BOARD FOR JUDICIAL ADMINISTRATION

WASHINGTON
COURTS

MEETING PACKET

FRIDAY, NOVEMBER 20, 2009
9:30 A.M.

AOC SEATAC OFFICE
SEATAC, WASHINGTON

Board for Judicial Administration Membership

VOTING MEMBERS:

Chief Justice Gerry Alexander, Chair
Supreme Court

Judge Michael Lambo, Member Chair
District and Municipal Court Judges' Association
Kirkland Municipal Court

Judge Marlin J. Appelwick
Court of Appeals, Division I

Judge Rebecca M. Baker
Superior Court Judges' Association
Ferry/Stevens/Pend Oreille Superior Courts

Judge Ronald Culpepper
Superior Court Judges' Association
Pierce County Superior Court

Judge Sara Derr
District and Municipal Court Judges' Association
Spokane County District Court

Judge Susan Dubuisson
District and Municipal Court Judges' Association
Thurston County District Court

Judge Tari Eitzen, President
Superior Court Judges' Association
Spokane County Superior Court

Judge Deborah Fleck
Superior Court Judges' Association
King County Superior Court

Justice Barbara Madsen
Supreme Court

Judge Jack Nevin
District and Municipal Court Judges' Association
Pierce County District Court

Judge Glenn Phillips, President
District and Municipal Court Judges' Association
Kent Municipal Court

Judge Christine J. Quinn-Brintnall
Court of Appeals, Division II

Judge John Schultheis
Court of Appeals, Division III

Judge Chris Wickham
Superior Court Judges' Association
Thurston County Superior Court

NON-VOTING MEMBERS:

Judge Stephen Brown, President-Elect
District and Municipal Court Judges' Association
Grays Harbor County District Court

Mr. Jeff Hall
State Court Administrator

Ms. Paula Littlewood, Executive Director
Washington State Bar Association

Mr. Salvador Mungia, President
Washington State Bar Association

Mr. Steven G. Toole, President-Elect
Washington State Bar Association

Judge Stephen Warning, President-Elect
Superior Court Judges' Association
Cowlitz County Superior Court

Board for Judicial Administration

November 20, 2009
9:30 a.m.
AOC SeaTac Office
Suite 1106, SeaTac Office Center

Agenda

1. Call to Order	Judge Michael Lambo	
2. Welcome and Introductions	Judge Michael Lambo	
Action Items		
3. October 16, 2009 Meeting Minutes **Action: Motion to approve the minutes of the October 16 meeting**	Judge Michael Lambo	Tab 1
4. Proposed Revision to GR 29(f)(5) **Action: Motion to recommend to the Supreme Court the proposed revision to GR 29(f)(5)**	Judge David Larson	Tab 2
5. BJA Legislative Agenda **Action: Motion to approve the proposed legislation regarding the interpreter oath** **Action: Motion to seek introduction of BJA request legislation requiring election of all judges**	Ms. Mellani McAleenan	Tab 3
6. 2010 BJA Meeting Schedule **Action: Motion to approve the proposed 2010 BJA Meeting Schedule**	Ms. Mellani McAleenan	Tab 4
Reports and Information		
7. Public Records Act	Mr. Rick Neidhardt	Tab 5
8. Washington State Center for Court Research Report	Dr. Carl McCurley	Tab 6
9. Suspension of Judge During Commission on Judicial Conduct Investigation	Judge Michael Lambo	Tab 7
10. WSBA Proposed Changes to Judicial Status	Mr. Salvador Mungia Ms. Paula Littlewood	Tab 8
11. Criminal Justice Summit	Mr. Jeff Hall	Tab 9

12. Access to Justice Board	Mr. M. Wayne Blair	
13. Washington State Bar Association	Mr. Salvador Mungia Ms. Paula Littlewood	
14. Reports from the Courts Supreme Court Court of Appeals Superior Courts Courts of Limited Jurisdiction	 Justice Barbara Madsen Judge Ann Schindler Judge Tari Eitzen Judge Glenn Phillips	
15. Association Reports County Clerks Superior Court Administrators District and Municipal Court Administrators Juvenile Court Administrators	 Ms. Barb Miner Ms. Marti Maxwell Ms. Jeri Cusimano	
16. Administrative Office of the Courts	Mr. Jeff Hall	
17. Other Business Next meeting: December 11 Beginning at 9:30 a.m. at the AOC SeaTac Office, SeaTac	Judge Michael Lambo	

TAB 1

Board for Judicial Administration
Meeting Minutes

October 16, 2009
AOC SeaTac Office
SeaTac Office

Members Present: Chief Justice Gerry Alexander, Chair; Judge Michael Lambo, Member-Chair; Judge Rebecca Baker; Judge Stephen E. Brown; Judge Sara Derr; Judge Susan Dubuisson; Judge Tari Eitzen; Judge Deborah Fleck; Ms. Paula Littlewood; Mr. Salvador Mungia; Judge Glenn Phillips; Judge Stephen Warning; and Judge Christopher Wickham

Guests Present: Mr. M. Wayne Blair, Ms. Jeri Cusimano, Ms. Ruth Gordon, Ms. Betty Gould, Ms. Marti Maxwell, Mr. Michael Merringer, Ms. Barb Miner, and Ms. Nancy Scott

Staff Present: Ms. Ashley DeMoss, Ms. Beth Flynn, Mr. Dirk Marler, Ms. Mellani McAleenan, Ms. Regina McDougall, and Mr. Chris Ruhl

Chief Justice Alexander called the meeting to order and introductions were made around the room.

Judge Fleck reported on the status of the Howard Hanson Dam and flood planning. King County is working with the federal government to try to get a disaster declared now so they can prepare for the possibility of flooding. Because of weather forecasting, it is possible there will be 6-12 days' notice in advance of flooding. Jail services will be renting space out of the valley for inmates.

Judge Phillips added that the dam level will be kept at about one-third of capacity. There is a 25-33% chance that flooding will occur. Giant sandbags are being placed around the levies in Kent and the valley courts are working with the Administrative Office of the Courts (AOC) to determine if a site can be developed on Inside Courts as a resource management tool for flooded courts.

Ms. Miner stated they still have boxes of files that need to be moved. They are doing everything they can to plan ahead and are thankful for electronic records but those just started in about 2000 so they still have boxes of case records that need to be moved. Luckily, the old bankruptcy court building is available to rent and contains courtrooms.

<u>September 18, 2009 Meeting Minutes</u>

> **It was moved by Judge Wickham and seconded by Judge Dubuisson to approve the September 18, 2009 BJA meeting minutes. The motion carried.**

BJA Legislative Agenda

Ms. McAleenan received a letter from Yakima County Superior Court requesting an additional superior court judge. That is the only item they have for BJA request legislation at this time.

It was moved by Judge Derr and seconded by Judge Baker to approve the recommended BJA request legislation. The motion carried.

Appointment to the BJA Best Practices Committee

It was moved by Judge Phillips and seconded by Judge Derr to reappoint Mr. Steven J. Kinn to the BJA Best Practices Committee. The motion carried.

Appointment to the BJA Court Security Committee

It was moved by Judge Dubuisson and seconded by Judge Baker to reappoint Mr. Craig Daly to the BJA Court Security Committee. The motion carried.

Washington State Association of County Clerks Legislative Agenda

Ms. Miner reported that the Washington State Association of County Clerks (WSACC) just has one piece of legislation being worked on this session. It is their third time running the bill (HB 1003 in 2009) and it relates to their responsibility to manage and pay for publication of notices in newspapers for dependency and termination cases. They are looking to move that responsibility, and other notice provisions in the law, to the plaintiff. For dependency and termination cases, DSHS would be responsible for the publishing work and costs. If the state pays for it, they would be reimbursed by the federal government for 38% of the cost, under Title 4E. Clerks are not eligible to receive any reimbursement. The WSACC is working with the Attorney General on this and needs to ensure DSHS is also on board.

Chief Justice Alexander asked that this bill be taken to the BJA Legislative Executive Committee for support at their next meeting.

Suspension of Judge During Commission on Judicial Conduct Investigation

Judge Lambo reported that this agenda item stems from a rule change proposal that Judge David Larson, Federal Way Municipal Court, sent to Judge Phillips and Justice Charles Johnson. Judge Larson would like to change GR 29(f)(5) which he perceives has a gap in the rule that makes it unclear as to what should occur when a workplace-related complaint is made by a court employee. The lack clarity and incomplete nature

of the rule leads to tension, confusion, and misunderstanding between the judicial branch seeking to follow GR 29, and the executive/legislative branches wanting to minimize the chance of liability related to human resources issues they do not control.

Judge Larson's proposed amendment would allow a presiding judge to work with the Commission on Judicial Conduct when a complaint is filed alleging the court is a hostile work environment.

At the request of Judge Lambo, Mr. Marler and Ms. McAleenan looked into the issue of suspending a judge pending investigation and discovered that it has been very rare but in the past the Supreme Court has suspended a judge, with pay, while being investigated. Chief Justice Alexander stated he thinks suspending a sitting judge has happened once while he was on the Supreme Court when an order to suspend a sitting judge under investigation was entered. In that situation there was agreement between the judge and the Commission on Judicial Conduct regarding the suspension. Chief Justice Alexander does not think the Supreme Court has the authority to suspend a judge pending investigation. However, he said if the Washington State Bar Association (WSBA) recommends that the Supreme Court suspend an attorney/judge, the Supreme Court can approve or deny that request.

Judge Phillips stated the District and Municipal Court Judges' Association (DMCJA) Board discussed whether there should be an avenue to seek suspension of a sitting judge under appropriate circumstances, and, if so, what mechanism would be used. There was concern, particularly in light of some recent higher profile cases, that the Legislature might take action in this area if the courts did not.

Judge Lambo suggested bringing this issue back for further discussion at a future meeting.

Interpreter Oath

There was discussion during a recent Interpreter Commission meeting regarding possible legislation or a rule change to revise the requirements of the interpreter oath. The Commission would like courts to be able to permanently swear in certified court interpreters instead of having to swear them in for each hearing.

This issue was discussed during the BJA Legislative Executive Committee conference call a few weeks ago and they decided to bring the issue to the full Board.

During discussion, it was suggested that Washington model Oregon's statute. Qualified interpreters were also discussed and a suggestion was made to not permanently swear them in but to possibly swear them in at the beginning of each day instead of for each hearing.

It was moved by Judge Baker and seconded by Judge Eitzen that the BJA support legislation to permanently swear in certified interpreters and that legislation be drafted and brought back to the November meeting for approval. The motion carried.

Court Management Council Court Transcriptionists Subcommittee

Mr. Marler shared that the Court Management Council has created a Court Transcriptionists Subcommittee under the leadership of Ms. Renee Townsley, with representatives from all court levels. The Subcommittee is addressing some issues that have been ongoing with respect to transcription and the verbatim report of proceedings (VRPs). Court of Appeals (COA) Divisions II and III have been having significant issues regarding timely and accurate VRPs and inconsistent formats.

Filing Fee Workgroup

A chart containing court fees updated for inflation was distributed in the meeting materials. Ms. McAleenan explained that several years ago the Court Funding Task Force recommended that the BJA annually review court fees and request adjustments due to inflation.

A workgroup was established during the September 2009 BJA meeting and they met by phone on Wednesday. There was no guidance from the workgroup on what should be done with the updated fee chart. At this point in time, there is no particular plan for another meeting. Ms. McAleenan is requesting guidance from the BJA on how to proceed.

Chief Justice Alexander and Judge Lambo referred this issue to the SCJA, DMCJA, JIJIC and WSACC for review. If any of the groups would like to pursue a fee increase, they can bring it back to the BJA at a future meeting.

Access to Justice Board (ATJ)

Mr. Blair stated that the Equal Justice Coalition is sponsoring a Lobbying 101 CLE which will be held at the University of Washington School of Law from 3-5 p.m. on October 20. The main focus of the CLE will be how to lobby for funding.

The ATJ Board is about to engage in a new project with the AOC and the Office of Administrative Hearings regarding how to deal with pro se litigants in court. There are no easy answers but there is an effort to try to look at this issue in detail. Former Representative Pat Lantz is one of the committee chairs.

Washington State Bar Association

Mr. Mungia reported that Bar members are stepping up to the plate and volunteering for the very successful home foreclosure legal aid project. The WSBA is also working to launch a statewide moderate means program for people who are not eligible for no-cost civil legal aid because of income levels but still cannot afford an attorney. The WSBA is hoping to partner with Seattle University Law School on the initial launch and then reach out to work with all three law schools in the state. Law students would help with client intake and WSBA will recruit and train lawyers willing to take on these cases for a reduced rate.

The WSBA is forming a task force to look at the escalating cost of litigation. They are in the process of finding a chair for the task force.

During the October WSBA Board of Governors (BOG) meeting in Pullman, they will hear from the Bylaw Review Task Force.

Ms. Littlewood announced the launch of the new MyWSBA Web site. Before going live, 54 members had already filled out their licensing paperwork online.

Reports from the Courts

Supreme Court: Chief Justice Alexander reported that the Supreme Court will be holding a session at Peninsula College in Port Angeles on October 27.

The Supreme Court will be electing a new Chief Justice during the November En Banc. Chief Justice Alexander is stepping down as Chief Justice effective January 11, 2010.

Superior Courts: Judge Eitzen was moved by President Mungia's presentation at the Fall Judicial Conference and she learned that the Superior Court Judges' Association's participation rate in the Nevins/Lawless fund is only 24%. She is researching the possibility of contributing via payroll deduction because even if a very modest sum is donated, if every judge participated it would add up and make a big difference. Judge Eitzen will work with Judge Phillips to encourage judicial participation.

Courts of Limited Jurisdiction: Judge Phillips reported that the District and Municipal Court Judges' Association's Spring Conference will be held in Spokane.

The DMCJA Board met during the Fall Judicial Conference and the DMCJA Legislative Committee recommendations were considered. The DMCJA will be bringing them before the BJA for support at a future meeting.

Association Reports

County Clerks: Ms. Miner stated that the Clerks are currently in the mode of being dramatically impacted by budget reductions. It is very challenging and some are finding themselves closing their offices on Fridays and during the lunch hour which will most likely result in diminished services to customers. Many clerks are taking steps to become more efficient by using technology to save staff time.

Superior Court Administrators: Ms. Maxwell said their association held their Fall Conference at Alderbrook two weeks ago and it was a success. Budget reductions were a hot topic during the conference. Ms. Maxwell thanked the AOC for their assistance with the conference, especially Ms. Sondra Hahn.

District and Municipal Court Administrators: Ms. Cusimano reported that their association's Fall Regional was scheduled in six locations this month but they only had 33 registered attendees and had to cancel the training. This is the first time they had to cancel training and it will be a hot topic at their board meeting.

They are looking forward to having a joint conference with the judges in May.

Juvenile Court Administrators: Mr. Merringer stated that during the last legislative session they attempted to have funds transferred from the Juvenile Rehabilitation Administration to the AOC. They are trying to develop a block grant model for this legislative session and have until December 1 to make a report to the Office of Financial Management and the Legislature.

Administrative Office of the Courts

Mr. Marler reported that AOC is dealing with budget constraints and is adapting. One example is the courthouse facilitators training program which was held at the AOC SeaTac office, resulting in no cost for the facility and minimal expenses for the educators. The program was successful.

The Presiding Judges Education Committee met to reformulate their title and mission since the Presiding Judges Conference was eliminated during budget reductions. They are trying to be very creative in how they deliver curriculum in the future and proposed a series of introductory programs to be offered during court-level conferences.

Other Business

BJA Financial Report: Ms. McAleenan gave the quarterly report on the private BJA funds. There is approximately $9,300 in the account and dues requests will go out in the next few weeks.

TAB 2

From: Sullins, Nan [mailto:Nan.Sullins@courts.wa.gov]
Sent: Monday, June 01, 2009 11:39 AM
To: David A. Larson
Cc: Vickie Churchill; Alexander, Justice Gerry; Johnson, Justice Charles W.
Subject: FW: GR 29(f)(5) and Liability Issues for Cities

Dear Judge Larson:

Justice Charles Johnson asked me to let you know that he is forwarding (via this email) your suggestions regarding GR 29(f)(5) (Presiding Judges) to Judge Vicki Churchill, Member Chair of the Board for Judicial Administration, for the BJA's consideration.

As you are aware, the Board for Judicial Administration is the policy board for the judiciary and was responsible for the drafting of the Presiding Judge rule.

Justice Johnson is asking the Board for Judicial Administration to review your suggested amendments and report back as it deems appropriate.

If you have anything that you feel you would like to add to your original submission, please provide that information directly to Judge Churchill.

Best regards,
Nan Sullins

Nanette B. Sullins
AOC Legal Services Manager
360.357.2124
360.357.2127 (fax)

From: Johnson, Justice Charles W.
Sent: Tuesday, May 26, 2009 7:54 AM
To: Sullins, Nan
Subject: FW: GR 29(f)(5) and Liability Issues for Cities

From: David A. Larson [mailto:David.Larson@cityoffederalway.com]
Sent: Sunday, May 24, 2009 8:42 AM
To: Johnson, Justice Charles W.
Cc: rcallner@cjc.state.wa.us; mpaja@co.kitsap.wa.us
Subject: GR 29(f)(5) and Liability Issues for Cities

Justice Johnson: I hope things are going well for you. It was nice seeing you the last time I was in Olympia.

I would like to start a dialogue on a change to GR 29(f)(5) to account for a gap in the rules that makes it unclear as to what should occur when a workplace related complaint is made by a court employee (see below). I make this request on my own behalf and not on behalf of the court, the

city, or the DMCJA. The lack of clarity and incomplete nature of the rule leads to tension, confusion, and misunderstanding between the judicial branch seeking to follow GR 29 and the executive/legislative branches wanting to minimize the chance of liability related to human resources issues they do not control. I am cc'ing Reiko Callner for her thoughts on the suggestions I am making. I believe that Ms. Callner will confirm that the Commission on Judicial Conduct does not manage the workplace. I am also cc'ing DMCJA President Judge Paja for her comments.

In addition to this suggested rule change, I believe there needs to be a constructive dialogue with municipalities and the courts regarding how liability for employment related complaints should be addressed. I think many of the issues can be addressed without changes to existing statutes, but the legislature may need to be involved at some point if there is a consensus that statutory law needs to be changed.

I suggest three possible models that would be intended to divorce any liabilities of the courts they sponsor from the ongoing fiscal concerns of the sponsoring municipality. These three models are as follows:

1. A common insurance pool with no self-insured retention for courts that would be separate from other insurance for non-court operations. I believe that municipalities can do this on their own without any change to existing law;
2. A state managed fund that is contributed to by municipalities on a flat-rate basis pursuant to a formula (i.e. X dollars for each judicial officer FTE and non-judicial officer FTE) with the state paying any excess costs/settlements/judgments over the value of the fund. There are ways to put a cap on the fund so that the contribution decreases if the money on hand in the fund gets to a certain level. This suggestion would require involvement of the legislature;
3. The state assumes 100% liability under GR 29 with defense provided by the AG. This suggestion would require involvement of the legislature.

Finally, I am suggesting that HR training on some level become a mandatory part of Judicial College and that Presiding Judges be required to take advanced HR training within a finite time period after assuming the PJ position. A requirement that our CJE credits include a certain number of credits in HR may also be needed. The rule can also require court administrators to take HR training.

I am not married to the language or suggested liability models, but I am committed to assist in any way I can to solve the problems that cannot be ignored or discounted. I would be glad to volunteer to be part of any committee or group appointed to address this issue. Although some may not share my belief, I believe this is an issue that requires immediate attention.

Thank you.

Judge David Larson
Federal Way Municipal Court
(253) 835-3012

Suggested Change to GR 29(f)(5)

(5) Supervise the daily operation of the court including:

....

NEW SECTION: (d) The Presiding Judge shall assure at all times that workplace related complaints made by court employees are handled in a fair, just, and expeditious manner. The Presiding Judge has discretion to delegate the investigation and disposition of such complaints to the Court Administrator. The Presiding Judge shall assure that the attorney for the municipality acting as counsel for the court is involved at all times in the investigation and disposition of such complaints. The Presiding Judge should also keep the executive and legislative branches informed in executive session as to the progress of the investigation and disposition of such complaints. The Presiding Judge shall report any complaints against judicial officers to the Commission on Judicial Conduct. For the sole purpose of assisting in the finding of fact, assessment of liability, and/or suggesting an appropriate remedy for the workplace complaint, the Presiding Judge may request that an outside investigation of such complaints be made by a judicial officer from a different jurisdiction. The attorney for the municipality acting on behalf of the court may request such an investigation when the allegations are made against the Presiding Judge. Any such request shall specify in writing the nature of the complaint, the type of assistance requested, and the names of the parties involved. The request shall be sent to the Chief Justice who may accept or deny the request. A copy of the request shall also be sent to the Commission on Judicial Conduct. If such a request is granted, then the Chief Justice shall appoint a judicial officer to conduct the investigation. The judicial officer appointed shall be from a different level of court than the involved court. For the purpose of this rule, all courts of limited jurisdiction are to be treated as being a part of the same level of court. The appointed judicial officer shall conduct the investigation in a fair, just, and expeditious manner and transmit the findings and conclusions of such investigation to the Presiding Judge, the attorney for the municipality, and to the Commission on Judicial Conduct. Such reports shall be considered work product of the court and shall not be admissible in any litigation arising out of the complaint leading to the investigation. Nothing herein is intended to change in any way the duties of the Commission on Judicial Conduct to investigate such a complaint if it falls within its jurisdiction.

Proposed Changes to GR 29(f)(5) Comments

The trial courts must maintain control of the working conditions for their employees. For some courts, this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations. However, it is crucial that the three branches of government cooperate in the investigation and disposition of workplace related complaints in a manner that is intended to solve problems and reduce potential liability for the municipality and the court.

General Rule 29
PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND
LIMITED JURISDICTION COURT DISTRICT

(a) Election, Term, Vacancies, Removal and Selection Criteria - Multiple Judge Courts.

(1) Election. Each superior court district and each limited jurisdiction court district (including municipalities operating municipal courts) having more than one judge shall establish a procedure, by local court rule, for election, by the judges of the district, of a Presiding Judge, who shall supervise the judicial business of the district. In the same manner, the judges shall elect an Assistant Presiding Judge of the district who shall serve as Acting Presiding Judge during the absence or upon the request of the Presiding Judge and who shall perform such further duties as the Presiding Judge, the Executive Committee, if any, or the majority of the judges shall direct. If the judges of a district fail or refuse to elect a Presiding Judge, the Supreme Court shall appoint the Presiding Judge and Assistant Presiding Judge.

(2) Term. The Presiding Judge shall be elected for a term of not less than two years, subject to reelection. The term of the Presiding Judge shall commence on January 1 of the year in which the Presiding Judge's term begins.

(3) Vacancies. Interim vacancies of the office of Presiding Judge or Acting Presiding Judge shall be filled as provided in the local court rule in (a)(1).

(4) Removal. The Presiding Judge may be removed by a majority vote of the judges of the district unless otherwise provided by local court rule.

(5) Selection Criteria. Selection of a Presiding Judge should be based on the judge's 1) management and administrative ability, 2) interest in serving in the position, 3) experience and familiarity with a variety of trial court assignments, and 4) ability to motivate and educate other judicial officers and court personnel. A Presiding Judge must have at least four years of experience as a judge, unless this requirement is waived by a majority vote of the judges of the court.

Commentary

It is the view of the committee that the selection and duties of a presiding judge should be enumerated in a court rule rather than in a statute. It is also our view that one rule should apply to all levels of court and include single judge courts. Therefore, the rule should be a GR (General Rule). The proposed rule addresses the process of selection/removal of a presiding judge and an executive committee. It was the intent of the committee to provide some flexibility to local courts wherein they could establish, by local rule, a removal process. Additionally, by delineating the selection criteria for the presiding judge, the committee intends that a rotational system of selecting a presiding judge is not advisable.

(b) Selection and Term - Single Judge Courts. In court districts or municipalities having only one judge, that judge shall serve as the Presiding Judge for the judge's term of office.

(c) Notification of Chief Justice. The Presiding Judge so elected shall send notice of the election of the Presiding Judge and Assistant Presiding Judge to the Chief Justice of the Supreme Court within 30 days of election.

(d) Caseload Adjustment. To the extent possible, the judicial caseload should be adjusted to provide the Presiding Judge with sufficient time and resources to devote to the management and administrative duties of the office.

Commentary

Whether caseload adjustments need to be made depends on the size and workload of the court. A recognition of the additional duties of the Presiding Judge by some workload adjustment should be made by larger courts. For example, the Presiding Judge could be assigned a smaller share of civil cases or a block of time every week could be set aside with no cases scheduled so the Presiding Judge could attend to administrative matters.

(e) General Responsibilities. The Presiding Judge is responsible for leading the management and administration of the court's business, recommending

policies and procedures that improve the court's effectiveness, and allocating resources in a way that maximizes the court's ability to resolve disputes fairly and expeditiously.

(f) Duties and Authority. The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

(1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers;

(2) Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges;

(3) Coordinate judicial officers' vacations, attendance at education programs, and similar matters;

(4) Develop and coordinate statistical and management information;

(5) Supervise the daily operation of the court including:

(a) All personnel assigned to perform court functions; and

(b) All personnel employed under the judicial branch of government, including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and

(c) The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

Commentary

The trial courts must maintain control of the working conditions for their employees. For some courts this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations.

With respect to the function of the court clerk, generally the courts of limited jurisdiction have direct responsibility for the administration of their clerk's office as well as the supervision of the court clerks who work in the courtroom. In the superior courts, the clerk's office may be under the direction of a separate elected official or someone appointed by the local judges or local legislative or executive authority. In those cases where the superior court is not responsible for the management of the clerk's office, the presiding judge should communicate to the county clerk any concerns regarding the performance of statutory court duties by county clerk personnel.

A model job description, including qualification and experience criteria, for the court administrator position shall be established by the Board for Judicial Administration. A model job description that generally describes the knowledge, skills, and abilities of a court administrator would provide guidance to Presiding Judges in modifying current job duties/responsibilities or for courts initially hiring a court administrator or replacing a court administrator.

(6) Supervise the court's accounts and auditing the procurement and disbursement of appropriations and preparation of the judicial district's annual budget request;

(7) Appoint standing and special committees of judicial officers necessary for the proper performance of the duties of the judicial district;

(8) Promulgate local rules as a majority of the judges may approve or as the Supreme Court shall direct;

(9) Supervise the preparation and filing of reports required by statute and court rule;

(10) Act as the official spokesperson for the court in all matters with the executive or legislative branches of state and local government and the community unless the Presiding Judge shall designate another judge to serve in this capacity;

Commentary

This provision recognizes the Presiding Judge as the official spokesperson for the court. It is not the intent of this provision to preclude other judges from speaking to community groups or executive or legislative branches of state or local government.

(11) Preside at meetings of the judicial officers of the district;

(12) Determine the qualifications of and establish a training program for pro tem judges and pro tem court commissioners; and

(13) Perform other duties as may be assigned by statute or court rule.

Commentary

The proposed rule also addresses the duties and general responsibilities of the presiding judge. The language in subsection (d), (e), (f) and (g) was intended to be broad in order that the presiding judge may carry out his/her responsibilities. There has been some comment that individual courts should have the ability to change the "duties and general responsibilities" subsections by local rule. While our committee has not had an opportunity to discuss this fully, this approach has a number of difficulties:

. It would create many "Presiding Judge Rules" all of which are different.
. It could subject some municipal and district court judges to pressure from their executive and/or legislative authority to relinquish authority over areas such as budget and personnel.

. It would impede the ability of the BJA through AOC to offer consistent training to incoming presiding judges.

The Unified Family Court subgroup of the Domestic Relations Committee suggested the presiding judge is given specific authority to appoint judges to the family court for long periods of time. Again the committee has not addressed the proposal; however, subsections (e) and (f) do give the presiding judge broad powers to manage the judicial resources of the court, including the assignment of judges to various departments.

(g) Executive Committee. The judges of a court may elect an executive committee consisting of other judicial officers in the court to advise the Presiding Judge. By local rule, the judges may provide that any or all of the responsibilities of the Presiding Judge be shared with the Executive Committee and may establish additional functions and responsibilities of the Executive Committee.

Commentary

Subsection (g) provides an option for an executive committee if the presiding judge and/or other members of the bench want an executive committee.

(h) Oversight of judicial officers. It shall be the duty of the Presiding Judge to supervise judicial officers to the extent necessary to ensure the timely and efficient processing of cases. The Presiding Judge shall have the authority to address a judicial officer's failure to perform judicial duties and to propose remedial action. If remedial action is not successful, the Presiding Judge shall notify the Commission on Judicial Conduct of a judge's substantial failure to perform judicial duties, which includes habitual neglect of duty or persistent refusal to carry out assignments or directives made by the Presiding Judge, as authorized by this rule.

(i) Multiple Court Districts. In counties that have multiple court districts, the judges may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

(j) Multiple Court Level Agreement. The judges of the superior, district, and municipal courts or any combination thereof in a superior court judicial district may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

(k) Employment Contracts. A part-time judicial officer may contract with a municipal or county authority for salary and benefits. The employment contract shall not contain provisions which conflict with this rule, the Code of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities.

The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and Washington State Court rules.

[Adopted effective April 30, 2002; amended effective May 5, 2009.]

Flynn, Beth

From: David A. Larson [David.Larson@cityoffederalway.com]
Sent: Thursday, November 12, 2009 11:09 PM
To: Flynn, Beth
Subject: RE: BJA Meeting Materials - GR 29
Attachments: Court Liability.doc

Beth: I would supplement with the attached and the explanation below. The DMCJA Board has indicated that this issue should be addressed by the Association of Washington Cities. I do not know if I am to individually bring this issue to AWC's attention or not, but I would be glad to if there was support from the judicial community. The proposed legislation ties into my email to Justice Johnson on the issue of how to reduce tensions between courts trying to follow GR 29 and municipalities trying to manipulate and control court employment issues to protect themselves from liability. This is the explanation I gave to the DMCJA legislative committee:

Liability Insurance Pools for Court Operations

I have done some research in light of recent issues surrounding our court and found that carriers cannot/will not write policies to cover court employment liability out of fear that the policies will be construed by courts in litigation to extend to non-court liability. There is also concern that some policies will not allow for the existing deductible to be insured against. Finally, RCW 48.62 is the "exclusive source of local government entity authority to individually or jointly self-insure risks, jointly purchase insurance or reinsurance, and to contract for risk management, claims, and administrative services" which I construe to mean that unless it is provided for in the statute that the carving out of liability for courts is not possible. As a result, I have drafted legislation that would allow cities to carve out insurance for court-related employment liability. The idea is to provide a predictable allocation each year for city budgets that can set aside to guard against liability that may not be within the exclusive control of city management. I hope the "intent" language further explains the need for such coverage. This is part or my quest to alleviate the tension between cities and their courts when it comes to personnel management issues under GR 29.

Thanks

Judge David Larson
Federal Way Municipal Court

From: Flynn, Beth [Beth.Flynn@courts.wa.gov]
Sent: Thursday, November 12, 2009 2:44 PM
To: David A. Larson
Subject: BJA Meeting Materials - GR 29

Hi Judge Larson --

Attached are the GR 29 documents I have to include in the BJA meeting packet. Please let me know if you want to add/delete anything.

Thanks!

Beth Flynn, Executive Assistant
Administrative Office of the Courts
PO Box 41174
Olympia, WA 98504-1174
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(360) 357-2127 (fax)
beth.flynn@courts.wa.gov

INTENT: Municipal courts operate as a separate branch of city government. Judges are not permitted to delegate supervision of the workplace to the executive or legislative branches of city government pursuant to General Rule 29. Yet, cities are vicariously liable for the conduct of court personnel for employment related liability. Cities need a viable mechanism to guard against unpredictable employment liability. Therefore, it is necessary for cities to be able to pool resources and insure against employment related liability arising out of municipal court operations.

NEW SECTION RCW 48.62.___ Self-Insurance Pools for Court Operations

The governing body of a city may individually self-insure, may join or form a self-insurance program together with other entities, and may jointly purchase insurance or reinsurance with other entities for employment liability risks arising out of the operation of a municipal court. In addition, the entity or entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter. Provided, that such policies of insurance or self-insurance programs may be structured to cover deductibles or other self-insured retentions under existing policies or agreements. Provided further, that any such policy of insurance or self-insurance program shall not be construed to extend liability to any city for employment related liability not claimed by or caused by municipal court personnel or officials.

TAB 3

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0941.1/10

ATTY/TYPIST: AI:ean

BRIEF DESCRIPTION: Modifying oath requirements for interpreters.

AN ACT Relating to oath requirements for interpreters; and amending RCW 2.43.050.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 2.43.050 and 1989 c 358 s 5 are each amended to read as follows:

(1) Before beginning to interpret, every interpreter appointed under this chapter shall take an oath affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

(2) The appointing authority shall require any person serving as an interpreter for the court or agency to state the person's name on the record and whether the person is an interpreter certified by the administrative office of the courts or a qualified interpreter registered by the administrative office of the courts in a noncertified language. If the person is an interpreter certified by the administrative office of the courts or a qualified interpreter

1 registered by the administrative office of the courts in a noncertified
2 language, the interpreter need not take the oath required in subsection
3 (1) of this section or submit the interpreter's qualifications on the
4 record. If the person is not an interpreter certified by the
5 administrative office of the courts or a qualified interpreter
6 registered by the administrative office of the courts in a noncertified
7 language, the interpreter must take the oath required under subsection
8 (1) of this section and submit the interpreter's qualifications on the
9 record.

--- END ---

ENGROSSED SENATE BILL 6342

State of Washington 59th Legislature 2006 Regular Session

By Senators Kline, Esser and Pflug; by request of Board For Judicial Administration

Read first time 01/11/2006. Referred to Committee on Judiciary.

AN ACT Relating to municipal court judges and commissioners; amending RCW 3.50.040, 3.50.050, 3.50.057, and 3.50.075; and repealing RCW 3.50.055 and 3.50.070.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 3.50.040 and 2002 c 136 s 2 are each amended to read as follows:

Within thirty days after the effective date of the ordinance creating the municipal court, the mayor of each city or town shall appoint a municipal judge or judges of the municipal court ((~~for a term of four years. The terms of judges serving on July 1, 1984, and municipal judges who are appointed to terms commencing before January 1, 1986, shall expire January 1, 1986. The terms of their successors shall commence on January 1, 1986, and on January 1 of each fourth year thereafter, pursuant to appointment or election as provided in this chapter. Appointments shall be made on or before December 1 of the year next preceding the year in which the terms commence~~)) <u>to serve until January 1st of the year following the next election when other city elected positions are normally elected</u>.

The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge initially appointed under this section.

A person appointed under this section as a full-time or part-time municipal judge shall be a citizen of the United States of America and a resident of the state of Washington; and an attorney admitted to practice law before the courts of record of the state of Washington((~~: PROVIDED, That in a municipality having a population less than five thousand persons, a person who has taken and passed by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court may be the judge. Any city or town shall have authority to appoint a district judge as its municipal judge when the municipal judge is not required to serve full time. In the event of the appointment of a district judge, the city or town shall pay a pro rata share of the salary~~)).

Sec. 2. RCW 3.50.050 and 1984 c 258 s 107 are each amended to read as follows:

(1) The legislative authority of the city or town ((~~may~~)) shall, by ordinance, provide ((~~that the position of municipal judge within the city or town shall be an elective position. The ordinance shall provide for the qualifications of the municipal judge which shall be the same as the qualifications necessary for the appointment thereof, and further, shall provide that the municipal judge shall be elected in the same manner as other elective city officials are elected to office, and that the term of the municipal judge shall be for a term of four years commencing on January 1, 1986, and every four years thereafter~~)) for the number of full and part-time judges to be elected.

(2) Municipal court judge elections shall be held at the same time as elections for other elected city offices.

(3) In cities or towns with more than one full or part-time judge position, the county auditor or election official of the county, in which the majority of city or town residents reside, shall, at least ten days before the time of filing declarations of candidacy for the election of municipal court judges, designate each such office of a municipal court judge to be filled by a number, commencing with the number one and numbering the remaining offices consecutively. At the

time of filing of the declaration of candidacy, each candidate shall designate by number which one, and only one, of the numbered offices for which he or she is a candidate. The name of the candidate shall appear on the ballot for only the numbered office for which the candidate filed a declaration of candidacy.

(4) Where a void in election or lapse of election occurs in a city or town with a population of less than ten thousand, the filings for office shall not be reopened and the mayor shall appoint a qualified person to serve the entire term of office for the position for which the void in election or lapse of election occurred. The legislative authority of a city or town that has the general power of confirmation over mayoral appointments shall have the power to confirm the appointment of a municipal judge appointed under this section.

(5) To be eligible to file a declaration of candidacy for and to serve as a municipal court judge, a person must be a citizen of the United States of America and a resident of the state of Washington, and must be either:

(a) A lawyer admitted to practice law in the state of Washington; or

(b) In those cities or towns having a population of less than five thousand persons, a person who has taken and passed, by January 1, 2003, the qualifying examination for a lay candidate for judicial officer as provided by rule of the supreme court.

(6) The terms of municipal court judges serving on July 1, 2006, and municipal judges who are appointed to terms commencing before January 1, 2010, shall expire January 1, 2010. The terms of their successors shall commence on January 1, 2010, and on January 1st of each fourth year thereafter, pursuant to appointment or election under this chapter.

Sec. 3. RCW 3.50.057 and 1993 c 317 s 6 are each amended to read as follows:

A judge of a municipal court need not be a resident of the city in which the court is created, but must be a resident of the county in which the city is located. In cities or towns where a court commissioner has not been appointed and the municipal court is presided over by a part-time judge, the judge need not be a resident of the city or county in which the municipal court is created.

Sec. 4. RCW 3.50.075 and 1994 c 10 s 1 are each amended to read as follows:

One or more court commissioners may be appointed by a judge of the municipal court. Each commissioner holds office at the pleasure of the appointing judge. A commissioner authorized to hear or dispose of cases must be a lawyer who is admitted to practice law in the state of Washington or a nonlawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.

A commissioner need not be a resident of the city or of the county in which the municipal court is created. ((~~When a court commissioner has not been appointed and the municipal court is presided over by a part time appointed judge, the judge need not be a resident of the city or of the county in which the municipal court is created.~~))

NEW SECTION. **Sec. 5.** The following acts or parts of acts are each repealed:

(1) RCW 3.50.055 (Judicial positions--Filling--Circumstances permitted) and 1993 c 317 s 4; and

(2) RCW 3.50.070 (Additional judges--Appointment, election) and 1984 c 258 s 109 & 1961 c 299 s 56.

--- END ---

HOUSE BILL REPORT
ESB 6342

As Reported by House Committee On:
Judiciary

Title: An act relating to municipal court judges and commissioners.

Brief Description: Changing the election and appointment provisions for municipal court judges.

Sponsors: Senators Kline, Esser and Pflug; by request of Board For Judicial Administration.

Brief History:
Committee Activity:
Judiciary: 2/20/06, 2/22/06 [DP].

Brief Summary of Engrossed Bill

- Requires election of all municipal court judges.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 6 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Rodne, Assistant Ranking Minority Member; Kirby and Serben.

Minority Report: Do not pass. Signed by 3 members: Representatives Priest, Ranking Minority Member; Springer and Wood.

Staff: Edie Adams (786-7180).

Background:

Municipal courts are courts of limited jurisdiction that hear cases involving infractions or crimes that are violations of city ordinances. Cities have several options in how to provide municipal court services. The city can contract with the district court to provide court services; establish a municipal department of the district court; or establish an independent municipal court. In addition, some cities contract with other cities for court services.

A judge of the municipal court serves a four-year term and must be an attorney admitted to practice law in Washington, except that in a municipality with less than 5,000 population, the judge may be a non-attorney who has passed the qualifying examination for a lay judicial officer by January 1, 2003. A municipal court judge must be a resident of the county in which the court resides, but does not need to be a resident of the city in which the court is created.

However, in a municipal court with a part-time judge where a commissioner has not been appointed, the part-time judge does not have to be a resident of the county where the court is located.

A full-time municipal court judge position (35 hours per week) must be filled by election. Additional positions that are by themselves or in combination equal to more than one-half of a full-time judge position also must be filled by election. Part-time judge positions may be filled by appointment or election at the option of the city. The city may appoint a district judge as its municipal judge if the municipal judge position is part-time.

A judge of the municipal court may appoint a commissioner, who holds office at the pleasure of the appointing judge and has the same power, authority, and jurisdiction as the appointing judge. The commissioner must be a lawyer admitted to practice in Washington or a non-lawyer who has passed the qualifying examination for lay judges.

Summary of Bill:

The statute governing independent municipal courts is amended to require election of all municipal court judges.

The mayor of a municipality must initially appoint a judge or judges for a newly created municipal court. The appointed judge serves until January 1 of the year following the next election when other city elected positions are normally elected.

The legislative authority of the municipality must provide by ordinance for the number of full- and part-time judges to be elected. Municipal court judge elections must be held at the same time as elections for other elected city offices.

Procedures are established for conducting municipal court judge elections. Where there is more than one judge position for a municipal court, the election official for the county in which the majority of city or town residents reside must designate each judge position by number. A candidate may run for only one of the numbered positions and must designate that numbered position when filing a declaration of candidacy.

Where a void in election or lapse of election occurs in a city or town with a population of less than 10,000, the filings for office may not be reopened and the mayor must appoint a qualified person to serve the entire term for the position. The legislative authority of the city or town may confirm this appointment if it has the general power of confirmation over mayoral appointments.

A municipal court judge may appoint a non-lawyer as a commissioner only if the person passed the qualifying examination for lay judges by January 1, 2003.

The terms of municipal court judges serving on July 1, 2006, and municipal judges appointed to terms commencing before January 1, 2010, expire on January 1, 2010. The terms of their successors commence on that date.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is not about how judges are selected; rather it is about how they are retained. We need to make sure we have a system that will ensure judicial independence, and election of judges is the way to do this. Election of judges ensures that the citizens of all cities, whether large or small, are equally protected and will have their disputes resolved by an independent judge at the choosing of the people. Appointment of judges does not necessarily result in better quality judges. The cities' contention that election of judges will create a significant burden is without merit. The cost of adding a single position to an election ballot would be minimal and only incurred once every four years.

Some jurisdictions have voluntarily decided to elect their judges because they want the judges to be independent and accountable to the people. The fact that a judge is appointed creates a perception problem. The city council and the mayor think of an appointed judge as working for the mayor rather than being an independent branch of government. Conflicts about court staff illustrate this. The staff of the courts are the responsibility of the judges, but where judges are appointed, the city views the court staff as city staff. Attorneys also can perceive appointed judges differently. For example, there is the perception that the prosecutor and the judge are on the same side since they are both city employees. These perceptions are troubling. Election of independent judges is very important for the confidence of the public in our judicial system.

Testimony Against: Appointment is a better way to select judges than election, especially in smaller cities where there may not be many candidates. Where judges are appointed, the mayor can take a look at the qualifications, education, and experience of the individual to ensure that a well-qualified person is selected. Judges are in a different capacity than policymakers, who can run on the positions they take on issues. Judges don't have that ability. Cities want to have independent judges, but they don't agree that election is the way to get there.

There are other methods of dealing with the independence issue. A Court Independence Response Team (CIRT) was established to address issues regarding perceived violations of the separation of powers. The CIRT developed policies that have helped to assure judges' independence. For example, they developed a professional services agreement that specifies a four-year appointment term to ensure judicial independence and that provides that termination is allowed only pursuant to applicable state law. There is also a Court Action Team that exists to address differences of opinion or perceived violations of separation of powers issues. Finally, newly-elected officials are now receiving training relating to separation of powers issues.

Persons Testifying: (In support) Marilyn Paja, District and Municipal Court Judges Association and Board for Judicial Administration; Deanna Dawson, Edmonds City Council; and Jeff Hall, Board for Judicial Administration.

(Opposed) Tammy Fellin, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.

TAB 4

Board for Judicial Administration
2010 Meeting Schedule

Date	Location
January 15	Olympia (9:30 a.m.)
February 19	Olympia (9:30 a.m.)
March 19	SeaTac (9:30 a.m.)
April 16	SeaTac (9:30 a.m.)
May 21	SeaTac (9:30 a.m.)
June 18	SeaTac (9:30 a.m.)
July 16	SeaTac (9:30 a.m.)
August 20	SeaTac (9:30 a.m.)
September 17	SeaTac (9:30 a.m.)
October 15	SeaTac (9:30 a.m.)
November 19	SeaTac (9:30 a.m.)
December 10	SeaTac (Joint meeting with Court Management Council) (9:30 a.m.)

SeaTac Location: AOC SeaTac Facility
Kilroy Airport Center SeaTac-South Tower
18000 International Blvd., Suite 1106
SeaTac WA 98188-4251

Olympia Location: Chief Justice's Reception Room
Temple of Justice
415 12th Ave SW
Olympia, WA 98501

TAB 5

BRIEFING TO THE BOARD FOR JUDICIAL ADMINISTRATION

PUBLIC ACCESS TO JUDICIAL RECORDS:
LIKELY LEGISLATIVE RESPONSE TO KOENIG DECISION

DECISION IN FEDERAL WAY V. KOENIG (Washington State Supreme Court opinion, October 15, 2009):

- **Holding: The Public Records Act (PRA) does not apply to any judicial records.** The court held, as a matter of statutory interpretation, that the judiciary is not a "state agency" for purposes of this act, so the act does not apply to the judiciary's records.
- The Court declined to narrowly construe Nast v. Michels, 107 Wn.2d 300 (1986), which had held that the PRA does not apply to case files.
- The Koenig court limited its holding to that of statutory interpretation. The majority opinion expressly stated that it was making no comment on separation of powers issues. See footnote 3. Thus, the Legislature can act to overturn Koenig, as long as it does not violate the separation of powers doctrine.
- The Koenig court discussed the common law right of access, but only in the context of Nast's earlier analysis. The court did not explicitly indicate that the judiciary's administrative records can be accessible under the common law standards. Nast stated this directly with regard to case files, but Koenig did not make the same explicit point with regard to other judicial documents.

LEGISLATION TO OVERTURN KOENIG IS LIKELY TO BE INTRODUCED. Open government advocates have already spoken to the Legislature about including the courts under the PRA. It is safe to assume that legislation will be introduced in the upcoming legislative session. It is also clear, however, that both the Legislature and the open government advocates are willing and interested in working with the judiciary in crafting appropriate legislation.

WHAT DOES THE PUBLIC RECORDS ACT DO?

- Under the PRA, governmental documents are accessible to the public unless there is a statute that exempts the document from disclosure. The statute can be within the PRA or elsewhere in the code. The PRA has over 80 exemptions (and hundreds of other statutes provide for confidentiality of particular records). Exemptions are continually being added to the PRA as new needs are identified. The exemptions are drafted with the focus of addressing confidentiality concerns arising from executive branch documents, not judicial branch documents. For more details about the PRA's exemptions, see the separate table that accompanies this document.
- The PRA also has numerous procedural and remedial requirements. Agencies must: meet deadlines for responding to document requests; maintain indices of their documents; cite the relevant statutory authority for each separate redaction of protected information from a document; publish substantive policies and general operating procedures; publish a list of all non-PRA laws that exempt its documents from disclosure; include a document log when responding to a document request; and meet numerous smaller procedural requirements. Agencies are also subject to significant civil liability for noncompliance.

HOW DOES THE JUDICIARY HANDLE PUBLIC RECORDS REQUESTS NOW? Currently, requests for judicial records are governed by multiple authorities: (1) court rules, (2) PRA, which are treated as non-binding

guidelines, (3) other statutes, and (4) the common law. A separate table provides more details about these authorities. The common law, however, needs a little more explanation.

PUBLIC ACCESS UNDER THE COMMON LAW.

- Under the common law, there is a presumption that judicial documents are available to the public. The presumption can be overcome by a showing that an interest in confidentiality for a particular document or set of documents outweighs the public 's interest in access. Thus, the common law calls for a balancing test between the interests that one party asserts for releasing the document and the interests that the other party asserts in keeping the document confidential. Unlike the PRA, the common law analysis does not involve deciding whether a document fits a finite set of exemptions.
- Koenig did not directly address the common law issue as applied to administrative records, restricting its holding to the applicability of the PRA. Though raised in an amicus brief, the parties did not directly address the common law analysis as an alternative theory of access.
- Case law pre-dating Koenig is clear that the common law balancing test applies to judicial case records generally, and that case law also indicates that the common law test is not limited to individual case records:
    - Cowles Publishing v. Murphy, 96 Wn.2d 584 (1981): The opinion has very broad language about the common law right of access with regard to judicial records, not limited to particular subsets of judicial records (such as case files). The actual holding was that the common law's general balancing test for public access applies to search warrants and supporting affidavits. The judge must weigh the competing interests between public access and confidentiality when determining whether a substantial threat exists to the interests of effective law enforcement or individual privacy and safety. The opinion also has dicta about a judge's notes from conference not necessarily being publicly accessible.
    - Beuhler v. Small, 115 Wn.App. 914 (2003). Holding: The common law analysis applies to a request for a judge's own notes about his prior sentencing decisions, but the balancing test comes out in favor of keeping these notes confidential, due to the interest in protecting a judge's subjective decision-making process and the judiciary's inherent right to control its own proceedings.
- The common law's balancing test likely applies to *all* judicial records, although it may well be that the balancing test is somewhat different for case files than for administrative records, depending on the nature of the administrative record at issue.

WHAT DIFFERENCE DOES IT MAKE WHETHER THE PUBLIC RECORDS ACT APPLIES TO JUDICIAL DOCUMENTS?

- Analysis of access issues under the common law is different than under the PRA. The PRA creates a finite number of exemptions to the requirement of public access; if a document does not fit within one of the exemptions, then it needs to be disclosed. By comparison, the common law analysis is much more fluid. The judge evaluates the particular documents being requested, each side presents their reasons for why the document should be public or confidential, and the judge decides which interest is the more compelling. The judge's evaluation is not confined to a predetermined list of exemptions – consideration can be given to any relevant policy concerns. This difference in analysis is somewhat mitigated by the fact that the judiciary for years has used the PRA as a non-binding set of guidelines.

- Expanding the PRA to include judicial documents, without otherwise amending the PRA, could call into question the several court rules on document accessibility. The PRA indicates that exemptions from disclosure can be found within the PRA or within *other statutes,* see RCW 42.56.070(1), but there is no similar language indicating that *court rules* can be the source of exemptions. Up until now, this lack of language about court rules has not been problematic, because court records generally have not been considered to be covered by the PRA, so courts were free to consider statutes (as guidelines) *and* court rules. This would change if the PRA were expanded. The court rules at issue are identified in the table that accompanies this document.
- The exemptions for the PRA were drafted with the executive branch agencies and their documents in mind. It is not entirely clear how the finite set of PRA exemptions (and other statutes) would apply to some of the different circumstances involving the judiciary. If the PRA applies to judicial records, it would be important to carefully consider what new exemptions would be appropriate for addressing judicial documents. These issues are explored in more detail below.
- The PRA would create new procedural requirements for the judiciary, including: firm deadlines for responding to requests; a requirement to create public indices of available documents; a requirement to publish agency procedures and substantive rules and policies (state agencies must do so in the WAC); more restrictive obligations for justifying each separate redaction of confidential information; and the other procedural requirements described above under "What Does the Public Records Act Do?".
- The PRA would expose the judiciary to potential financial liability. Violators must pay reasonable attorney fees, other costs, and a penalty of between $5 and $100 per day of denied access.
- Education of courts and their staff would be needed. Many questions would arise as to how the pre-existing set of exemptions (written with executive branch documents in mind) would apply to judicial documents. The potential that fines can be imposed for violations makes this even more important.

IF THE JUDICIARY IS GOING TO BE SUBJECT TO THE PRA, SHOULD NEW EXEMPTIONS BE CREATED THAT TAKE INTO ACCOUNT UNIQUE ISSUES RELATED TO JUDICIAL DOCUMENTS?

AOC has initially identified the following three exemptions for further consideration:

- **Case files**: Since 1986, case files have not been subject to the PRA (Nast), and this has worked well. Also, case files involve information at the core of judicial functioning, and it would make sense to retain judicial control over these.
- **Other documents relating to judicial decision-making in cases:** Any documents that relate to how cases are resolved should not be subject to the PRA. These documents relate directly to the fundamental functioning of the courts. Examples: notes by judges about cases that they are hearing; notes from when groups of appellate judges conference on individual cases; written communications within the judiciary about the resolution of individual cases.
- **Court rules:** The PRA currently has language indicating that exemptions for public disclosure can be found within the PRA or in other *statutes.* If this language is not expanded to include court rules, then an issue would arise as to whether the court rules have any effect.

Beyond these three areas, there are many other subject matter areas that merit further consideration under the PRA. It is not always clear how the PRA would apply to some important judicial issues, such as those listed at the end of this paragraph, and it would be important to take the time to figure out if any of these issues should be added as new PRA exemptions. Some of these potential concerns may in fact be satisfactorily resolved under the PRA, but a full exploration of these and other issues would be warranted. Examples include:

- Office of Public Guardianship (RCW 42.56.230 exempts from disclosure the personal information in the files of any welfare recipient or client of a public institution. OPG provides services to a low—income population; the personal information in the case files of these individuals should also be exempt.)
    - Applications of persons applying to become public guardians;
    - Investigations (of both applicants and contracted guardians);
    - Unfounded grievances filed against public guardians.
- Professional guardianship program:
    - Application-criminal history records, possibly other confidential information;
    - Investigations;
    - Unfounded grievances.
- Washington State Bar Association-attorney and LPO records
    - Applications-often have criminal record information and potential other confidential information;
    - Grievance investigations prior to the official public review typically are not open to the public;
    - Address and other contact information-not business information gathered by the WSBA.
- Judicial Conduct Commission
    - Investigation information-no formal action taken;
    - Unfounded grievances.
- Judicial branch administrative committees
    - BJA and subcommittees;
    - JISC and subcommittees;
    - Supreme Court committees (Rules, Budget, Ethics, etc.) and en banc meetings;
    - Court of Appeals committees;
    - SCJA and DMCJA boards and committees;
    - Administrative meetings held within each trial court, and their committees.
- Communications between judges as to cases, practices and procedures, interpretation of laws, discussion of pending legislation, etc., whether via e-mail, listserv, or other written form.

ILLUSTRATIVE PROVISIONS OF THE PUBLIC RECORDS ACT AND THE CURRENT LAW ON ACCESS TO JUDICIAL DOCUMENTS

(the table does not address procedural or remedial provisions)

Public Records Act	Current Framework for Analyzing Public Access to Judicial Documents
Documents are accessible to the public unless a statutory exemption applies. The burden of proof is on the party/entity that opposes disclosure.	Documents are presumed public unless otherwise indicated by the common law balancing test, a court rule, or a non-PRA statute. The PRA is treated as instructive but non-binding.
Examples of categories of records that have exemptions: • Preliminary drafts, notes, recommendations, intra-agency memos expressing opinions/policies (RCW 42.56.280) (exempt until policies are adopted/implemented). • Personal information about public employees (RCW 42.56.250). • Personal information about "clients of the state" (RCW 42.56.050). • Private personal information in other areas (multiple provisions, including RCW 42.56.050, .210, and .230). • Certain records involving investigative, law enforcement, and crime victims (RCW 42.56.240). • Certain financial, commercial, and proprietary information (RCW 42.56.270). • Records of a governmental agency that is a party to a controversy to extent not discoverable (RCW 42.56.290). • Library records that disclose identity of users (RCW 42.56.130). • Records relating to terrorism (RCW 42.56.420). • "Other statutes" – Records that are confidential under other statutes are exempt under the PRA (RCW 42.56.070(1)). Thus, exemptions exist for confidential adoption files under Chapter 26.33 RCW, confidential juvenile court files under Chapter 13.40 RCW, confidential paternity files under Chapter 26.26 RCW, etc. It is these "other statutes" that tend to specifically address judicial case files. NOTE: The PRA does *not* have a similar provision for court rules that provide for confidentiality. NOTE: There are over 80 PRA exemptions, and several hundred exemptions under "other statutes."	Examples of rules, statutes, and common law standards providing for confidentiality: • Common law balancing test – Judicial documents are presumed to be publicly accessible, except when the interest in keeping a document confidential outweighs the interest in openness. • GR 31 – Sets general standards for access to court records (not administrative records). Records are accessible unless restricted by law, rule, order, or case law. Personal identifiers to be omitted or redacted. • GR 15 – Addresses destruction, sealing, and redaction of court records. • GR 22 -- Addresses access to family law and guardianship court records. • GR 31 (J) – Protects juror information (other than name) • CJC Rule of Procedure 11 – Addresses confidentiality for judicial conduct investigations and proceedings. • JIS Committee Rules 11, 12, 15 – Govern confidentiality of JIS records. • ARLJ 9 – For CLJ courts, lists categories of case records that are public, those that are private, and those that are quasi-public. • GR 23(c)(2)(xi) – Authorizes the Certified Professional Guardian Board to adopt regulations on confidentiality ; Board adopted such a regulation. • A wide variety of statutes provide for confidentiality of categories of case files. See, e.g., the statutes referred to in this table's left-hand column, under "other statutes."

TAB 6

Judicial Needs Estimation

Carl McCurley, WSCCR

November 20, 2009

Objectives

- Predict the number of judges needed for the expected volume and mix of cases for any court
- Efficient, objective, flexible, and robust

2

Background

- Weighted caseload studies conducted in 1977 & 1986
- By 1999, the 1986 study was outdated; AOC looked for alternatives
- The SCJA approved the current objective method in 2001; DMCJA approved in 2002

3

Weighted caseload

- How much time needed for particular case types?
- Assumption—resolutions per judge equal across courts
- Assumption—judges' productivity next year will be close to that in the study period

4

Objective workload

- Produces estimate of how many cases can be handled in a year
- The rate of resolutions per judicial officer can differ by size of court
- Assumption—judges' productivity next year will be near the average of past 5 years

5

Superior Courts

6

Overview

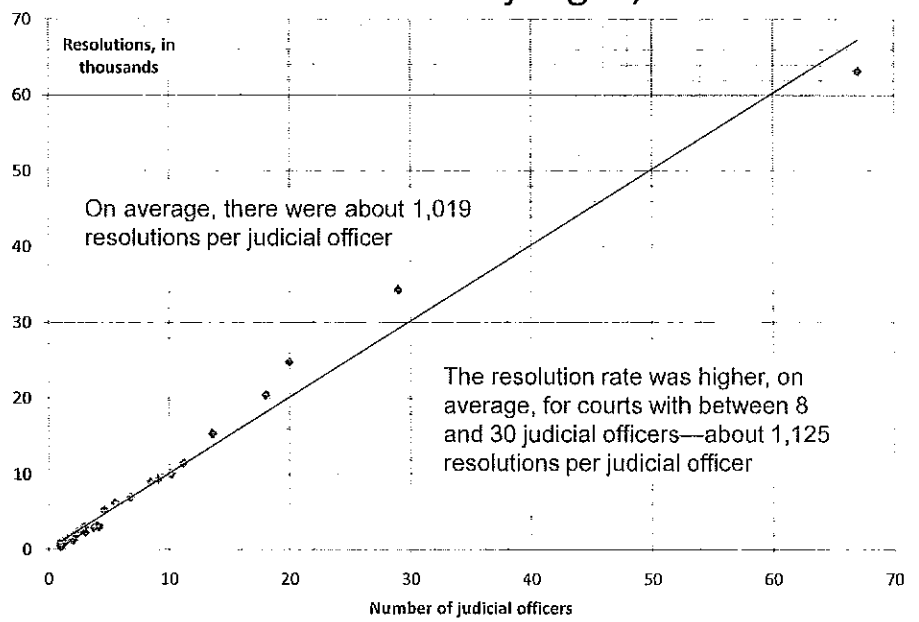
Calculate resolutions per judge over past 5 years = Z

Predict filings from 5 year trend = Y

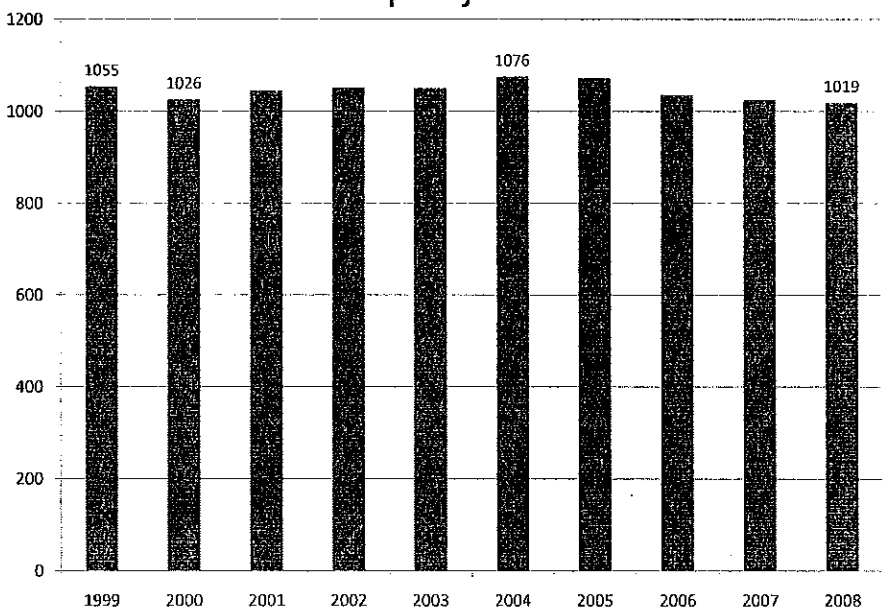
Predicted need = Y/Z

7

Resolutions and judges, 2008



Resolutions per judicial officer



Example

IF the resolution rate for a court (Z) is 1,000 per judge

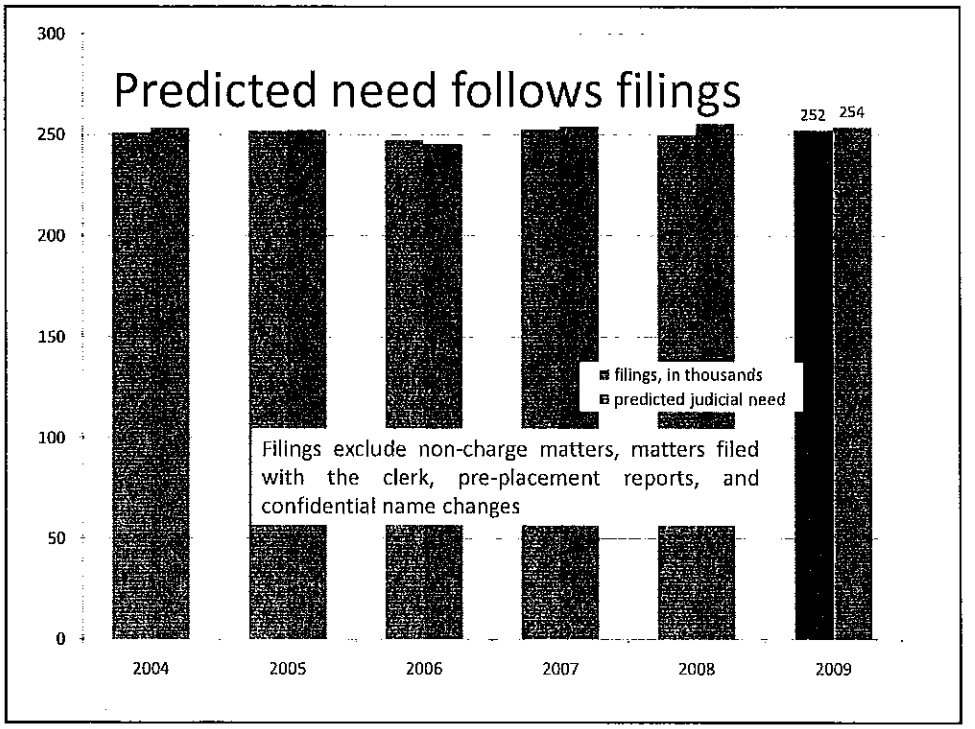
AND the anticipated number of filings (Y) is 10,000

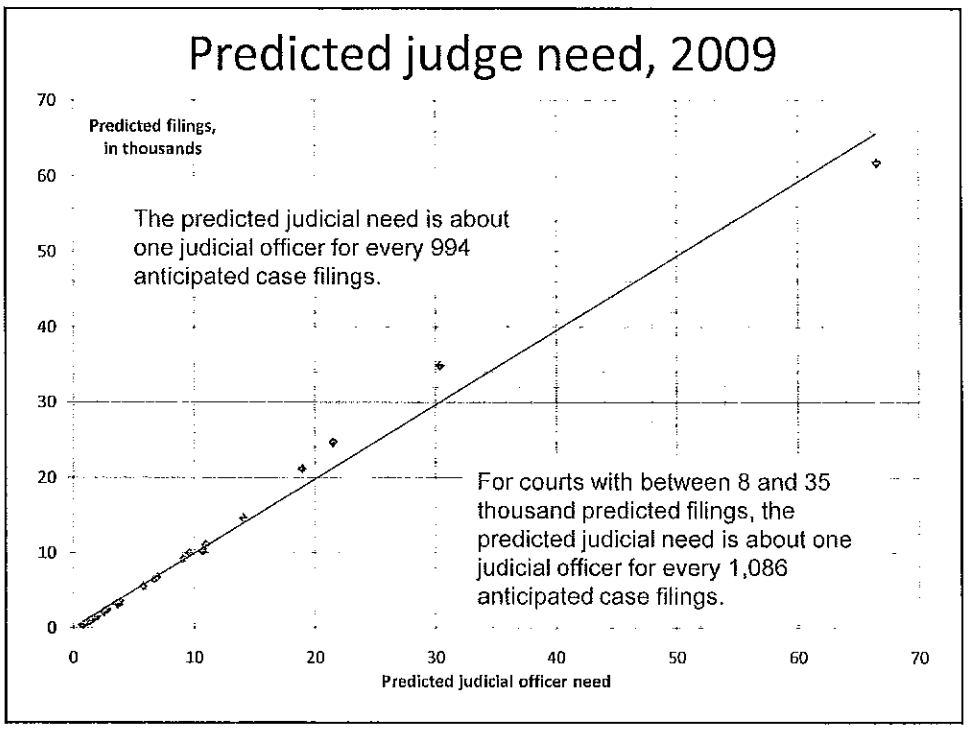
THEN the need for judges = Y/Z =

10,000 resolutions / 1,000 resolutions per judge

= 10 judges

10


Predicted need follows filings
300
250
200
150
100
50
0
252
254
filings, in thousands
predicted judicial need
Filings exclude non-charge matters, matters filed with the clerk, pre-placement reports, and confidential name changes
2004
2005
2006
2007
2008
2009


Predicted judge need, 2009
Predicted filings, in thousands
70
60
50
40
30
20
10
0
The predicted judicial need is about one judicial officer for every 994 anticipated case filings.
For courts with between 8 and 35 thousand predicted filings, the predicted judicial need is about one judicial officer for every 1,086 anticipated case filings.
0
10
20
30
40
50
60
70
Predicted judicial officer need

Adjustments

- Elevator brake—next year's predicted filings are not allowed to be lower than this year's actual filings
- Account for level of staffing needed for the current local case backlog (cases not processed within the 100% time-in-process standards approved by the BJA)
- Additions for King and Thurston

13

Validity

- A test of methods compared projections
- Three models yielded similar estimates of 2001 judicial officer need
  - 236 for objective workload
  - 225 for weighted caseload
  - 228 for a population-based model

14

Unfilled judgeships

- Superior courts are staffed about 6% below authorized level of judgeships
- If courts keep up with workload, they are more productive, and the higher productivity becomes the standard for future staffing

15

Resource-intensive cases

- Complex civil matters, lengthy murder trials
- They take time and cut the total number of cases that can be resolved in a year
- Effect—greater predicted judge need
- Dependency cases: Best Practices WCL study—how to integrate results?

16

District and Municipal

17

Overview

- Ratio of resolutions per judge sets productivity standard
- Need for judges based on projected filings
- CLJ method accounts for types of cases
  - Infractions
  - DUI/Physical Control
  - Misdemeanors, DV
  - Civil, Small Claims, Felony Warrants

18

CLJ Adjustments

- DWI, CNT, and OCT exclude bail forfeitures
- Civil, Small Claims— reduced to account for percentage of cases routinely closed out
- Infractions— instead of filings, count hearings
- Judges' Superior Court Commissioner time
- Parameters estimated without top and bottom 5% of productive courts
- Parameters based on courts with > 0.45 FTE

19

But it's still...

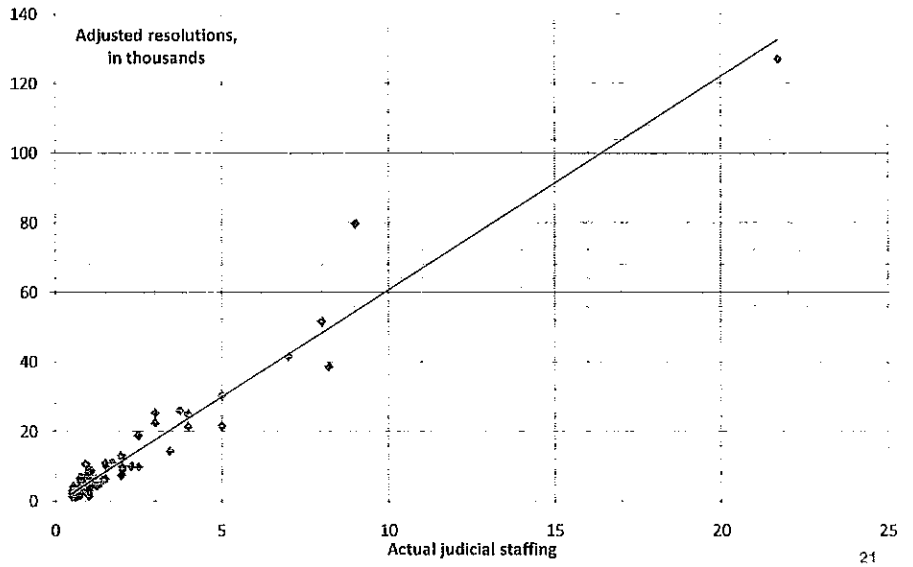
Calculate resolutions per judge over past 5 years = Z

Predict filings from 5 year trend = Y

Predicted need = Y/Z

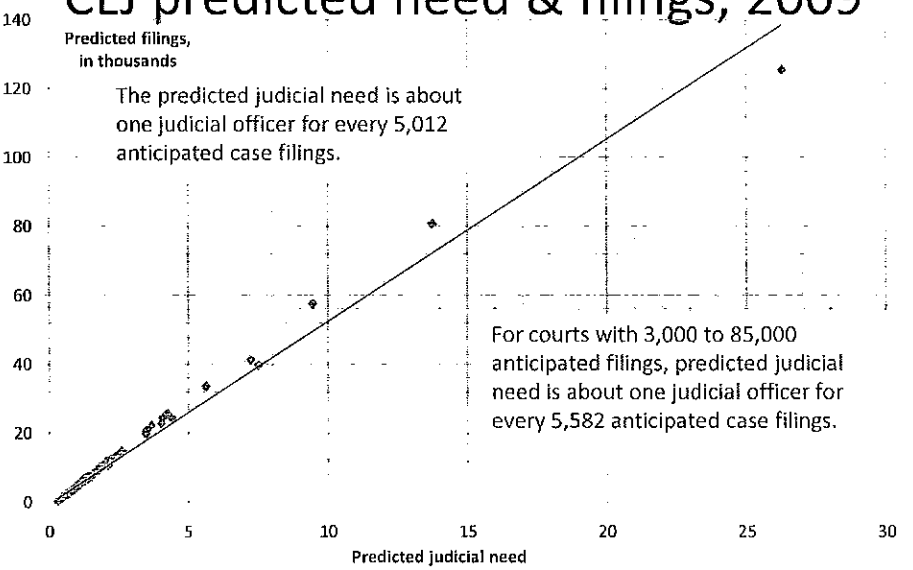
20

Resolutions and staffing, 2008



21

CLJ predicted need & filings, 2009



The predicted judicial need is about one judicial officer for every 5,012 anticipated case filings.

For courts with 3,000 to 85,000 anticipated filings, predicted judicial need is about one judicial officer for every 5,582 anticipated case filings.

22

JUDICIAL NEEDS ESTIMATION:
OVERVIEW—SUPERIOR COURTS
(last updated 11/18/2009)

Judicial needs are estimated via an objective statewide measure, as required in statute[1] and as administratively adopted by the Superior Court Judges Association (SCJA) and the District and Municipal Court Judges' Association (DMCJA). The measure is a multi-stage statistical modeling process.

A general description of the process for superior courts follows. (The process for limited jurisdiction courts is largely parallel, differing in respect to case types and related adjustments.)

Step 1: Capacity (Court Productivity—The Number Of Cases A Judicial-FTE Can Process)

Capacity (the number of cases a full-time judicial officer can process) is determined by measuring observed judicial work product (case resolutions) per judicial FTE. That is, counts of case resolutions for each of the past five years in all superior courts are computed, based on case data routinely recorded in the Superior Courts' case-management information system (SCOMIS). (The use of five years of data smoothes out transitory effects.) Then those results are related to the number of judicial FTEs at each site who did that work. Ordinary least-squares regression (OLS), a widely-used method for finding the relationship between a dependent variable (judicial officer FTEs) and independent variables (resolved cases) is used to establish that relationship. A very strong linear relationship between number of judicial officers and the number of resolutions has consistently been demonstrated; approximately 98-99% of the observed difference in the number of resolutions in a court can be explained by the number of judicial officers.

This process results in a statewide estimate of the level of judge staffing needed to handle resolutions. Further technical adjustments are undertaken to account for differences in rates of productivity (given differences in administrative overhead) in large and small courts. This allows recognition of economies of scale.

Estimated Capacity:
 # Judicial-Officer FTE's = (Total Resolutions for previous 5 years) + Scale Adjustment + error
where scale adjustment, in the widely accepted manner, is estimated through 2nd- and 3rd-order transformations of the independent variable (Total Resolutions).

In mathematical notation: $\#\ \text{Judge FTEs}_{(year-1,year-5)} = b_0 + b_1{*}TR + b_2{*}TR^2 + b_3{*}TR^3 + e$

Step 2: Predicting Individual Courts' Needs

Individual courts' needs can now be estimated by applying the results of step 1 (the estimated relationship between judges and case resolutions) to the individual court's filing trends. This yields an estimate of the number of judicial officers that would be necessary to resolve the predicted filings. In this way, predicted need is based on observed past practice, with routine updating of past practice each year as more recent data become available.

To predict volume of cases in an individual court, the court's filings trends are determined. A simple linear regression model is employed to predict a court's upcoming-year filings based on that court's filings for the last five years. Projected Total Filings are estimated as:

$$PTF = a_0 + a_1{*}year$$

[1]RCW 2.56.030(11)

If the predicted value is lower than the number of filings for the most recent year, the most recent year's number of filings is substituted. (This, together with employing a five-year trend, avoids undue influence of what may well be an anomalous, uncharacteristic year.)

With this estimate of an individual court's filings for the coming year, the model results from step 1 (the number of cases a judicial officer can process per year) are applied to yield the number of judicial officers that would be necessary to resolve the predicted number of incoming cases.

Prediction: **Judge FTEs = b(Projected Total Filings) + Scale Adjustment**

In mathematical notation: **# Judge FTEs = $[b_0 + b_1{*}PTF + b_2{*}PTF^2 + b_3{*}PTF^3]$**

Step 3: Adjusting The Prediction For Case Backlog

Court workload, however, involves not only incoming cases but also local case backlog (cases which are still pending beyond the Board for Judicial Administration's adopted 100% time standard for the case type[2]). To incorporate that additional workload and corresponding judge need, a final adjustment is made to the estimates via a multiplier reflecting the number of additional judges that would have been necessary to have met the time standards for each of the case types which have formal standards (criminal, civil, domestic, probate, and juvenile offender). Recognizing that backlogged cases are partially processed, a 50%-complete assumption is imposed.

A weighted multiplier (based on proportional filings) is derived from individual multipliers for each of the backlogged case types. A court with no backlog will have a multiplier of 1.0, while a court with a hypothetical (but never experienced) backlog of 100% of cases would have a multiplier of up to 2.0. In observed practice, backlogs are limited, and have a relatively small effect on total judicial needs.

Step 4: Final Estimates

Final estimates for each court are generated from the component information attained from steps 1 through 3.

In mathematical notation: # Judge FTEs = $[b_0 + b_1{*}PTF + b_2{*}PTF^2 + b_3{*}PTF^3]$ x [Time Standards Multiplier], where the regression coefficients (b_0, b_1, b_2, b_3) were estimated in step 1, and the time standards multipliers were calculated in step 3.

Advantages of the Objective Workload Analysis

The objective workload analysis is efficient, objective, flexible, and robust. It draws information from SCOMIS case data, thereby avoiding the measurement pitfalls of original data collection and self-reporting (resource-intensiveness, rapid depreciation in accuracy, validity/reliability shortcomings, credibility issues). The objective workload analysis implicitly reflects operational constraints. It is dynamic, capturing innovations and changes in practice, productivity, and case/procedural complexity over time. The measure is a widely accepted and applied methodology that is common across industries; it is familiar to legislative and council budget/funding staff. The objective workload methodology has been validated through comparisons with projections from adjusted weighted-caseload models and population-based growth models.

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[2]Advisory Case Processing Time Standards, *Washington Court Rules*

WASHINGTON
COURTS

Judicial Needs Estimation for Courts of Limited Jurisdiction

Prepared by the
AOC Research Unit

FINAL

January 2003

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Table of Contents

Input-Output Model Methodology 1
Background 1
Description of Methodology 2
Summary: How Does the Model Work 4
Other Policy Issues 4
Results and Conclusion 5
2003 Projected Judicial Needs Estimate 6

Typical Questions about the District/Municipal Input Output Model 9

Appendix A –
Letter regarding DMCJA ADOPTION OF INPUT/OUTPUT MODEL 13

Appendix B –
Memo regarding ENTRY OF SEARCH WARRANTS FOR INCLUSION IN JUDICIAL NEEDS ESTIMATES 15

Appendix C -
DMCJA Judicial Resource Task Force Meeting Notes 16

Appendix D –
Examples of Superior Court Cases Handled by District Court Judges 34

Appendix E –
District Court Felony Activity – Business Rules 35
Workgroup Proposal and Related Discussion 37
Workgroup Recommendation 42

Judicial Needs Estimation for Courts of Limited Jurisdiction
Input-Output Model Methodology
Prepared by: AOC-Research
February 3, 2003

I. Background

Beginning in January 2002, the DMCJA Board of Trustees established an advisory committee to work with AOC to develop a new methodology for judicial needs estimation in the Courts of Limited Jurisdiction. Using the previous experience of the Superior Court as a starting point, this group worked for several months on a model that would accurately reflect the judicial needs for district and municipal courts throughout the State of Washington. The committee's work culminated in a model that will be used by the Administrative Office of the Courts to estimate judicial resource needs in the district and municipal courts. This section describes the essentials of that methodology.

The rationale for this exercise is to objectively assess the need for district and municipal court judges and commissioners who hold permanent judicial positions. Ideally we want to develop and utilize a methodology that will be accurate, feasible, and flexible enough to capture innovations and changes in practice over time. The methodology of choice in Washington State in the past has been a 'Weighted Caseload' approach. While in theory this approach has its attractions, in practice it has some significant practical limitations that can be attributed to the underlying data necessary to 'calibrate' the model: One, it is expensive and time-consuming to collect the necessary data. Two, this expensive data collection process must be routinely performed if the model is to keep current with actual practice. Three, the data collection process is heavily reliant upon self-reporting, thus introducing inconsistencies in data collection and limitations in objective verification. In short, weighted caseload is an expensive approach that produces results of questionable reliability.

The alternative approach of choice - what is commonly known as an 'input-output' model - utilizes data that are inexpensive to obtain and update on a routine basis. The input-output methodology has been widely-applied. It has been well-tested and is robust. The essence of input-output is to model 'outputs' (e.g., caseload) as depending upon key 'inputs' (e.g., judicial officers, staff). Beyond this basic concept, other variables can be factored in to: (1) see if additional information improves the predictive power of the model, or (2) allow acceptable objective qualitative measures to augment the baseline prediction. In the following sections, these issues will be discussed in depth.

II. Description of Methodology

A critique of any model should be based upon how closely it captures the salient features of the world it is trying to explain and, just as importantly, how feasible it is to implement and maintain it. Having a complete description of the real world would be ideal but totally infeasible (and impossible in most cases). Our model then will not capture the true complexity of the real world since all models are necessarily only representations of reality. By definition, any model will far short when comparing its results against reality. Rather, the comparison should be made against other models that try to explain the same process, using the two criteria of accuracy and feasibility.

Commonly, a two-step procedure is used to arrive at predicted judicial needs - regardless of the methodology employed. The first step is to use a well-tested statistical model to estimate the key parameters (one can think of this as a calibration) that are then used in the (second) prediction step. One of the advantages of input-output is that this first crucial step can be performed at regular intervals with minimal direct cost. In other words, it is very inexpensive to re-calibrate the model so as to be up to date with changes in practices or to add new data elements that may become available. These characteristics of responsiveness and flexibility are ones that have been lacking in previous weighted caseload models.

In the first step, we use the most recent years of annual data to estimate a relationship between the number of judicial officers and the cases resolved. These data are at the court level and are extracted from the state Judicial Information System (JIS). In order to obtain a sufficiently large sample, and to smooth out any transitory effects, we use the five most recent years of data. In this first stage case filings are not necessary to any calculations since, although they represent the potential work burden, they do not represent what actually was accomplished. In other words, the numbers of cases resolved are the best measure of the work actually accomplished and will embody the operational constraints of the process. The resolution data represent the best available measures that can capture performance in a given period. Additionally, resolutions are segregated by case type. Specifically, the caseload is placed into one of four case-type categories: (1) All infractions involving a hearing, (2) DWIs, (3) All other misdemeanors, (4) All other case types.[1] Since we wish to capture the caseload that represents judicial workload, we excluded infractions in which the defendant simply pays the fine without any court hearing. The model is then estimated by means of an ordinary least squares regression (OLS), a widely-used method for finding the relationship between a dependent variable (judicial officer FTEs) and multiple independent variables (the various categories of resolved cases).

In step two, we place a court's filings into the estimated model in order to predict what resource amount would be needed (in terms of judicial officers) to resolve all filings. Using the estimated relationship between judges and case resolutions of step one, and treating each filing as a potential resolution, the model yields a prediction of judicial

[1] All other case types = civil, small claims, felony complaints, domestic violence protection orders. We tested numerous classification schemes before finalizing this choice.

need for each court. Hence predicted need is ultimately determined by observed past practice, with routine updating of this sample of past practice as more recent data become available. Additionally, in order to 'smooth' the effects of yearly variations in filings, we use a five-year filing trend to project filings, instead of the actual filings in a given year, to make our prediction. The filing trend is court-specific as population growth varies significantly across the state. The trend is determined by performing a standard ordinary least squares regression on the filings of the various case types. Three other issues arise at this point: (1) How to reflect judicial work/responsibilities not captured in the caseload statistics, (2) How to deal with a set of civil and small claims cases where the litigants are inactive, (3) How to determine which incoming infraction filings will result in a hearing.

There are two areas of judicial workload that are currently not captured in AOC's reported caseload statistics. These are 1) various search warrants and 2) various pre-filing hearings. Search warrants require a hearing before a judicial officer but do not result in a case filing. However, JIS has an application available to all users called "Document Indexing". The purpose of this application is to track court activity that occurs before a case is actually filed in courts, such as the issuance of search warrants. We are able to extract the counts from this application and to treat them as a case filing for purposes of prediction. Likewise, pre-filing hearings[2] are also captured in JIS although they are not counted as case filings. Nevertheless they do represent judicial workload, and so we again have extracted these numbers and treat them as a case filing for purposes of needs estimation. Both of these additional counts, search warrants and pre-filing hearings, are treated as 'All Other Case types' for purposes of categorization.

Additional consideration was given to the percentage of civil and small claims filings that are never subsequently acted upon by those who originally filed the case. This is problematic for the methodology because it relies on case dispositions as a means of quantifying the work output of judges. At some point the court clerk, if aware of the long period of inactivity, will close the case out after informing the parties involved. In a sense, these cases lie dormant and are unlikely to have any demand upon judicial time. They are captured as a filing but resolution can take years. Courts vary in how they keep track of these cases and at what point they eventually close them out. Taking a sample of cases from courts[3] we observed to be diligent in regularly closing out inactive cases yielded a good and consistent estimate of the percentage of these cases.[4] Since there was not any systematic variation in this rate among courts of different size or demographics (and no a priori reason to suspect this type of behavior of litigants would differ significantly across jurisdictions) we used this estimate to deflate the civil and small claims filings used in the prediction stage. AOC is making continuing efforts to encourage court clerks to close out inactive civil and small claims cases.

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[2] Includes: bail hearings, preliminary appearances for felonies, probable cause hearings.

[3] Note only District courts are involved here.

[4] Around 20% of civil and small claims filings

A final issue requiring resolution was how to determine the number of infraction filings which will turn into a request for a hearing. We have data and trends describing these cases for each court over the past several years. The percentage of infraction filings which involve a hearing can vary considerably across courts. Thus we use a five year trend per court to estimate this percentage and project that onto infraction filings in order to deflate those numbers.

Summary: How Does the Model Work?

Step 1: Estimate the relationship between judicial officers and the caseload, segregated by type of case.

Estimate: *Judge FTEs = (Infraction Hearing Resolutions) + (DWI Resolutions) + (Other Criminal Resolutions) + (All Other Resolutions) + error*

Step 2: Predict how many judicial officers are needed to dispose of the projected caseload in the coming year (adjustments needed for infraction, civil, and small claims filings).

Predict: *Judge FTE = ((Projected Infraction Filings)x(Estimated Infraction Hearing Rate)) + (Projected DWI Filings) + (Projected Other Criminal Filings) + (Projected All Other Filings[5])*

III. Other Policy Issues

The Judicial Needs Advisory Committee spent considerable time debating various policy issues that would have an impact - either directly or indirectly - on the final model or the data used in the estimation process. Major examples of these considerations are:

1. Time Spent as a Superior Court Commissioner

The committee reviewed the current practices of some courts[6] where district court judges regularly sit as superior court commissioners. In these jurisdictions, time spent by district court judges is correctly reflected as a resource in the superior court judicial needs model. To avoid an inaccurate (exaggerated) representation of the actual time that is available for district court judges to hear district court cases, judges' time spent in superior court time was not included in the estimation process. Thus in the input-output model, the disposition of cases is related to the amount of judicial FTEs available for district court matters.

2. Presiding Judges with Full-time Administrative Duties

The committee discussed how the time of judges who have full time administrative duties should be reflected. A preference is for these judges to be "footnoted" as being

[5] With both civil and small claims filings deflated by 20%.

[6] Specifically: Clark, King, Okanogan, and Jefferson

unavailable (and removed from the model) as a resource for disposing cases. Presently, only the presiding judges at both the King County Superior and District courts meet the condition of being required to devote all of their time to administrative responsibilities, as mandated by county ordinance.

3. Small Courts

There are numerous examples of both district and municipal courts with small reported judicial FTEs. Concerns over the impact of measurement error increase as the size of a court decreases. District and municipal courts under 0.4 judicial officers are thus excluded form the estimation process. This does not preclude including these courts in the second prediction step, although, in keeping with this lower bound, we are not reporting the predictions for the courts that do not meet this minimum threshold.

IV. Results & Conclusion

The most recent results are presented in Table I (attached). Two points are important to reiterate. First, data reliability and integrity are crucial to the overall credibility of any project such as this. The JIS data that is used in the model is objective, in contrast to the self reported information in the weighted caseload methodology. Using objective data from the JIS system has the added benefit of highlighting questionable information that may signal data entry problems or the need for reporting improvements. Second, the input-output model is flexible so that it can be modified as needed - it has potential for further refinements and enhancements. These two features of the model make it a significantly preferable methodology.

It should also be emphasized that the input-output model is only one estimate of judicial needs (and no different than weighted caseload in this respect). The estimate of judicial need in any particular court is based upon a statewide average, and therefore does not directly reflect unique circumstances or practices in an individual court. The model is not intended to account for the substantial variation in practice among courts of limited jurisdiction in Washington. If a particular court has adopted an innovative program that differs significantly from "standard" practice, additional resources that are required will not be reflected in the model's results. The model is intended to establish a baseline using general statewide practice. This baseline estimate should not be viewed as the definitive answer to a court's precise judicial need. Courts will be expected to combine various measures in addition to the results of the input output methodology to form a comprehensive picture of judicial need. Continued development of the model to incorporate elements of best practice and other aspects of the courts' operation is planned.

Appendix materials provide additional information about the process and considerations used to structure the judicial resource needs methodology for district and municipal courts.

Washington State Trial Courts Judicial Workload Analysis
District Courts, Year 2003 (projected)

Court	Available Judicial Officers in Year 2001	Predicted Judicial Officers for Year 2003	Difference: Predicted-Available
Adams - Ritzville	0.4	0.3	-0.1
Adams -Othello	* 0.4	0.5	0.1
Asotin	0.8	0.6	-0.2
Benton	4.6	4.4	-0.3
Chelan	* 2.0	1.8	-0.2
Clallam # 1	1.0	1.1	0.1
Clallam # 2	* 0.6	0.4	-0.2
Clark	* 5.9	6.4	0.6
Columbia	0.3	0.2	-0.1
Cowlitz	* 1.9	2.9	0.9
Douglas	* 0.9	0.9	-0.1
Ferry	* 0.4	0.2	-0.1
Franklin	1.0	1.2	0.2
Garfield	0.2	0.2	0.0
Grant	* 2.7	3.0	0.3
Grays Harbor	2.0	1.5	-0.5
Island	2.0	1.2	-0.8
Jefferson	* 0.8	0.8	0.0
King	*† 25.1	20.2	-4.9
Kitsap	3.5	3.5	0.0
Kittitas - Lower	1.1	1.2	0.1
Kittitas - Upper	0.5	0.5	0.0
Klickitat - East	* 0.7	0.4	-0.2
Klickitat - West	0.4	0.3	-0.1
Lewis	* 2.1	1.6	-0.5
Lincoln	0.8	0.4	-0.3
Mason	1.1	1.2	0.1
Okanogan	* 1.3	1.2	-0.1
Pacific - North	* 0.1	0.3	0.2
Pacific - South	* 0.3	0.5	0.2
Pend Oreille	* 0.1	0.5	0.0
Pierce	8.7	7.7	-1.0
San Juan	0.8	0.3	-0.5
Skagit	3.0	2.9	-0.1
Skamania	* 0.4	0.4	0.0
Snohomish	9.1	9.7	0.6

Spokane	13.0	11.1	-1.9
Stevens	* 0.6	1.0	0.4
Thurston	3.1	2.7	-0.4
Wahkiakum	* 0.2	0.2	0.0
Walla Walla	* 1.1	1.4	0.4
Whatcom	3.0	2.8	-0.2
Whitman	* 0.9	1.0	0.1
Yakima	4.0	3.9	-0.1
STATE	***113.3***	***104.7***	***-8.6***

Notes:

1. The model was estimated using 1997-2001 resolution and judicial officer data per court; predictions are based upon projected 2003 filings

2. The available judicial resources and predictions of the number of judicial officers needed for 2003 is based on a 40 hour work week. In some jurisdictions, employee contracts specify that less than 40 hours will be worked by court staff. In these jurisdictions, the reported number based on a 40 hour standard will understate the judicial resources required to dispose of the caseload.

** Available judicial officers excludes the time District Court judges act as Superior Court commissioners.*

† The available judicial officers in King Co. is reduced by one to reflect the full time presiding judge who is not able to hear cases , as required by local ordinance.

Washington State Trial Courts Judicial Workload Analysis

Select Municipal Courts, Year 2003 (projected)

Court	Available Judicial Officers in Year 2001	Predicted Judicial Officers for Year 2003	Difference: Predicted-Available
Aberdeen	0.5	0.5	0.0
Auburn	1.0	1.2	0.2
Bainbridge Island	0.7	0.3	-0.4
Bellingham	1.1	1.8	0.7
Bonney Lake	0.6	0.4	-0.2
Bremerton	1.0	0.9	-0.1
Centralia	0.9	0.4	-0.4
Des Moines	0.6	0.5	-0.1
East Wenatchee	0.6	0.3	-0.3
Edmonds	0.5	0.6	0.1
Everett	1.5	1.6	0.1
Federal Way	1.5	1.2	-0.3
Fife	0.9	1.0	0.1
Gig Harbor	0.6	0.3	-0.3
Kent	2.1	1.5	-0.6
Kirkland	1.0	1.1	0.1
Lake Forest Park	0.5	0.5	0.0

Lakewood	0.8	1.2	0.4
Lynnwood	0.9	1.4	0.5
Marysville	0.5	0.8	0.3
Olympia	1.0	1.1	0.1
Pasco	0.9	0.7	-0.1
Port Orchard	0.7	0.3	-0.4
Puyallup	0.9	0.9	0.1
Renton	1.1	0.9	-0.2
SeaTac	0.8	0.5	-0.3
Shelton	0.9	0.4	-0.5
Sunnyside	0.4	0.6	0.2
Tacoma	4.1	3.1	-1.1
Tukwila	0.9	0.6	-0.3
Yakima	2.1	1.9	-0.2

Notes:

1. The model was estimated using 1997-2001 resolution and judicial officer data per court; predictions are based upon projected 2003 filings

2. The available judicial resources and predictions of the number of judicial officers needed for 2003 is based on a 40 hour work week. In some jurisdictions, employee contracts specify that less than 40 hours will be worked by court staff. In these jurisdictions, the reported number based on a 40 hour standard will understate the judicial resources required to dispose of the caseload.

Typical Questions about the District/Municipal Input Output Model

1. Why are we changing from the weighted caseload model?

There are three basic reasons: (1) credibility, (2) cost-effectiveness, & (3) flexibility. These three factors play off one another. The weighted caseload model lacks credibility because much of the data is self reported and cannot be objectively verified, and has consequently been questioned by funding authorities. It is also an expensive and time consuming process. By the time a large statewide survey can be conducted to measure the average time of all types of cases in all courts, the information is already outdated.. What that means in practice is that a weighted caseload study cannot be conducted very frequently. Thus the data collected about court activity at the time of the study carries forward unaltered as long as the study weights are used. This inflexibility is detrimental to both accuracy and credibility. While the input-output model has many of the same limitations of the weighted caseload model, as discussed below, it overcomes these three major disadvantages.

2. In general, how does the new model work?

The model uses a 2-step process. First, it estimates a relationship between measures of input (the # of judicial officers doing the work, and outputs (the # of cases going out the door) over a specific period of time. Next, the model incorporates filings as a way to measure future workload (filings represent cases that will ultimately be disposed). Through this process, filings and dispositions work in combination to form a baseline for the prediction of judges needed.

3. What information does the model use to estimate judicial needs?

The model uses disposition and filing statistics from the Judicial Information System (JIS). Dispositions are used because they represent the best estimate of the work a judge "produces". The model uses filings to represent workload that will become dispositions sometime in the future. It uses filings to predict the number of judges that will be needed to get the projected dispositions out the door.

4. In my court, there is no probation service which means as the judge I spend a lot more time than other judges monitoring defendants' compliance with conditions imposed. How will the model reflect this?

It doesn't take this into account directly. The model, like all similar models such as weighted caseload, is based upon collecting data from across the state. The model is not intended to account for every local variation in practice. If a local practice varies significantly from the statewide 'norm', we often have likely explanations on hand that can be used. But in the model, the estimate for any particular court is based upon a statewide average. This has both advantages and disadvantages. The advantage is that local practice is not built into - and thus fixed - the estimate. The disadvantage is that the burden of justifying local variations in practice falls on that court.

Like many situations, the one described above does not neatly fall into the local practice definition. It is a situation that could be faced by more than one court, and/or it could be described as less of a 'practice' and more of a 'constraint'. If it is truly a local constraint, then once again, it is really out of the scope of our model. If it is an issue facing many courts then we would want to try to capture it in some fashion - if possible. It may ultimately be too difficult to measure objectively.

5. The weighted caseload model allowed us to record the "extra" time judges spend doing non-case work, such as attending to administrative duties. Will we still get credit for this required work?

Administrative time is not measurable in an objective way and is not explicitly included in the model. It will show up indirectly via the resolution rate per judge. In other words, the more administrative time judges spend, the less time there is available for case resolutions. Although non-case time could be included in the weighted caseload model, it was inflexible. The non-case time was the same for all courts and unchanging over time. The input-output model will be able to capture - albeit indirectly via case resolutions - the changing nature of non-case activities over time.

6. In addition to my district court judicial duties, I also regularly sit as superior court commissioner. How will this be handled?

Time spent in superior court will be counted in the superior court model. Correspondingly, the available district court judicial resources will be reduced to reflect this, resulting in a more accurate model. If we were to do otherwise it would look as though you were less productive in district court than you actually were; i.e., it would incorrectly tend to make your court look unfavorable when compared to the statewide average, and the predicted number of judges will likely be less than the actual number. The reason for this is that the model only predicts judicial need for district court workload whereas you are actually working in both courts. Time spent as a superior court commissioner will be recognized separately from the district court model.

7. In my court we have more DUI cases than some other like-sized courts. Will our workload be recognized and reflected in the estimate for our court?

Yes. The model will reflect your court's workload in all case types that are distinctly recognized and used in the estimation process (just like weighted caseload).

8. Will the new model require additional record-keeping or other work for the judge or court staff?

It is unlikely that any additional work will be required of the judge. The extent of additional workload on staff will depend upon: (1) agreed upon changes in JIS to accommodate data entry rule changes, and/or (2) the addition of new data elements to be captured in JIS. Unlike

weighted caseload, the new model will rely on data that is captured in JIS. One new area of work that will require new data entry is the inclusion of search warrant using a JIS application known as "document indexing". Eventually there may be other areas of work the judiciary may want to try to measure using JIS data, but for now very little additional work will be required of courts.

9. Does the model specifically look at the standard case types, e.g. DUI, infraction, criminal non-traffic, small claims etc. How are these case types distinguished in the model?

Like weighted caseload, we classify cases by type. The difference is that we let the data determine if breaking out a particular case type enhances the accuracy of the model or not. Under weighted caseload, a priori assumptions about the classification scheme for cases drive the data collection and compilation process. The only way to find out if the assumptions were correct is to complete the study - not very efficient. For example, in the 1991 district court weighted caseload estimate, the final weight for small claims cases was exactly the same as that for felony complaints. So aggregating those two case types together in the weighted caseload model would be just as accurate as breaking them out separately. In the input-output model, we should be able to see very quickly whether or not we benefit by breaking out certain case types from others.

10. How does the model deal with the workload judges handle where there is no "case" filed in JIS yet, such as search warrants?

Most of the workload ***will*** *be represented by the caseload filed in JIS. However, for non-case activities or hearings, such as search warrants, we will need a way to capture this work in an objective way - JIS is the best choice. To ensure search warrants are entered in JIS for counting, it will be necessary to develop some new business rules for court staff to follow. A JIS application called "document indexing" will likely be used.*

11. If we work longer hours to keep up with an increasing caseload, will the model recognize this?

This is a potential problem for any model which determines need based only on current practice. In other words, this question pertains to both input-output and weighted caseload. These models will 'allocate' judges based upon actual practice. If judges across the state are fairly consistently working longer in order to "keep up", and it continues for some time, then the model is going to 'assume' that this is standard practice and will allocate judicial resources based on this standard.

The key here is the long-term systemic response of the judiciary to an increasing workload. If all judges decide to work longer and this response persists then there is no way to use the data to demonstrate that judges are 'peddling too fast'. Eventually, judges will reach maximum capacity and case resolutions would slow down resulting in a "backlog". When we develop a way to

measure the pending caseload, as in superior court, and compare it to the adopted time standards then we should be able to include some sort of adjustment factor that implicitly recognizes the result of peddling faster.

12. The model estimate for my court is less than our current staffing level. Does this mean we are not as efficient as other courts?

Possibly, but it is incorrect to absolutely draw such a conclusion because it is impossible to address efficiency issues using only caseload figures. As is often the case, this limitation is inherent in the data and not the model (i.e., weighted caseload is just as limited). The estimate for your court represents an average based upon the size of your workload. Variation from the average is expected and can be due to many factors. In order to discuss issues of efficiency it is critical to be able to account for factors that are beyond your control. For example, prosecutorial practices vary among counties and these differences can significantly impact case management and flow. The key point here is that we are talking about an external factor that is entirely beyond your control. Perhaps an analogy works best for this question. If you were to compare the crop yield per acre of the most efficient farmer in Nevada to the yield of the least efficient farmer in Iowa it is likely that the latter would have a higher yield. It would be erroneous in this example to use crop yield as an efficiency measure since these farmers operate under fixed and very different climatic conditions. To use only some measure of workload as an efficiency measure for a court would be make a similar error.

13. If our court is treating certain cases in a different or innovative way, for example supporting a specialty domestic violence or mental health court, will the model recognize this and award our court more 'credit' for the extra time this program takes?

No model is designed to accommodate every local variation in practice. At some level this is desirable. Like weighted caseload, the model will predict judicial need based upon a statewide average. An average is merely a way of placing 'a number' on diversity. If your court is doing something different from the 'standard' practice, a supporting argument about the value or community benefit of that program will need to be made to your local funding authorities as to why this practice is justified. The model is intended to establish a baseline using general statewide practice. This baseline estimate should not be viewed as the definitive answer to your true needs - local variation is expected. Like weighted caseload, the input-output estimate is but one piece of information that must be supplemented with other factors unique to your court.

14. Will there be some type of standing committee that will continue to review the evolution of the model?

Yes, the Committee has recommended that the DMCJA Board establish a permanent group to periodically review the model and make new recommendations or suggestions for improvements.

Superior Courts
Judicial Need Estimates by Full-Time Equivalents, 2009 Projected Filings[1]

Court	Judges	Authorized Unfilled Judge Positions[2]	Full-Time Commissioners	Part-Time Commissioners	Total Estimated Judge Need[3]
Adams	1.00	0.00	0.00	0.00	0.97
Asotin/Columbia/Garfield	1.00	0.00	0.00	0.34	1.55
Benton/Franklin	6.00	0.00	2.00	0.50	9.61
Chelan	3.00	1.00	1.00	0.00	3.57
Clallam	3.00	0.00	1.00	0.19	3.66
Clark	10.00	0.00	3.00	0.60	14.08
Cowlitz	4.00	1.00	0.00	0.61	5.80
Douglas	1.00	0.00	0.00	0.09	1.31
Ferry/Stevens/PendOreille	2.00	0.00	0.00	0.43	2.50
Grant	3.00	0.00	0.00	0.75	3.64
Grays Harbor	3.00	0.00	0.00	0.00	3.84
Island	2.00	0.00	0.00	0.20	2.57
Jefferson	1.00	0.00	0.00	0.30	1.45
King	53.00	5.00	14.00	0.00	66.51
Kitsap	8.00	0.00	1.00	0.10	9.09
Kittitas	2.00	0.00	0.00	0.00	1.67
Klickitat/Skamania	1.00	0.00	0.00	0.13	1.55
Lewis	3.00	0.00	1.00	0.00	3.67
Lincoln[4]	1.00	0.00	0.00	0.13	1.13
Mason	2.00	0.00	0.00	1.05	2.58
Okanogan	1.00	1.00	0.00	0.56	1.97
Pacific/Wahkiakum	1.00	0.00	0.00	0.00	1.34
Pierce	22.00	2.00	7.00	0.00	30.34
San Juan	1.00	0.00	0.00	0.00	0.79
Skagit	4.00	0.00	1.00	0.50	6.95
Snohomish	15.00	0.00	5.00	0.00	21.48
Spokane	12.00	1.00	6.00	0.00	18.93
Thurston	8.00	0.00	2.00	0.18	10.70
Walla Walla	2.00	0.00	0.00	0.35	2.78
Whatcom	3.00	0.00	3.00	0.80	6.72
Whitman	1.00	0.00	0.00	0.00	1.18
Yakima	8.00	0.00	2.00	1.20	10.98
TOTAL	**188.00**	**11.00**	**49.00**	**9.01**	**254.93**

1. *Year 2009 projected filings are based on the previous five-year filing trends of the various case types in a given court. Need estimates are based on the previous five years of data for the number of total judicial officers and case resolutions.*
2. *Superior court judge positions authorized by state statute yet unfunded at the county level.*
3. *This column represents the estimated number of judge positions needed, as required by RCW 2.56.030(11). Individual counties or judicial districts may choose to establish and fund court commissioner positions instead of superior court judge positions. Identical indicators are used to measure the workload of both judges and commissioners.*
4. *The estimation process eliminates Lincoln County due to caseload anomalies which strongly influence the overall results. In order to obtain a true statewide total, the estimated judge need for Lincoln County is imputed to be identical to the current judicial officer FTE count in that county.*

Description of Superior Court Judicial Needs Estimation

In March 2001, a new methodology for estimating judicial needs in the superior courts was adopted by the Administrative Office of the Courts in conjunction with the Superior Court Judges' Association. Beginning with the 2001 Annual Report, a yearly table is published displaying court-level judicial needs estimates using this methodology, along with a brief description of the process.

The superior court model for estimating judicial needs is workload-based. The estimates are derived from a statistical model with two primary data components: (1) the observed caseload processed, and (2) the number of available judicial officers. The caseload measure is represented by case resolutions, and the judicial officer measure is represented by judge and commissioner FTEs. Any significant effects due to differences in court size are captured during the estimation process. In order to ensure that a good representative sample underlies the estimation, the data are drawn from courts across the state and from the past several years.

This type of approach has wide usage in a number of diverse applications and so provides a well-established base model. One of the inherent advantages of this methodology is the facility to capture changes in practice over time. Another advantage is that qualitative adjustments – based upon objective data – are possible. A qualitative adjustment adopted for use in the superior court model relies upon the published case-management statistics for various case types to create a "time standards adjustment factor." This adjustment allocates additional resources based upon an individual court's time-in-process results versus the case-processing time standards adopted by the Board for Judicial Administration.* In other words, the model recognizes when a court has a case backlog problem, and takes into consideration the judicial resources needed by that court to reduce the delay in case processing. This adjustment factor is a way to introduce an *objective* quality assurance check on the baseline prediction from the input-output model.

* *The case-processing time standards were adopted by the Board for Judicial Administration as an objective means for courts to measure the pace of cases from filing to resolution. They are published in the Washington Court Rules.*

District Courts
Judicial Need Estimates by Full-Time Equivalents, 2009 Projected Filings[1]

Court	Judges	Commissioners	Acting as Superior Court Commissioner	Total Judicial Officers	Total Estimated Judge Need[2]
Adams-Othello	0.44	0.00	0.00	0.44	0.64
Adams-Ritzville	0.44	0.00	0.00	0.44	0.64
Asotin	1.00	0.00	0.35	0.65	0.81
Benton	3.00	2.00	0.00	5.00	5.63
Chelan	2.00	0.00	0.03	1.97	2.38
Clallam #1	1.00	0.50	0.00	1.50	2.05
Clallam #2	0.60	0.00	0.00	0.60	0.47
Clark	6.00	1.00	0.00	7.00	7.24
Columbia	0.42	0.00	0.00	0.42	0.37
Cowlitz	2.00	0.00	0.01	1.99	4.24
Douglas	1.00	0.00	0.10	0.90	1.11
Ferry	0.36	0.00	0.00	0.36	0.36
Franklin	1.00	0.00	0.00	1.00	1.50
Garfield	0.25	0.00	0.04	0.21	0.31
Grant	2.00	1.00	0.50	2.50	3.67
Grays Harbor	2.00	0.00	0.00	2.00	2.11
Island	1.00	1.00	0.03	1.97	1.38
Jefferson	1.00	0.00	0.23	0.77	1.21
King *	21.00	1.00	0.30	21.70	26.28
Kitsap	4.00	0.00	0.01	3.99	4.20
Kittitas-Lower	1.00	0.08	0.00	1.08	1.40
Kittitas-Upper	0.65	0.06	0.00	0.71	0.68
Klickitat-East	0.53	0.04	0.00	0.57	0.64
Klickitat-West	1.00	0.00	0.00	1.00	0.49
Lewis	2.00	0.39	0.10	2.29	1.97
Lincoln	0.74	0.00	0.15	0.59	0.50
Mason	1.00	0.08	0.00	1.08	1.61
Okanogan	2.00	0.00	0.60	1.40	1.18
Pacific-North	0.40	0.00	0.00	0.40	0.59
Pacific-South	0.60	0.00	0.03	0.57	0.56
Pend Oreille	0.75	0.00	0.15	0.60	0.52
Pierce	8.00	0.00	0.00	8.00	9.45
San Juan	0.77	0.00	0.15	0.62	0.42
Skagit	2.00	1.50	0.06	3.44	2.60
Skamania	1.00	0.80	0.10	1.70	0.46
Snohomish	8.00	1.00	0.00	9.00	13.74
Spokane	5.50	3.00	0.30	8.20	7.53
Stevens	1.00	0.25	0.00	1.25	1.10
Thurston	3.00	0.00	0.00	3.00	4.02
Wahkiakum	0.30	0.00	0.10	0.20	0.34
Walla Walla	1.50	0.00	0.00	1.50	1.38
Whatcom	2.00	1.00	0.00	3.00	3.48
Whitman	1.00	0.00	0.05	0.95	1.15
Yakima	4.00	0.00	0.25	3.75	4.42
State	**99.25**	**14.70**	**3.64**	**110.31**	**126.76**

* *Judges and Total Estimated Judge Need exclude a full-time presiding judge who is unavailable to hear cases. Currently, only applies to King County, as required by local ordinance.*

1. *Year 2009 projected filings are based on the previous five year filing trends of the various case types in a given court.*
2. *Need estimates are based on the previous five years of data for the number of total judicial officers and case resolutions.*

Description of Courts of Limited Jurisdiction Judicial Needs Estimation

In August 2002, a new methodology for estimating judicial needs of the courts of limited jurisdiction was adopted by the Administrative Office of the Courts in conjunction with the District and Municipal Court Judges' Association. Beginning with the 2002 Annual Report, a yearly table is published displaying court-level judicial needs estimates using this methodology, along with a brief description of the process.

The district and municipal court model for estimating judicial needs is workload based. The estimates are derived from a statistical model with two primary data components: (1) the observed caseload processed, and (2) the number of available judicial officers. The caseload measure is represented by case resolutions, and the judicial officer measure is represented by judge and commissioner FTEs. In order to ensure that a good representative sample underlies the estimation, the data are drawn from courts across the state and from the past several years. Estimates are presented for selected municipal courts.

This type of approach has wide usage in a number of diverse applications and so provides a well-established base model. An inherent advantage of this methodology is the facility to capture changes in practice over time.

Selected Municipal Courts
Judicial Need Estimates by Full-Time Equivalents, 2009 Projected Filings[1]

Court	Judges	Commissioners	Total Judicial Officers	Total Estimated Judge Need[2]
Aberdeen	0.70	0.00	0.70	0.77
Airway Heights	0.20	0.00	0.20	0.44
Anacortes	0.10	0.00	0.10	0.40
Auburn/Algona	1.00	0.00	1.00	1.90
Bainbridge Island	0.52	0.00	0.52	0.45
Battle Ground/La Center/Ridgefield	0.25	0.00	0.25	0.85
Bellingham	1.00	1.00	2.00	1.71
Black Diamond	0.00	0.00	0.00	0.42
Blaine	0.21	0.00	0.21	0.39
Bonney Lake	0.75	0.00	0.75	1.11
Bothell	1.00	0.00	1.00	0.88
Bremerton	1.00	0.00	1.00	1.26
Buckley	0.13	0.00	0.13	0.45
Burlington	0.25	0.00	0.25	0.48
Centralia	0.50	0.00	0.50	0.66
Chehalis	0.75	0.00	0.75	0.39
Cheney	0.10	0.15	0.25	0.46
Cle Elum	0.10	0.05	0.15	0.30
Colfax	0.05	0.00	0.05	0.29
College Place	0.08	0.00	0.08	0.41
Connell	0.04	0.00	0.04	0.30
Cosmopolis	0.05	0.00	0.05	0.32
Deer Park	0.04	0.00	0.04	0.29
Des Moines	0.80	0.00	0.80	0.98
East Wenatchee	0.25	0.00	0.25	0.63
Edmonds	0.53	0.00	0.53	0.93
Elma	0.13	0.00	0.13	0.34
Enumclaw/Maple Valley	0.13	0.00	0.13	0.63
Everett	1.70	0.00	1.70	2.41
Everson-Nooksack	0.06	0.00	0.06	0.31
Federal Way	0.80	0.75	1.55	1.99
Ferndale	0.10	0.00	0.10	0.41
Fife	0.85	0.00	0.85	1.39
Fircrest	0.12	0.00	0.12	0.65
Gig Harbor	0.41	0.00	0.41	0.47
Granger	0.03	0.00	0.03	0.30
Hoquiam	0.19	0.00	0.19	0.52
Kent	2.00	0.00	2.00	2.55
Kirkland/Clyde Hill/Medina/Hunts Point/Yarrow Point	1.00	0.20	1.20	1.24
Lake Forest Park	0.50	0.00	0.50	0.47
Lakewood	0.73	0.00	0.73	1.77
Lynden	0.16	0.00	0.16	0.53
Lynnwood	0.90	0.00	0.90	2.20
Marysville	0.50	0.00	0.50	2.36
Medical Lake	0.20	0.00	0.20	0.32
Milton	0.20	0.00	0.20	0.47

Court	Judges	Commissioners	Total Judicial Officers	Total Estimated Judge Need[2]
Montesano	0.16	0.00	0.16	0.41
Mount Vernon	0.33	0.00	0.33	0.64
Napavine	0.04	0.00	0.04	0.31
Ocean Shores	0.90	0.00	0.90	0.34
Olympia	1.00	0.00	1.00	1.17
Orting	0.08	0.00	0.08	0.36
Pacific	1.00	0.00	1.00	0.57
Pasco	0.75	0.00	0.75	1.34
Port Orchard	0.60	0.00	0.60	0.48
Poulsbo	0.40	0.00	0.40	0.43
Puyallup	1.00	0.00	1.00	1.79
Raymond	0.10	0.00	0.10	0.40
Renton	1.00	0.00	1.00	1.48
Roy	0.10	0.00	0.10	0.34
Ruston	0.10	0.00	0.10	0.38
Seatac	1.00	0.00	1.00	0.77
Sedro Woolley	0.28	0.00	0.28	0.48
Selah	0.08	0.00	0.08	0.38
Shelton	0.75	0.00	0.75	0.49
South Bend	0.18	0.00	0.18	0.35
Spokane	3.50	1.50	5.00	3.47
Steilacoom	0.06	0.00	0.06	0.38
Sumas	0.04	0.00	0.04	0.33
Sumner	0.25	0.00	0.25	0.57
Sunnyside	0.50	0.00	0.50	0.73
Tacoma	3.00	1.00	4.00	4.06
Tenino	0.28	0.00	0.28	0.31
Toppenish	0.25	0.00	0.25	0.64
Tukwila	0.85	0.09	0.94	0.97
Tumwater	0.16	0.00	0.16	0.62
Union Gap	1.00	0.00	1.00	0.70
Wapato	1.00	0.00	1.00	0.45
Westport	0.15	0.00	0.15	0.31
Yakima	2.00	0.50	2.50	2.09
Yelm	1.00	0.00	1.00	0.45
Zillah	0.05	0.00	0.05	0.30

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TAB 7

Washington State Constitution

ARTICLE IV
THE JUDICIARY

SECTION 9 REMOVAL OF JUDGES, ATTORNEY GENERAL, ETC. Any judge of any court of record, the attorney general, or any prosecuting attorney may be removed from office by joint resolution of the legislature, in which three-fourths of the members elected to each house shall concur, for incompetency, corruption, malfeasance, or delinquency in office, or other sufficient cause stated in such resolution. But no removal shall be made unless the officer complained of shall have been served with a copy of the charges against him as the ground of removal, and shall have an opportunity of being heard in his defense. Such resolution shall be entered at length on the journal of both houses and on the question of removal the ayes and nays shall also be entered on the journal.

Removal, censure, suspension, or retirement of judges or justices: Art. 4 Section 31.

RCW 2.64.094

Suspension of judge or justice.

If the commission adopts a recommendation that a judge or justice be removed, the judge or justice shall be suspended, with salary, from his or her judicial position upon filing of the recommendation with the supreme court and until a final determination is made by the supreme court.

[1987 c 186 § 6.]

TAB 8

Flynn, Beth

From: Paula Littlewood [PaulaL@wsba.org]
Sent: Sunday, November 08, 2009 10:54 PM
To: GPhillips@ci.kent.wa.us; mja; Eitzen, Tari
Cc: HALL, JEFF E.
Subject: Information on Proposed Changes to Judicial Status
Attachments: BOG Bylaws Memo - 10-09.doc; Proposed Language Judical Membership - Redline and Clean to BOG 10-09.pdf

Judges Eitzen, Phillips, and Appelwick,

As you may have heard, WSBA is doing a comprehensive review of its Bylaws and one area being considered for change is the requirements for judicial status. President Mungia mentioned this at the last BJA meeting and we had at least one judicial liaison at the BOG meeting in Pullman last month (Judge Paja for DMCJA), but I wanted to get the three of you this information directly in case your associations would like to see the actual proposed language.

Attached here is the cover memo to the BOG that accompanied the proposed Bylaw language changes considered at the BOG's October meeting (please note that not all of it is relevant to the judicial status issue) as well as the proposed language changes (one document that contains both the redline and clean version).

This item will be on the December BOG agenda for action, although that does not necessarily mean the BOG will be ready to take action on it.

If you have questions or would like more information, please let me know.

Thanks,
Paula

Paula Littlewood
Executive Director
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WSBA

REGULATORY SERVICES DEPARTMENT

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To: The President, President-elect, Immediate Past-president, and Board of Governors
From: Jean K. McElroy, Director of Regulatory Services
Date: October 14, 2009
Re: Bylaws Review Committee Report Regarding Membership Section

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First Reading – For Review and Discussion: These materials are presented so the full Board of Governors can begin review and discussion of proposals being made by the Bylaws Review Committee regarding changes to the WSBA Bylaws. For the October Board meeting, the proposals for review are regarding the Membership section of the WSBA Bylaws, currently Article II of the Bylaws.

Recommendation: The recommendations developed by the Bylaws Review Committee regarding the Membership section are contained in the attached materials.

Discussion: In fiscal year 2008/2009, a Committee was appointed to conduct a complete review of the WSBA Bylaws. The BOG members of this Committee were then-President-elect Sal Mungia, Governor Carla Lee, Governor Cathy Moore, and Governor Ed Shea; the staff members of this Committee were Assistant General Counsel Elizabeth Turner and Regulatory Services Director Jean McElroy. Executive Director Paula Littlewood and General Counsel Bob Welden also were invited to and did attend many of the meetings. The review of the Bylaws spanned the entire fiscal year and has resulted in a proposal for a massive update, rewrite, and rearrangement of the Bylaws.

During the course of the year, the Committee realized that the Bylaws reflect many policy decisions and issues related to the WSBA, the type of organization that it is, and how it is run. Due to the size and complexity of this project, and its importance to the functioning of the WSBA, the proposals that have been developed likely will engender some discussion among the full Board regarding these various policy matters. For this reason, and because it's too much material and too many issues to handle at one time, the Committee's recommendations will be presented over the course of several Board meetings.

The first Bylaws section for review and discussion relates to Membership. This section currently is in Article II of the Bylaws. It governs the types of memberships available, applicable license fees, how members change their memberships, etc. The Committee had several overarching goals for this section:

- determine what it is about a membership class that makes it necessary or desirable to have that class, and if possible, group together similar types within a class for the sake of clarity;
- define the benefits of particular classes of membership;
- define the requirements for members in different classes of membership; and
- simplify and make more uniform the rules regarding changing membership classes.

After much discussion, the Committee decided to recommend that the WSBA maintain four membership "classes" based on specific characteristics that apply to those classes. Therefore, the proposed Bylaws describe four membership classes briefly defined as follows:

- **Active members** have full membership rights in WSBA, pay the full license fee, and can fully engage in the practice of law;
- **Inactive members** (of which there are three types – Inactive-Lawyer, Inactive-Disability, and Inactive-Honorary) remain members of the WSBA but have limited membership rights, pay reduced or no license fees, and cannot practice law in Washington;
- **Judicial members** are members of the WSBA but have limited membership rights, pay a license fee (that will be some portion of the Active member license fee) as determined by the BOG, and can (in the proposed Bylaws) practice law; and
- **Emeritus/Pro Bono members** meet the requirements of Admission to Practice Rule (APR) 8(e), remain members of the WSBA but have limited membership rights, pay a reduced license fee, and can practice law only within the parameters set by APR 8(e).

From this starting point, the Bylaws move on to address the other topics identified above. Rather than discuss each separate provision or topic in this section, this memo will attempt to identify some of the policy issues that are raised by this section of the Bylaws. The following are some of the issues that the Board will need to consider in reviewing these Bylaws, followed by a very brief description of the action recommended by the Committee:

- <u>Should the definition of Judicial member be changed, should the WSBA have the ability to require a license fee and/or any mandatory assessments from Judicial members, and should retired/resigned judges remain Judicial members?</u>

The Committee recommends changing the definition and making provision for the imposition of license fees and/or assessments on Judicial members, while expanding the membership rights of Judicial members. The Committee also recommends requiring retired/resigned judges either become Active, Inactive or Emeritus members and recommends creating penalties for failure to do so. it appears that many judicial members are not aware that they may need to change their membership class and contact information when they complete their judicial service, which can result in issues for the judge and the WSBA down the road. Finally, the Committee recommends that Judicial members be required to keep their membership information current with the WSBA, because not requiring them to do so has caused data and tracking errors in the past.

- Should Emeritus members be required to provide a minimum number of hours of pro bono service to retain Emeritus status?

  The Committee concluded any change to Emeritus eligibility and requirements (such as the license fee amount or requiring any number of pro bono hours) must be made through a court rule change to APR 8(e).

- What information should members be required to provide to the WSBA, and should there be a consequence for failing to provide the required information?

  The Committee recommends that members be required to provide a physical residence address, a principal office address and telephone, and information about a resident agent if the member lives outside of Washington, and that the consequence for failing to provide the required information should be an administrative suspension.

- Should there be a limitation on the number of times one can change from active to inactive membership status?

  The Committee recommends imposing no restrictions on the number of times a member may change from active to inactive and vice-a-versa.

- In order to serve our membership and also protect the public by attempting to ensure that licensed lawyers are competent to practice law, what should be required for members to change back to Active membership if they've been Inactive or Suspended? Should the requirement change based on the number of years one has been inactive or suspended?

  The Committee recommends that inactive/suspended members seeking active membership no longer be required to retake the bar exam. Instead, if inactive/suspended six years or less, the Committee recommends that 45 MCLE credits be required, along with payment of any required license fee, the

correcting of any issues that led to suspension, and completion of a character and fitness review.

Over six years, the Committee recommends documented completion of a 15 credit readmission course, in addition to the above requirements.

- Under what circumstances should a current or former member be required to retake the Bar exam?

  The Committee recommends that the requirement of retaking the Bar examination be limited to the instances of a disbarred member seeking readmission, it's been more than six years since resignation, or if required by the BOG on the recommendation of the Character and Fitness Board.

- What requirements should there be for voluntarily resigned members to return to active membership in the WSBA, and should those requirements be different from what is required of applicants who have never been members of this Bar?

  The Committee recommends a combination of MCLE and readmission courses depending on the length of time the former member remained resigned, rather than requiring retaking the Bar examination.

- What should be required of the WSBA staff before a member can be suspended from membership/practice?

  The Committee recommends one registered or certified letter, one phone call and one email message.

- Should there be a hardship exemption provision allowing for the waiver of license fees? If so, under what circumstances?

  The Committee recommends adopting a hardship exemption allowing the waiver of a member's license fees when there is physical or mental disability and extreme financial hardship.

- For what can a member's license to practice be administratively suspended, and what is a reasonable reinstatement charge for nonpayment of fees?

  The Committee identified and grouped the different reasons for administrative suspension of a member's license to practice law. The Committee recommends reducing the cost of reinstatement for non-payment suspensions where the suspension is longer than a year.

- What about those lawyers who no longer want to practice law but want to part from the WSBA on good terms?

  The Committee recognizes that many members want to discontinue practice in Washington, but don't want it to appear that they did something inappropriate that resulted in their being *required* to discontinue practice. The Committee therefore is recommending that the term "resignation" be changed to "voluntary resignation" to reinforce the fact that it is the result of a voluntary act on the part of the lawyer and not in any way due to some kind of misconduct by the lawyer.

ATTACHMENTS:

1. Proposed Membership Bylaws section, redlined to existing Membership Bylaws section.
2. Clean version of proposed Membership Bylaws section.

Note: Formatting, lettering, numbering, etc., the various Bylaws sections at this point is problematic at best, because the end result of all the Bylaw changes will be a complete reordering of the existing sections. Therefore, for this section, the redline version is to the existing Bylaws. The clean version is not identically numbered or formatter, but is numbered and formatted in a manner that seemed helpful to clearly conveying how the segments relate to each other. All formatting, numbering, etc. will be unified and cleaned up in the final version of the rewritten Bylaws as a whole.

REDLINE VERSION:

II. MEMBERSHIP

A. CLASSES OF MEMBERSHIP.

There shall be ~~the following~~ four classes of membership with the qualifications, privileges and restrictions specified.

...

3. Judicial ~~Members~~.

a. An active member may qualify to become a Judicial member of the Bar ~~by notifying the Executive Director when~~ if the member is one of the following:

~~a.~~1. A current full-time judge, commissioner, or magistrate ~~or former judge~~ of the courts of record in the State of Washington, or the courts of the United States~~.~~;

~~b.~~2. A current full-time ~~or former full-time~~ judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer~~.~~;

~~c.~~3. A ~~full-time or former full-time commissioner or magistrate in the courts of record or in the district or municipal courts in the State of Washington, or~~ current senior status judge in the eCourts of the United States~~.~~; or

~~d.~~4. ~~A full-time administrative law judge in the State of Washington.~~

~~e.~~ A current full-time Tribal Court judge in the State of Washington.

~~f. Judicial members are deemed inactive members and shall not engage in the practice of law. Judicial members are not required to pay the annual membership fee required of inactive members in Article II, Section E of these Bylaws.~~

b. Judicial members may:

1. Practice law if not prohibited by statute or the Code of Judicial Conduct;

2. Be appointed to serve on any task force, advisory board or council of the Bar; and

3. Be non-voting members in WSBA Sections, if allowed under the Section's bylaws.

c. Nothing in these bylaws shall be deemed to prohibit a judicial member from carrying out their judicial duties.

d. Judicial members are required to provide the member registry information required of other members, and are to provide the WSBA with any changes to such within 10 days of any change.

e. Judicial members are required to inform the WSBA within 10 days when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for Judicial membership, and must apply to change to another membership class or to resign. Judicial members desiring to change membership class to Active or Emeritus/Pro Bono are required to pass a character and fitness review, and in addition to any other requested information, must disclose any judicial discipline or investigations, whether or not ongoing.

f. Judicial members must pay any required license fee and/or assessments that may be established by the WSBA or approved by the Supreme Court for this membership class. Notices, deadlines, late fees, and other consequences of failing to pay any required fees and assessments shall be consistent with those established for Active members.

g. Members who transfer to Judicial membership shall be maintained in their assigned reporting group for mandatory continuing legal education purposes, and shall report earned credits to the WSBA in accordance with the reporting requirements of that group. A certificate of compliance with judicial education requirements shall be sufficient to establish compliance with those requirements. Either judicial continuing education credits or lawyer continuing legal education credits may be applied to the credit requirement for judicial members; if judicial continuing education credits are applied, the standards for determining accreditation for judicial continuing education courses will be accepted as establishing compliance.

...

C. CHANGE OF MEMBERSHIP ~~STATUS~~ CLASS TO ACTIVE.

...

2. Transfer from Judicial ~~Membership~~ to Active ~~Membership~~.

~~*(Applicable to Members on Judicial Status Prior to September 1, 2003)*~~

~~Any~~ judicial member may request to transfer ~~from judicial membership~~ to Active. ~~Membership u~~ Upon ~~the~~ a Judicial member's resignation, retirement, or completion of such member's term of judicial office, such member must notify the WSBA within 10 days, and any Judicial member desiring to continue his/her affiliation with the WSBA must change to another membership class within the WSBA. A Judicial member may transfer to Active by:

a. completing and submitting an application form, all required licensing forms, and any other required information;

b. paying the then current ~~year's membership~~ Active license fee, including any mandatory assessments, less any license fee and assessments paid as a Judicial member for the same licensing year;

c. passing a character and fitness review essentially equivalent to that required of applicants for admission to the Bar. Judicial members seeking to transfer to Active must disclose any judicial discipline or investigations of which the member is aware, whether previously concluded or ongoing at the time of the requested transfer~~and otherwise complying with subsection 1 above~~.

~~Transfer from Inactive or Judicial to Active Membership.~~

~~*(Applicable to Members Transferring to Inactive or Judicial Status as of September 1, 2003)*~~

~~a. A member who has been on inactive status for 5 years or less in the preceding 10 years may transfer to active status by:~~

~~(1) filing an application in the form prescribed by the Board of Governors providing satisfactory proof that the member is of good moral character and that he or she has not been subject to discipline in Washington or elsewhere while on inactive status; and, within 6 months of filing the application,~~

~~(2) paying the current annual membership fee for active members including the assessment for the Lawyers' Fund for Client Protection, less any membership fee paid by him or her as an inactive member for the same year; and~~

~~(3) providing satisfactory evidence that he or she is current in the continuing legal education requirements of active members for the period that he or she was on inactive status.~~

~~b. A member who was suspended prior to changing to inactive status, and who has been suspended or inactive for a total of 5 years or less in the preceding 10 years, may transfer to active status by complying with part a above.~~

~~c. A member transferring to active status within 6 months after service as a judge [as defined in Art. II (A)(3)] may do so by complying with parts (a) (1) and (2) above and providing satisfactory evidence that he or she was current in judicial continuing legal education upon completion of such service, regardless of the number of years he or she served as a judge.~~

~~d. A member who is inactive for more than for 5 years in the preceding 10 years, or who does not meet the requirements of either part (a) (3) or (b) above, must take and pass the Washington~~

~~Bar Examination to demonstrate continued professional competence.~~

~~Notwithstanding the above, the Board of Governors may withhold a transfer to active status where for any reason there are serious and substantial questions regarding the present professional competence or moral character of the member, and may refer the matter to the Character and Fitness Committee for investigation and hearing, or may require the inactive member to take and pass the Washington Bar Examination to demonstrate continued professional competence. The member shall be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Committee.~~

D. CHANGE OF MEMBERSHIP CLASS TO INACTIVE

1. Any Active, Judicial, or Emeritus/Pro Bono member who is not Suspended or Disbarred shall become an Inactive-Lawyer member when the member files a written request for Inactive membership with the Executive Director, and that request is approved.

2. Members are transferred to Inactive-Disability pursuant to Title 8 of the Rules for Enforcement of Lawyer Conduct. Any member seeking to transfer from Inactive-Disability to Inactive-Lawyer must first establish that the member has complied with the requirements of Title 8 of the ELC, and then must submit a written request to make the change and comply with all applicable licensing requirements for Inactive-Lawyer members.

3. All members who have been Active or Judicial, or a combination of Active and Judicial, members for fifty years may qualify for Inactive-Honorary membership. A qualified member may request to change to Inactive-Honorary membership by submitting a request in writing, or making such request in response to the WSBA's inquiry regarding such a membership change.

4. An Active member may apply to change from Active to Inactive-Lawyer while disciplinary investigations or proceedings are pending against such member. Such transfer, however, shall not terminate, stay or suspend any pending disciplinary investigation or proceeding against the member.

E. CHANGE OF MEMBERSHIP CLASS TO JUDICIAL

An Active member may request to become a Judicial member of the Bar by submitting a written request on judicial letterhead and complying with the provisions of these bylaws.

...

G.~~E.~~ ANNUAL ~~MEMBERSHIP~~ LICENSE FEES AND ASSESSMENTS.

All annual license fees and assessments must be paid as prescribed by the WSBA Board of Governors or approved by the Washington Supreme Court.

1. License Fees.

...

c. Judicial Members.

Judicial members shall pay any required annual license fee or mandatory assessment in an amount(s) established by the BOG or approved by the state Supreme Court, in such manner or on such form as is required by the WSBA. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Judicial members.

CLEAN VERSION:

II. MEMBERSHIP

A. CLASSES OF MEMBERSHIP.

There shall be four classes of membership with the qualifications, privileges and restrictions specified....

3. Judicial.

a. An active member may qualify to become a Judicial member of the Bar if the member is one of the following:

1) A current full-time judge, commissioner, or magistrate of the courts of record in the State of Washington, or the courts of the United States;

2) A current full-time judge, commissioner, or magistrate in the district or municipal courts in the State of Washington, provided that such position requires the person to be a lawyer;

3) A current senior status judge in the Courts of the United States; or

4) A current full-time Tribal Court judge in the State of Washington.

b. Judicial members may:

1) Practice law if not prohibited by statute or the Code of Judicial Conduct;

2) Be appointed to serve on any task force, advisory board or council of the Bar; and

3) Be non-voting members in WSBA Sections, if allowed under the Section's bylaws.

c. Nothing in these bylaws shall be deemed to prohibit a judicial member from carrying out their judicial duties.

d. Judicial members are required to provide the member registry information required of other members, and are to provide the WSBA with any changes to such within 10 days of any change.

e. Judicial members are required to inform the WSBA within 10 days when they retire or when their employment situation has otherwise changed so as to cause them to be ineligible for Judicial membership, and must apply to change to another membership class or to resign. Judicial members desiring to change membership class to Active or Emeritus/Pro Bono are required to pass a character and fitness review, and in addition to any other requested information, must disclose any judicial discipline or investigations, whether or not ongoing.

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a. Completing and submitting an application form, all required licensing forms, and any other required information;

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3. All members who have been Active or Judicial, or a combination of Active and Judicial, members for fifty years may qualify for Inactive-Honorary membership. A qualified member may request to change to Inactive-Honorary membership by submitting a request in writing, or making such request in response to the WSBA's inquiry regarding such a membership change.

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...

c. Judicial Members.

Judicial members shall pay any required annual license fee or mandatory assessment in an amount(s) established by the BOG or approved by the state Supreme Court, in such manner or on such form as

is required by the WSBA. Except for the amount of the license fee itself, the annual license fee payment requirements, including deadlines and late payment fees, for Active members shall apply to Judicial members.

TAB 9

Criminal Justice Summit
Seattle University School of Law – October 1, 2009

In attendance:

Wayne Blair, Trial Court Funding Task Force
Dave Boerner, Sentencing Guidelines Commission
Marc Boman, Council on Public Defense
Bob Boruchowitz, Seattle University Law School
Tom Carr, Seattle City Attorney
Theresa Connor, Integrity of Justice Project
Mary Jane Ferguson, KC Office of Public Defender
Sheila Gall, Association of WA Cities
Tag Gleason, Seattle Police Dept.
Jeff Hall, Administrator for the Courts
Christie Hedman, WA Defender Asociation
V. David Hocraffer, KC Office of Public Defender
Brooks Holland, Gonzaga Law School
Mark Larson, King County Prosecuting Attorney's Office
Dan McGivern, SU intern
Jackie McMurtrie, UW School of Law
Floris Mikkelsen, The Defender Association
Joanne Moore, Office of Public Defense
Anita Paulsen, Public Defender Association
Jennifer Shaw, ACLU of Washington
Gail Stone, WSBA

Welcome – Dean Annette Clark, Seattle University School of Law

Dean Clark welcomed Summit attendees to the first of the three 2009 Criminal Defense Summits, hosted by each of Washington's three law schools.

Introduction – Marc Boman, Co-chair, WSBA Council on Public Defense

Mr. Boman recapped the work of last year's Criminal Justice Summit participants, including the Feb. 9, 2009 Statement of Participants. The Statement included seven principles and assumptions (see attached). Last year's summit participants agreed to focus first on revising Driving While License Suspended in the Third Degree (DWLS 3) and raising property crime thresholds (felony theft). The 2009 legislature enacted an increase in felony theft levels.

Discussion – moderated by Jackie McMurtrie, Professor, UW School of Law

Prof. McMurtrie opened up the discussion by asking the group to focus on proposals that would have a significant impact. Ideas offered included:

- **DWLS 3** – Denis Tracy, Whitman County Prosecutor, is working on a proposal for DWLS 3. Prof. McMurtrie will distribute the proposal to participants.
- **Evidence-based alternatives to incarceration** – Dave Boerner, chair of the Sentencing Guidelines Commission (SGC), noted that the SGC and the Superior Court Judges Association are developing a proposal to authorize and establish a certification procedure for evidence-based alternatives to incarceration. One question they are grappling with is how to cover the up-front costs of these programs. One method might be to replicate the process used to expand the availability of drug courts some years ago, in which the immediate savings were identified and recaptured to fund the program.

- **Additional sentencing measures** proposed or under consideration by the Sentencing Guidelines Commission:
    - Reduce all prison sentences by 30 to 60 days, which would save tens of millions of dollars during the current fiscal crisis. This could be enacted with a sunset provision.
    - Revise the sentencing grid to increase sentences at the top of the grid (for more serious crimes) and reduce sentences at the bottom of the grid (less serious crimes). This legislation has passed one house in Olympia but has not made it to the Governor's desk.
- **Decriminalize 40 grams or less of marijuana** – Jennifer Shaw of the ACLU presented SB 5615, Sen. Kohl-Welles' 2009 legislation. Discussion ensued, with participants making the following points:
    - The fiscal note on the bill identified $16 million in savings plus a net increase of $1 million in revenue.
    - We need to balance cost savings with public safety needs.
    - In Seattle, all 54 marijuana cases were actually initially booked for other charges. Defendants had been stopped for warrants of other reasons and then marijuana was found.
    - Collateral consequences can include disqualification for student loans r other federal benefits.
    - QUERY: 40 grams is 1.5 ounces, which is more than one-time personal use. Did ACLU consider lowering the amount?
        - No. The bill simply changes the current misdemeanor to an infraction. Thirteen other states have taken this approach.
    - The Criminal Justice Summit participants group and its effectiveness and competence are better used on other issues. The power of this group lies in the diversity of perspectives and interests represented and in this group achieving consensus. The group cannot reach a consensus on this legislation in time for the 2010 legislative session so we should not focus our time on it over the next two Summit meetings.
    - But we should discuss the issue and see whether the group can, in fact, achieve a consensus on it this year.
- **Expiration of warrants** – Anita Paulsen asked whether we should recommend that warrants should expire.
- **Identify a juvenile issue** – Marc Boman suggested the group investigate the possibility of a proposal affecting juveniles and the juvenile court system.
- **Moratorium on the death penalty** – Bob Boruchowitz suggested this. Several other participants suggested this group would not be able to come to consensus about this.

After potential proposals were identified, Prof. McMurtrie led the discussion on how the group would like to proceed through the next two Summits.

- **Who else needs to be at the table**? Washington State Patrol and the Traffic Safety Commission were identified as important stakeholders.
- **Clarifying the role of summit participants.** Jeff Hall reminded the group that participants are not here as representatives of our organizations but as persons with particular expertise. What we can do is identify proposals that we think would achieve consensus and have significant impact, then take those proposals back to our organizations. Our organizations (or some number of them) could then create a coalition around the proposal.

- **Short-term or long-term focus?** It was noted that because last year's summits were held shortly prior to the legislative session, participants didn't have time to actually draft legislation. Since we're starting earlier this year, we have an opportunity to do so this year if we use our two remaining meetings wisely. Denis Tracy's DWLS 3 proposal provides the best vehicle for having a proposal we can take back to our organizations for possible support in the 2010 session.
    - One recommendation was that the group should look at issues beyond what we think we can achieve this year. This group is a unique gathering of experienced, influential leaders from all segments of the criminal justice system and we should put our minds to longer term issues, such as the death penalty.
    - Another was that the group could form subcommittees to develop proposals so that Summit meeting time could be used effectively. As well, we could designate time for both short-term and long-term proposals.
- **Take up only those issues on which we believe we can achieve consensus in the short-term?** It was recommended that our time be spent only on issues upon which we believe we may be able to achieve consensus in the short term. Others recommended that the group not shy away from controversial issues if they have the potential for significant fiscal impact, offering that it's valuable to identify areas of specific disagreement so people can apply some creative problem-solving.
- **Should the group develop another Statement of Participants?** Discussed but not resolved.

Consensus actions for next Summit meeting:

- Pursue DWLS 3 – Jeff Hall will follow up with Denis Tracy.
- Sentencing Guidelines Commission proposals – Dave Boerner will follow up after the SGC takes action and provide that information.
- Warrants – Anita Paulsen and Mark Larson will work on this and report back.
- Juvenile – Marc Boman will consider possible ideas to bring back to the group.

Adjournment

Criminal Justice Summit
Meeting Nov 12, 09

DWLS 3rd degree

Position Paper

1. **The current law of DWLS**:

a. There are different degrees 1,2,3 and different reasons for getting suspended (for instance: DUI, Reckless Driving, Too Many Tickets: 1st and 2nd degree – the more serious suspensions; to less serious 3rd degree for not paying tickets or child support). There are a number of different ways a person may have their license suspended in the third degree. It is a crime to drive while suspended in any degree.

b. For the version of DWLS3 that is involved here, a person gets their license suspended if they fail to respond, or pay, any traffic ticket (for instance, that speeding ticket in Colfax they got on the way to the football game).

c. When they get suspended, the DOL mails them a letter. It is a common situation for the letter to go to an outdated address and the person will drive without knowing they are suspended (still a crime). So this is one of the few crimes a person can commit without knowing they are committing a crime.

d. For a small number of people, DWLS3 is a crime that can be called "driving while poor", in that some people do not have the funds to pay the ticket in a timely way, and some of those people do not understand enough about the system to know that they can obtain a payment plan, rather than having to pay the entire ticket fine at once. They then ignore the ticket and their license is suspended, but the person continues to drive as a means to get to work.

e. About 32% of cases in District and Municipal courts are DWLS3

f. About 80%[?] of those are cases where the suspension is due to FTA on a traffic ticket

g. These cases take up about 15% to 20% of the time of prosecutors, judges, clerks, and public defenders

h. In most jurisdictions, unless the defendant has a very long history of DWLS, the prosecutor gives the defendant an option to reinstate their license (by simply paying the old infraction – or getting into a payment plan). If the defendant does this, the DWSL3 misdemeanor is reduced to an infraction such as Driving without a valid license. In some of the larger jurisdictions, the charge is reduced to an infraction regardless of whether the defendant reinstates their license or has a history of DWLS.

i. In larger jurisdictions, it is almost unheard of for a defendant to be sentenced to serve jail time if convicted of DWLS3 for FTA, even with a number of prior convictions for the same thing. In smaller jurisdictions, it is still very rare. In most jurisdictions, the jail space is devoted to more serious crimes.

j.

2. **The goal of the current system** (of having traffic infraction FTA as a grounds for license suspension) is payment of infraction tickets (revenue) and respect for our system. There is also a collateral effect of some coercion to get insurance if the underlying infraction is failing to pay a No Insurance ticket, and if the local prosecutor on the DWLS takes the time to try to coerce the defendant to get insurance.

The effect of the current system:

a. In effect, the current system uses the criminal courts to enforce collection of a civil debt;

b. Experience shows that about 50% of those who get caught driving while suspended, quickly clear up the suspension (by paying the old ticket);

c. Of the remaining 50%, we spend money to prosecute, defend, judge, and process with clerks, (and very rarely to jail them) with little to show for it. It is my belief that we spend more on the process for these 50% who can't or won't pay than we collect, most likely far more.

3. We can accomplish the goals of DWLS more effectively than the current system, BUT we must also keep in mind the cost of any change, and any change should be simple and clear for law enforcement and DOL;

4. **Proposal**:

A. Remove FTA as reason for suspension. Send all FTA's to civil collections process. Some courts may elect to make some effort to collect the debt themselves, before sending to a collection agency, but that would be up to the local courts.

AND

B. No driver's license may be renewed or issued for any driver who fails to pay or enter a payment plan on any infraction.

AND

C. If any car is used in the commission of the infraction of Driving Without Proof of Insurance, the owner must provide proof of insurance at the time of renewing the car tabs for the following two years.

This proposal accomplishes the goals of collection of revenue to the same extent as the current system –because approximately 50% of the problem people will pay once collection action is begun by the local court and/or a collection agency. Also, it will coerce owners without insurance to get insurance. In addition, there will be a small coercive effect on the obstinate people who will go to some lengths not to pay, in that their license will expire. If they continue to drive, they will incur the infraction of driving without a valid license.

This proposal does not increase the level of revenue /debt collection over the current system, but it costs nothing, thereby saving approximately 15% or more of our current time spent on these cases. That time then can be spent on the things that criminal system is designed to address: assault, DUI, theft, etc.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3292.2/10 2nd draft

ATTY/TYPIST: KT:lel

BRIEF DESCRIPTION: Changing provisions regulating driver's and vehicle licenses.

AN ACT Relating to driver's and vehicle licenses; amending RCW 46.20.270, 46.20.291, 46.20.311, 46.20.342, 46.20.391, 46.63.110, and 46.16.216; creating a new section; repealing RCW 46.20.289; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** On September 1, 2010, the department shall reinstate the driving privileges of a person whose driving privileges were suspended pursuant to RCW 46.20.289 due solely to a notice of failure to: Respond to a notice of traffic infraction, appear at a requested hearing, comply with a written promise to appear in court, or comply with the terms of a notice of traffic infraction or citation; provided such infraction was committed prior to September 1, 2010.

Sec. 2. RCW 46.20.270 and 2009 c 181 s 1 are each amended to read as follows:

(1) Whenever any person is convicted of any offense for which this title makes mandatory the withholding of the driving privilege of such person by the department, the court in which such conviction is had shall forthwith mark the person's Washington state driver's license or

permit to drive, if any, in a manner authorized by the department. A valid driver's license or permit to drive marked under this subsection shall remain in effect until the person's driving privilege is withheld by the department pursuant to notice given under RCW 46.20.245, unless the license or permit expires or otherwise becomes invalid prior to the effective date of this action. Perfection of notice of appeal shall stay the execution of sentence including the withholding of the driving privilege.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in this title ((~~46 RCW~~)) which occur on federal installations within this state, shall immediately forward to the department a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine, penalty, or court cost, a plea of guilty or nolo contendere or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses. The abstract for any infractions involving violations of RCW 46.30.020 shall include the vehicle license number for the vehicle that was being driven at the time of the infraction.

(3) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or other infraction issued under RCW 46.63.030(1)(d) has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing

standing, stopping, and parking or one or more other infractions issued under RCW 46.63.030(1)(d) have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of this title and except as defined in RCW 46.25.010, "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in this title which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine or court cost, a plea of guilty or nolo contendere, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(5) For the purposes of this title, "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding.

Sec. 3. RCW 46.20.291 and 2007 c 393 s 2 are each amended to read as follows:

The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);

(5) ((~~Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289;~~

~~(6)~~)) Is subject to suspension under RCW 46.20.305 or 9A.56.078;

((~~(7)~~)) (6) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.0921; or

((~~(8)~~)) (7) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320.

Sec. 4. RCW 46.20.311 and 2006 c 73 s 15 are each amended to read as follows:

(1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.267, 46.20.342, or other provision of law.

(b) Except for a suspension under RCW 46.20.267, ((~~46.20.289,~~)) 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(c) If the suspension is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the

person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the alcohol or drug dependency agency required under RCW 46.61.524 and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an interlock required under RCW 46.20.720 is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(d) Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(e)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of seventy-five dollars.

(ii) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

(2)(a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the

license or privilege renewed or restored until: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of seventy-five dollars.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred fifty dollars. If the revocation is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the alcohol or drug dependency agency required under RCW 46.61.524 and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person applying for a new license. If, following issuance of a new license, the department determines, based upon notification from the interlock provider or otherwise, that an interlock required under RCW 46.20.720 is no longer functioning, the department shall suspend the person's license or privilege to drive until the department has received written

verification from an interlock provider that a functioning interlock is installed.

(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or ((~~46.20.289 or~~)) 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of seventy-five dollars.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars.

Sec. 5. RCW 46.20.342 and 2008 c 282 s 4 are each amended to read as follows:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by

imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license;

(v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xv) A conviction of RCW 46.61.740, relating to theft of motor vehicle fuel;

(xvi) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xvii) An administrative action taken by the department under chapter 46.20 RCW; or

(xviii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) ((~~the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v)~~)) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, ((~~(vi)~~)) (v) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or ((~~(vii)~~)) (vi) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers'

licenses, or any combination of (i) through ((~~(vii)~~)) (vi), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

Sec. 6. RCW 46.20.391 and 2008 c 282 s 6 are each amended to read as follows:

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide, vehicular assault, driving while under the influence of intoxicating liquor or any drug, or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, may submit to the department an application for a temporary restricted driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the

license, may issue a temporary restricted driver's license and may set definite restrictions as provided in RCW 46.20.394.

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to ((~~failure to appear or pay a traffic ticket under RCW 46.20.289,~~)) a violation of the financial responsibility laws under chapter 46.29 RCW((~~,~~)) or for multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license.

(b) ((~~If the suspension is for failure to respond, pay, or comply with a notice of traffic infraction or conviction, the applicant must enter into a payment plan with the court.~~

~~(c)~~)) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation.

(3) An applicant for an occupational or temporary restricted driver's license who qualifies under subsection (1) or (2) of this section is eligible to receive such license only if:

(a) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant demonstrates that it is necessary for him or her to operate a motor vehicle because he or she:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, or welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first-class mail to the driver that the occupational driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection; and

(e) The department shall not issue an occupational driver's license under (b)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (b)(iv) of this subsection.

(4) A person aggrieved by the decision of the department on the application for an occupational or temporary restricted driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an occupational or temporary restricted driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of a separate offense that under <u>this</u> chapter ((~~46.20 RCW~~)) would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

Sec. 7. RCW 46.63.110 and 2009 c 479 s 39 are each amended to read as follows:

(1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has

previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall ((~~suspend the person's driver's license or driving privilege~~)) <u>not renew the person's driver's license or allow a driver's license to be issued to the person</u> until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the department has been notified that the court has entered into a new time payment or community restitution agreement with the person.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall ((~~suspend the person's driver's license or driving privilege~~)) <u>not renew the person's driver's license or allow a driver's license to be issued to the person</u> until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed:

(a) A fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040;

(b) A fee of ten dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the Washington auto theft prevention authority account; and

(c) A fee of two dollars per infraction. Revenue from this fee shall be forwarded to the state treasurer for deposit in the traumatic brain injury account established in RCW 74.31.060.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in

the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited in the state general fund. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

Sec. 8. RCW 46.16.216 and 2004 c 231 s 4 are each amended to read as follows:

(1) To renew a vehicle license, an applicant shall satisfy all listed standing, stopping, and parking violations, and other infractions issued under RCW 46.63.030(1)(d) for the vehicle incurred while the vehicle was registered in the applicant's name and forwarded to the department pursuant to RCW 46.20.270(3). For the purposes of this section, "listed" standing, stopping, and parking violations, and other infractions issued under RCW 46.63.030(1)(d) include only those violations for which notice has been received from state or local agencies or courts by the department one hundred twenty days or more before the date the vehicle license expires and that are placed on the records of the department. Notice of such violations received by the department later than one hundred twenty days before that date that are not satisfied shall be considered by the department in connection with

any applications for license renewal in any subsequent license year. The renewal application may be processed by the department or its agents only if the applicant:

(a) Presents a preprinted renewal application showing no listed standing, stopping, or parking violations, or other infractions issued under RCW 46.63.030(1)(d), or in the absence of such presentation, the agent verifies the information that would be contained on the preprinted renewal application; or

(b) If listed standing, stopping, or parking violations, or other infractions issued under RCW 46.63.030(1)(d) exist, presents proof of payment and pays a fifteen dollar surcharge.

(2) To renew a vehicle license for any vehicle that had been driven by any person in violation of RCW 46.30.020 during the twenty-four month period prior to the vehicle license renewal, which infraction was committed while the vehicle was registered in the applicant's name and forwarded to the department pursuant to RCW 46.20.270(2), regardless of the identity of the person who actually committed that moving violation, an applicant shall obtain proof that the vehicle is insured to the level required by chapter 46.30 RCW and present that proof to the department or its agents at the time of renewal, and pay a fifteen dollar surcharge before the renewal application may be processed.

(3) The surcharge shall be allocated as follows:

(a) Ten dollars shall be deposited in the motor vehicle fund to be used exclusively for the administrative costs of the department of licensing; and

(b) Five dollars shall be retained by the agent handling the renewal application to be used by the agent for the administration of this section.

((~~(3)~~)) (4) If there is a change in the registered owner of the vehicle, the department shall forward the information regarding the change to the state or local charging jurisdiction and release any hold on the renewal of the vehicle license resulting from parking violations or other infractions issued under RCW 46.63.030(1)(d) or 46.30.020 incurred while the certificate of license registration was in a previous registered owner's name.

((~~(4)~~)) (5) The department shall send to all registered owners of vehicles who have been reported to have outstanding listed parking violations or other infractions issued under RCW 46.63.030(1)(d), at

the time of renewal, a statement setting out the dates and jurisdictions in which the violations occurred as well as the amounts of unpaid fines and penalties relating to them and the surcharge to be collected.

(6) The department shall send to all registered owners of vehicles that have been reported to have been driven in violation of RCW 46.30.020, at the time of renewal, a statement setting out the dates and jurisdictions in which the violations occurred as well as a statement explaining that the renewal cannot be processed until the applicant provides proof of insurance and payment of the surcharge as required by this section.

NEW SECTION. **Sec. 9.** RCW 46.20.289 (Suspension for failure to respond, appear, etc) and 2005 c 288 s 5, 2002 c 279 s 4, 1999 c 274 s 1, 1995 c 219 s 2, & 1993 c 501 s 1 are each repealed.

NEW SECTION. **Sec. 10.** This act takes effect September 1, 2010.

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