for stakeholders to convene or review access to justice areas. One such area calls for the Minority and Justice Commission to convene a workgroup.
 - Justice Yu called for the Minority and Justice Commission to support moving forward to cover follow-up with the report and the formation of a Committee. Judge Glenn will lead this area as a liaison.
- Justice Gordon McCloud thanked Judge Coburn, Judge McCullough, Justice Montoya Lewis, and Karen Murray for serving on the Gender Justice Study Advisory Committee, Judge Glenn for serving as a liaison, Cynthia Delostrinos and Frank Thomas for their guidance, Judge Smith and Annie Benson for their feedback, Justice Yu for her honesty, and various other members for their work on the study.
- Judge Galván emphasized the importance of having data to reflect BIPOC voices in making policy changes.
- There were a number of areas of recognized need that got omitted during the brainstorming stage and did not get included in the final report. Hopefully they will be covered in the future.
- The Race and Criminal Justice Task Force will be completing its report in September, and there will likely be overlap with the Gender Justice Study, especially in the need for data collection.

ACTION: The Minority and Justice Commission was named in the Gender Justice Study to convene a workgroup. As liaison to the study, Judge Glenn will lead these efforts.

Community Reparations Initiatives Research - Seattle University School of Law Calhoun Fellows

- Professor Bob Boruchowitz, Maddi Story, Cole Story, Cait Nold, Timea Soos, Andrea Vallejos Velazquez, and Callan Oki presented on the group proposal to center the priorities of well-established community voices in development of 2022 Symposium on Reparations.

- A planning document, including compiled research, is included on page 16 of the meeting packet. The Movement for Black Lives put out a reparations tool kit that the fellows are using in their definition.
- The Fellows touched on the following ideas in their presentation:
 - Decriminalization and divestment.
 - Importance of centering impacted voices.
 - Link between slavery and mass incarceration - restoration of rights for incarcerated persons and formerly incarcerated persons.
 - Commissioner Joel Caston - DC
- The Minority and Justice Commission was encouraged to expand and continue the reparations research by Commission members. Most research included in the presentation was centered around King County. Eastern Washington impact and restoration of parental rights should be explored.
- Justice Yu is meeting with the fellows next week to discuss the Symposium. The Commission will be seeking volunteers to help plan the Symposium.

ACTION: Contact Frank Thomas if you are interested in assisting with planning for the 2022 Supreme Court Symposium.

CHAIR & STAFF REPORTS

Racial Justice Consortium – Patty Lally

- Patty Lally shared the Racial Justice Consortium road map that outlines the work of the Consortium through spring of 2022. The group is currently focusing on the idea of belonging.
- By winter 2021, work on an action plan for every level of court will begin.

2021 Symposium Debrief: *Behind Bars* – Justice Yu and Frank Thomas

- Justice Yu recognized Frank Thomas for his role in planning a successful Symposium. It was acknowledged that having Angela Davis present at the Symposium was amazing and that her goals can align with the state, when at one time they would have seemed too radical.
- Frank Thomas directed members of the Commission to share the Symposium web page with their friends and colleagues. Documents and videos from the event are available on the Commission’s website.
- Commission members commended how engaging the Symposium was. In the midst of many Zoom calls and conferences, this one was particularly engaging. It was very well organized and seamless, and highlighted the importance of setting the stage for an academic leader to speak to the Washington judiciary.
- The Symposium also emphasized the importance of how incorporating lived experience with quantitative data creates a whole picture – creates empathy and a holistic approach.
- Cheryl Lidel, one of the lived-experience presenters, was recently resentenced and released since speaking at the event.

MJC and DMCMA “Silence=Acceptance” Race Equity Training – LaTricia Kinlow

- The training was created by King County District Court and encourages people to think about the whole court experience, not just what happens in the court room. How experiences at the counter, over the phone, etc. impact individuals.
- It highlights lasting effects of racist laws in Washington, like redlining.
- Hundreds of people from across the state attended the multiple sessions.

Convening LFO Work Group – Frank Thomas

- The LFO Convening will be held on the morning of Wednesday, October 6th and chaired by Judge David Keenan and Kelley Olsen of Civil Survival.
- Voices of people directly impacted by LFOs are encouraged to attend.

MJC FY22 Research Initiatives and Invitation for Proposals – Frank Thomas

- The Minority and Justice Commission will undertake a plea bargain research project, and finalize and publish the research into bail decision racial disproportionality in this fiscal year. Frank Thomas has been asked to join the interview panel for the newly formed Equity Researcher position at WSCCR, who will work closely with the Commissions to advance equity-based quantitative research. Additionally, we have unallocated discretionary funds with which we can invite members to propose research projects or other productive initiatives.

ACTION: A general invitation was extended to the Commission to submit research proposals. Email Frank Thomas if you have any ideas.

PRESENTATION BY FRANKLIN HIGH SCHOOL ART COLLECTIVE

Presentation of 2021 MJC Artwork – Art of Resistance and Resilience (ARR)

- JR Manaois introduced the Franklin High School art collective, ARR. The MJC Commissioned ARR to paint a piece of art for the annual poster. The students joined the meeting to present their artwork and answer questions from the Commission.
- *What does Justice feel like to you?*
 - Fair – justice is like freedom.
 - Reparations, providing the community with what they need and want
 - Desire to resolve what happened, whether big or small
 - Fairness, being seen. How you treat one another.
- *What were some of the intentions behind this mural?*
 - Taking an amazing opportunity and being bold with it. Wanting to be seen. Lately feeling discontent with a lot of issues. Showing what and how we're feeling.
 - Want someone to see what you see.
 - Youth vision
- *What does it not represent?*
 - This mural represents now. Not the distant future.
 - Does not represent blatant vandalism – not our goal.
 - We're not here to destroy, we want justice, making ourselves seen and heard.
- *If there was anything you could add to the mural, what would it be?*
 - The people tearing down the statue – personalize them more like youth.
 - More details, especially in the fire.
- *If you could place this mural anywhere other than the court system, where would that be and why?*
 - In my own home – proud of the mural
 - Somewhere to educate people on these issues and inspire others to help with the change. Somewhere to encourage others to join the movement.
 - Where it can be handled. Where the message of the mural can be appreciated.
- Kai read the description of the mural that the students drafted:
 - "The statue of Lady Justice looms over the turmoil of her surroundings, racism, injustice, and death reigning supreme. She is not blind to this; she cannot see through the cloth of the American flag. What she cannot see through the flag, are the fire and flames of the forests, and the projections of our strife and our fight. We came

here to remove her blindfold, and make her finally bear witness to the human and environmental injustice."

- The students asked Mari and Kema, the group facilitators, *What does this project mean to you?*
 - Young people inheriting our future. What is our responsibility as adults in this time to listen and truly learn, internalize what our young people are asking us to hear?
 - Proud. Celebrate power of voice and creativity.
- Justice Yu thanked the students and their willingness to share their mural. The Court cherish the art. Commission members shared their excitement about the mural and their gratitude towards the students for creating an inspirational and provocative piece.

COMMISSION LIAISON & COMMITTEE REPORTS

Education Committee – Judge Lori K. Smith

- *LFO Reconsideration Days: The Big Waive* – LaTricia Kinlow
 - Attendees heard from Representative Simmons on the impact of LFOs. Each attendee received a copy of "A Pound of Flesh."
- The education committee is working on programs for the 2022 spring conferences. One idea being explored covers decision making and bias at the appellate level.

ACTION: Reach out to Frank Thomas if you have education ideas regarding timely issues and standalone CLE events.

Fall Conference Colloquium Planning Group (2022)

- Colloquium Judicial education series on facially neutral laws with racialized impact; racial disproportionality as evidence of racism and systemic racism.
- Planning group that broke off from our Racial Judicial Discussion group to pursue holistic educational programming looking critically at the role of systemic racism in our state's legal system. Group is ready to submit 2022 SCJA Spring Conference Plan, which is centerpiece of the multi-conference program. Judge Johanna Bender and Judge Maureen McKee are heading that working group. The finalized proposal is ready to be submitted next week.

Outreach Committee – Lisa Castilleja and Judge Bonnie Glenn

- Seattle Youth & Law Forum
 - Judge McCullough is requesting \$1500 for the event.
- Tri-Cities Youth & Law Forum
 - One large group is not possible, so three smaller gatherings will be facilitated. It will be conducted as a hybrid event.
 - \$3000 is being requested to host the program this year due to event being held in three different locations. The event was not held last year, and it is important to hold programming each year in Eastern Washington.
- Spokane Youth & Law Forum is awaiting news from Spokane Schools on new regulations and feedback on feelings of Zoom fatigue.
- Justice Yu recommended allocating \$1500 to each of the three Youth and Law forums. If more funds can be allocated at a later date, it will be discussed with Frank Thomas.
 - The motion to approve allocation of \$1500 to each of the three Youth & Law Forums was unanimously approved.
- Moriah Freed will be working with the Outreach Committee moving forward. A survey was sent out to the Outreach Committee listserv to set a recurring meeting date. A reminder will be sent to the listserv – please respond.

Juvenile Justice Committee – Frank Thomas

- The Committee did not meet in July.
- Moving into FY22, the Juvenile Justice Committee's priorities for FY22 include: juvenile records privacy reforms; juvenile decline research and policy analysis; analysis of COVID-19 protocols on juvenile detention racial disparities.

Tribal State Court Consortium – Judge Lori K. Smith

- The TSCC is planning an in-person meeting at Fall Conference. The TSCC is requesting an allocation of funds from MJC to cover costs from the meeting that cannot be covered by grant funds. The group is still awaiting a quote on food before requesting an allotment formally. It is estimated that between 20-30 people will attend in-person.

MJC Liaisons

- **Access to Justice Board**
 - The 2021 ATJ Conference, *Crisis and Reckoning: A Call to Dismantle Unjust Systems*, will take place August 11-13. It is free to attend unless seeking CLE credits.
- **Bar Licensure Task Force**
 - Frank Thomas is representing the Minority and Justice Commission on the Task Force. He will be joining the *equity outcomes* and *evaluating alternatives to the bar exam* work groups.

Race and Criminal Justice Task Force 2.0

- The Task Force has been working since last summer on research projects. They are now moving towards considering research and developing recommendations.
- Tremendous overlap between this Task Force's scope and the Gender Justice Study and Racial Justice Consortium.
- The Task Force is scheduled to present findings to the Washington Supreme Court on September 29th from 9-12.

ADJOURNMENT

The meeting was adjourned at 12:21 PM.

LFO STAKEHOLDER CONVENING

WEDNESDAY, OCTOBER 6

9:00 AM - 12:00 PM

REGISTRATION VIA ZOOM

Please register to receive the meeting link.



The purpose of this convening is to bring together the community of individuals and organizations that have been working on LFO reform in Washington State. During the meeting we will have presentations on several different efforts that are reforming the landscape of LFOs in Washington. We will hear about new research, tools, policies, practices, and build connections that can lead to future collaboration.

Hosted by

**The Washington Supreme Court Minority & Justice Commission,
in partnership with Civil Survival and Living with Conviction**

Please contact Cynthia Delostrinos at

Cynthia.Delostrinos@courts.wa.gov with any questions.



LIVING WITH CONVICTION

GR9 COVER SHEET

- A. Name of Proponent: The Washington State Office of Public Defense and the Minority and Justice Commission...
- B. Spokesperson: George Yeannakis, Office of Public Defense
- C. Purpose: Amendment to GR 31 Access to Court Records

Introduction

These proposed amendments to GR 31, Access to Court Records, aim to ensure that courts across Washington State treat juvenile records consistently, comply with the Washington State Constitution and recognize the severe and long-lasting impact of the electronic dissemination of a juvenile court record. This is critical for all youth and particularly youth of color since we know that:

“[o]ne of the most consistent findings in the research on the juvenile justice system is that race matters. Race matters in Washington State just as it matters across the United States. Studies conducted in numerous states have demonstrated that race shapes decisions at various stages in the juvenile justice process, independent of the severity of the offense and of the individual’s criminal history” Heather D. Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009-2019* (2021) available at https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf.

The Administrative Office of the Courts adopted a policy, after careful consideration, to not display juvenile court records on a publicly-accessible website and to exclude juvenile offender court records from bulk distribution.

The Washington State Administrative Office of the Courts (AOC) tracks statewide case information and records through its Judicial Information System (JIS), ACORDS and Odyssey. To respond to the numerous issues and policy implications of the electronic distribution of court information, the Judicial Information System Committee (JISC) established the JIS Data Dissemination Committee which makes policies regarding AOC’s dissemination of computer-based court records.¹ AOC, through its JISDDC, responded to the demonstrated harms of displaying juvenile offender records publicly online and distributing juvenile offender records to

¹ The JISC was established by the Washington Supreme Court and authorized by the Washington State Legislature to provide direction and oversight to the statewide Judicial Information System. JISCR 1 (1976); RCW 2.68.050. Through its Bylaws, the JISC created the Data Dissemination Committee to address issues with respect to access to and dissemination from the JIS. Article Seven, [JISC Bylaws, amended 6/25/21](#). Through the JISC’s delegation of authority, the Data Dissemination Committee adopted the Washington State Court’s [Data Dissemination Policy](#).

large private data aggregators by imposing limits through Section V of its Data Dissemination Policy:

A. Juvenile offender court records shall be excluded from any bulk distribution of JIS records by the AOC otherwise authorized by GR 31(g), except for research purposes as permitted by statute or court rule.

B. The AOC shall not display any information from an official juvenile offender court record on a publicly-accessible website that is a statewide index of court cases.

AOC's limits were adopted after extensive discussion and consideration. These limits have been in place since 2008. However, rather than following AOC's policy limiting the display of juvenile court records on a publicly accessible website, some counties (e.g. King County through its new electronic records portal) now provide broad, online public access to "juvenile offender cases" though a publicly accessible website. See King County Script public access search site, available at <https://dja-prd-ecexap1.kingcounty.gov/?q=Home>.

Immediate action is needed because the harms of available juvenile court records are acute and are intensified by display on a publicly accessible website.

"A publicly available juvenile court record has very real and objectively observable negative consequences, including denial of 'housing, employment, and education opportunities.'" (*State v. S.J.C.*, 183 Wash. 2d 408, 432, 352 P.3d 749, 761, 2015). In public housing, a single juvenile offense might result in the entire family's eviction. (See Ashley Nellis, "Addressing the Collateral Consequences of Convictions for Young Offenders," 35 THE CHAMPION 20, 23, 2011.) In addition, a juvenile court record can foreclose employment possibilities and make it harder to obtain even a high school diploma, much less post-secondary education. (See Ashley Nellis.)

In 2014, the Legislature declared that "it is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records." Laws of 2014, ch. 175, § 1. The Legislature has also provided a pathway to seal juvenile court records. RCW 13.50.260.

Washington State is one of seven states in the country that "categorically make all juvenile records public though there are exceptions even within these states. Juvenile Law Center, *JUVENILE RECORDS A National Review of State Laws on Confidentiality, Sealing and Expungement*, pg. 15 (2014) available at [national-review.pdf \(jlc.org\)](http://national-review.pdf(jlc.org)). By providing online, public access to juvenile records, the harms of publicly available juvenile records are intensified and are more far-reaching. That's because:

the emergence of the internet has enabled instant access to many digital records, and services like Intelius.com or BeenVerified.com make searching names cheap, quick, and easy. Moreover, some jurisdictions have cut out the middleman and have created databases to allow online searches of court records. McMullen, Judith, *Invisible Stripes*:

The Problem of Youth Criminal Records, 27 SOUTHERN CALIFORNIA REVIEW OF LAW & SOCIAL JUSTICE 1 (2018) available at [Invisible Stripes: The Problem of Youth Criminal Records by Judith G. McMullen :: SSRN](#) (citations omitted).

As a result, “[a]ny potential school, landlord, or employer can easily access information about a subject’s contacts with the law-- indeed, any curious citizen can mine this information at will.” *Id.* In addition, the sealing of juvenile court records is undermined if not rendered useless if a youth’s name is routinely published online. “Once information becomes publicly accessible, it cannot be made confidential again.” Jacobs, James, *THE ETERNAL CRIMINAL RECORD*, at 22 (2015).

Action must be taken to help ensure that youth can truly have their case sealed and treated as though it never occurred so they can reach their full potential. To meet this goal, we made the following recommendations for suggested rule changes:

- Prevent the display of juvenile court records on a publicly accessible website
- Specifically prohibit the bulk distribution of juvenile court records.

The proposed amendments to GR 31

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Information from an official juvenile offender court record shall not be displayed on a publicly accessible website. The only exception to this rule is if the website is accessed from a physical county clerk’s office location.

~~(2)~~(3) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

~~(3)~~ (4) A fee may not be charged to view court records at the courthouse. (2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

(g) Bulk Distribution of Court Records. (1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records. **(2) Dissemination contracts shall not include the dissemination or distribution of juvenile court records** (3) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other

resources required to satisfy the request. (4) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

Conclusion and request for expedited consideration

The proposed amendments to GR 31 address the severe, long-lasting impact that access to juvenile court records, including on a publicly accessible website, causes to youth involved in the justice system, who are disproportionately youth of color.

DRAFT

GR 31
ACCESS TO COURT RECORDS

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

(c) Definitions.

(1) "Access" means the ability to view or obtain a copy of a court record.

(2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.

(3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court records, as is and without modification.

(4) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing

that

is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial

proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.

(5) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

(6) "Dissemination contract" means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.

(7) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.

(8) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).

(9) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(10) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020

and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Information from an official juvenile offender court record shall not be displayed on a publicly accessible website. The only exception to this rule is if the website is accessed from a physical county clerk's office location.

~~(2)~~ (3) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

~~(3)~~ (4) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records.

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

(A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.

(B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.

(C) Driver's License Numbers.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible

- (1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the

Courts must:

- (A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.
- (B) Determine, in its discretion, that filling the request will not violate this rule.
- (C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.
- (D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and

conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies

an

individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available

for

audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

not

(3) Criminal justice agencies may request court records publicly accessible.

(A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.

records.

(B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court

the

(C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which

agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.

(g) Bulk Distribution of Court Records.

- (1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.
- (2) Dissemination contracts shall not include the dissemination or distribution of juvenile court records
- ~~(2)~~ (3) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.
- ~~(3)~~ (4) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

- (h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.
- (i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.
- (j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.
- (k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be

private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[Adopted effective October 26, 2004; amended effective January 3, 2006.]

GR9 COVER SHEET

- A. Name of Proponent: The Washington State Office of Public Defense and the Minority and Justice Commission....
- B. Spokesperson: George Yeannakis, Office of Public Defense
- C. Purpose: Amendments to GR 31 and CrR 2.1

Introduction

These proposed amendments to GR 31, Access to Court Records, and CrR 3.2, The Indictment and the Information, aim to ensure that courts across Washington State treat juvenile records consistently, comply with the Washington State Constitution and recognize the severe and long-lasting impact of that result from prosecuting youth in juvenile court. This is critical for all youth and particularly youth of color since we know that:

“[o]ne of the most consistent findings in the research on the juvenile justice system is that race matters. Race matters in Washington State just as it matters across the United States. Studies conducted in numerous states have demonstrated that race shapes decisions at various stages in the juvenile justice process, independent of the severity of the offense and of the individual’s criminal history” Heather D. Evans & Steven Herbert, *Juveniles Sentenced as Adults in Washington State, 2009-2019* (2021) available at https://www.opd.wa.gov/documents/00866-2021_AOCreport.pdf.

The Administrative Office of the Courts adopted a policy, after careful consideration, to not display juvenile court records on a publicly-accessible website and to exclude juvenile offender court records from bulk distribution.

The Washington State Administrative Office of the Courts (AOC) tracks statewide case information and records through its Judicial Information System (JIS), ACORDS and Odyssey. To respond to the numerous issues and policy implications of the electronic distribution of court information, the Judicial Information System Committee (JISC) established the JIS Data Dissemination Committee which makes policies regarding AOC’s dissemination of computer-based court records.¹ AOC, through its JISDDC, responded to the demonstrated harms of displaying juvenile offender records publicly online and distributing juvenile offender records to large private data aggregators by imposing limits through Section V of its Data Dissemination Policy:

¹ The JISC was established by the Washington Supreme Court and authorized by the Washington State Legislature to provide direction and oversight to the statewide Judicial Information System. JISCR 1 (1976); RCW 2.68.050. The Through its Bylaws, the JISC created the Data Dissemination Committee to address issues with respect to access to and dissemination from the JIS. Article Seven, [JISC Bylaws, amended 6/25/21](#). Through the JISC’s delegation of authority, the Data Dissemination Committee adopted the Washington State Court’s [Data Dissemination Policy](#).

A. Juvenile offender court records shall be excluded from any bulk distribution of JIS records by the AOC otherwise authorized by GR 31(g), except for research purposes as permitted by statute or court rule.

B. The AOC shall not display any information from an official juvenile offender court record on a publicly-accessible website that is a statewide index of court cases.

AOC's limits were adopted after extensive discussion and consideration. These limits have been in place since 2008. However, rather than following AOC's policy limiting the display of juvenile court records on a publicly accessible website, some counties (e.g. King County through its new electronic records portal) now provide broad, online public access to "juvenile offender cases" through a publicly accessible website. See King County Script public access search site, available at <https://dja-prd-ecexap1.kingcounty.gov/?q=Home>.

Immediate action is needed because the harms of available juvenile court records are acute and are intensified by displaying the youth's full name in the case caption.

"A publicly available juvenile court record has very real and objectively observable negative consequences, including denial of 'housing, employment, and education opportunities.'" (*State v. S.J.C.*, 183 Wash. 2d 408, 432, 352 P.3d 749, 761, 2015). In public housing, a single juvenile offense might result in the entire family's eviction. (See Ashley Nellis, "Addressing the Collateral Consequences of Convictions for Young Offenders," 35 THE CHAMPION 20, 23, 2011.) In addition, a juvenile court record can foreclose employment possibilities and make it harder to obtain even a high school diploma, much less post-secondary education. (See Ashley Nellis.)

In 2014, the Legislature declared that "it is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records." Laws of 2014, ch. 175, § 1. The Legislature has also provided a pathway to seal juvenile court records. RCW 13.50.260.

Washington State is one of seven states in the country that "categorically make all juvenile records public though there are exceptions even within these states. Juvenile Law Center, *JUVENILE RECORDS A National Review of State Laws on Confidentiality, Sealing and Expungement*, pg. 15 (2014) available at [national-review.pdf \(jlc.org\)](http://national-review.pdf(jlc.org)). By providing online, public access to juvenile records, the harms of publicly available juvenile records are intensified and are more far-reaching. That's because:

the emergence of the internet has enabled instant access to many digital records, and services like Intelius.com or BeenVerified.com make searching names cheap, quick, and easy. Moreover, some jurisdictions have cut out the middleman and have created databases to allow online searches of court records. McMullen, Judith, *Invisible Stripes: The Problem of Youth Criminal Records*, 27 SOUTHERN CALIFORNIA REVIEW OF

LAW & SOCIAL JUSTICE 1 (2018) available at [Invisible Stripes: The Problem of Youth Criminal Records by Judith G. McMullen :: SSRN](#) (citations omitted).

As a result, “[a]ny potential school, landlord, or employer can easily access information about a subject’s contacts with the law-- indeed, any curious citizen can mine this information at will.” *Id.* In addition, the sealing of juvenile court records is undermined if not rendered useless if a youth’s name is routinely published online. “Once information becomes publicly accessible, it cannot be made confidential again.” Jacobs, James, *THE ETERNAL CRIMINAL RECORD*, at 22 (2015).

Action must be taken to help ensure that youth can truly have their case sealed and treated as though it never occurred so they can reach their full potential. To meet this goal, we made the following recommendations for proposed rule changes:

- Caption juvenile court cases with a youth’s initials at the trial court level (as is done at the appellate level—pursuant to RAP 3.4f² --and in other states in order to limit broad dissemination of a youth’s involvement in juvenile court thereby enabling reintegration and rehabilitation.

The proposed amendments to GR 31

(d) Access.

(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.

(2) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.

(3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records.

(1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court. (A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used. (B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document. (C) Driver’s License Numbers. (D) In a juvenile offender case, the parties shall

² In a juvenile offender case, the parties shall caption the case using the juvenile’s initials. The parties shall refer to the juvenile by his or her initials throughout all briefing and pleadings filed in the appellate court, and shall refer to any related individuals in such a way as to not disclose the juvenile’s identity. However, the trial court record need not be redacted to eliminate references to the juvenile’s identity.

caption the case using the juvenile's initials. The parties shall refer to the juvenile by their initials throughout all briefing and pleadings.

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

(g) Bulk Distribution of Court Records. (1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records. (2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request. (3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

The proposed amendments to CrR 2.1 (additions in bold)

(2) Contents. The indictment or the information shall contain or have attached to it the following information when filed with the court:

- (i) the name, or in the case of a juvenile respondent the initials, address, date of birth, and sex of the defendant
- (ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

Conclusion and request for expedited consideration

The proposed amendments to GR 31 and CrR 2.1 address the severe, long-lasting impact that access to juvenile court records causes to youth, who are disproportionately youth of color. In addition, the proposal is consistent with the appellate court rules and we submit these proposed rule changes for expedited consideration pursuant to GR 9(e)(2)(E).

GR 31
ACCESS TO COURT RECORDS

- (a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by Article I, Section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, Section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.
- (b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record. Administrative records are not within the scope of this rule. Court records are further governed by GR 22.
- (c) Definitions.
 - (1) "Access" means the ability to view or obtain a copy of a court record.
 - (2) "Administrative record" means any record pertaining to the management, supervision or administration of the judicial branch, including any court, board, or committee appointed by or under the direction of any court or other entity within the judicial branch, or the office of any county clerk.
 - (3) "Bulk distribution" means distribution of all, or a significant subset, of the information in court records, as is and without modification.
 - (4) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered into the record.
 - (5) "Criminal justice agencies" are government agencies that perform criminal justice functions pursuant to statute or executive order and that allocate a substantial part of their annual budget to those functions.

- (6) "Dissemination contract" means an agreement between a court record provider and any person or entity, except a Washington State court (Supreme Court, court of appeals, superior court, district court or municipal court), that is provided court records. The essential elements of a dissemination contract shall be promulgated by the JIS Committee.
- (7) "Judicial Information System (JIS) Committee" is the committee with oversight of the statewide judicial information system. The judicial information system is the automated, centralized, statewide information system that serves the state courts.
- (8) "Judge" means a judicial officer as defined in the Code of Judicial Conduct (CJC) Application of the Code of Judicial Conduct Section (A).
- (9) "Public" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.
- (10) "Public purpose agency" means governmental agencies included in the definition of "agency" in RCW 42.17.020 and other non-profit organizations whose principal function is to provide services to the public.

(d) Access.

- (1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.
- (2) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.
- (3) A fee may not be charged to view court records at the courthouse.

(e) Personal Identifiers Omitted or Redacted from Court Records.

- (1) Except as otherwise provided in GR 22, parties shall not include, and if present shall redact, the following personal identifiers from all documents filed with the court, whether filed electronically or in paper, unless necessary or otherwise ordered by the Court.

- (A) Social Security Numbers. If the Social Security Number of an individual must be included in a document, only the last four digits of that number shall be used.
- (B) Financial Account Numbers. If financial account numbers are relevant, only the last four digits shall be recited in the document.
- (C) Driver's License Numbers.
- (D) In a juvenile offender case, the parties shall caption the case using the juvenile's initials. The parties shall refer to the juvenile by their initials throughout all briefing and pleadings

(2) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Court or the Clerk will not review each pleading for compliance with this rule. If a pleading is filed without redaction, the opposing party or identified person may move the Court to order redaction. The court may award the prevailing party reasonable expenses, including attorney fees and court costs, incurred in making or opposing the motion.

COMMENT

This rule does not require any party, attorney, clerk, or judicial officer to redact information from a court record that was filed prior to the adoption of this rule.

(f) Distribution of Court Records Not Publicly Accessible

- (1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:
 - (A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.
 - (B) Determine, in its discretion, that filling the request will not violate this rule.

- (C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.
 - (D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.
- (2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.
 - (3) Criminal justice agencies may request court records not publicly accessible.
 - (A) The provider of court records shall approve the access level and permitted use for classes of criminal justice agencies including, but not limited to, law enforcement, prosecutors, and corrections. An agency that is not included in a class may request access.
 - (B) Agencies requesting access under this section of the rule shall identify the court records requested and the proposed use for the court records.
 - (C) Access by criminal justice agencies shall be governed by a dissemination contract. The contract shall: (i) specify the data to which access is granted; (ii) specify the uses which the agency will make of the data; and (iii) include the agency's agreement that its employees will access the data only for the uses specified.
- (g) Bulk Distribution of Court Records.
 - (1) A dissemination contract and disclaimer approved by the JIS Committee for JIS records or a dissemination contract and disclaimer approved by the court clerk for local records must accompany all bulk distribution of court records.

- (2) A request for bulk distribution of court records may be denied if providing the information will create an undue burden on court or court clerk operations because of the amount of equipment, materials, staff time, computer time or other resources required to satisfy the request.
- (3) The use of court records, distributed in bulk form, for the purpose of commercial solicitation of individuals named in the court records is prohibited.

- (h) Appeals. Appeals of denials of access to JIS records maintained at state level shall be governed by the rules and policies established by the JIS Committee.
- (i) Notice. The Administrator for the Courts shall develop a method to notify the public of access to court records and the restrictions on access.
- (j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.
- (k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

[Adopted effective October 26, 2004; amended effective January 3, 2006.]

CrR 2.1
THE INDICTMENT AND THE INFORMATION

(a) Use of Indictment or Information. The initial pleading by the State shall be an indictment or an information in all criminal proceedings filed by the prosecuting attorney.

(1) *Nature.* The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney. Allegations made in one count may be incorporated by reference in another count. It may be alleged that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(2) *Contents.* The indictment or the information shall contain or have attached to it the following information when filed with the court:

(i) the name, or in the case of a juvenile respondent the initials, address, date of birth, and sex of the defendant

(ii) all known personal identification numbers for the defendant, including the Washington driver's operating license (DOL) number, the state criminal identification (SID) number, the state criminal process control number (PCN), the JUVIS control number, and the Washington Department of Corrections (DOC) number.

(b) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information.

(c) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within 10 days after arraignment or at such later time as the court may permit.

(d) Amendment. The court may permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

(e) Defendant's Criminal History. Upon the filing of an indictment or information charging a felony, the prosecuting attorney shall request a copy of the defendant's criminal history, as defined in RCW 9.94A.030, from the Washington State Patrol Identification and Criminal History Section.

Comment

Supersedes RCW 10.37.020, .025, .026, .035, .180; RCW 10.40.080; RCW 10.46.170. The purpose of section (f) is to ensure that the defendant's criminal history is available when and if the court is required to determine the validity of a plea agreement.

[Adopted effective July 1, 1973; Amended effective September 1, 1986; July 1, 1984; March 18, 1994.]