

BJA COURT RECOVERY TASK FORCE



**WASHINGTON
COURTS**

MEETING PACKET

**AUGUST 4, 2021
2:30 – 4:30 P.M.**

VIDEOCONFERENCE



BJA Court Recovery Task Force

August 4, 2021, 2:30 - 4:30 pm

ZOOM Meeting

AGENDA

<p>1. Welcome (5 minutes)</p> <p>Approve June 9, 2021, Minutes</p>	<p>Chief Justice Steven González Judge Judith Ramseyer Judge Scott Ahlf</p>
<p>2. Innovating Justice Award (15 min)</p>	<p>Chief Justice Steven González</p>
<p>3. Statewide Updates (20 min)</p> <p>Court Orders</p> <p>Association Updates</p> <p>AOC/Rescue Funds</p>	<p>Chief Justice Steven González</p> <p>Judge Judith Ramseyer Judge Scott Ahlf</p> <p>Dawn Marie Rubio</p>
<p>4. Presentations: (35 min)</p> <p>Gender and Justice Commission Gender Justice Study</p> <p>What does access to the courts look like in the virtual world?</p>	<p>Justice Gordon McCloud and Arina Gertseva</p> <p>Chief Justice Steven González Judge Judith Ramseyer</p>
<p>5. Committee Updates (45 minutes) <i>Share remaining goals and activities, sticking points, data collection efforts, and policy changes needed</i></p> <ul style="list-style-type: none"> • Lessons Learned • Criminal Matters <ul style="list-style-type: none"> ○ Juvenile Criminal Civil ○ Therapeutic ○ Adult • Family Law • Child Welfare • Technology Considerations • General Civil Litigation 	<p>Judge Judith Ramseyer</p> <p>Judge Scott Ahlf Judge Ruth Reukauf Judge Jeff Smith Amy Muth</p> <p>Terry Price</p> <p>Linnea Anderson</p> <p>Dawn Marie Rubio/Judge David Estudillo</p> <p>Justice Debra Stephens</p>
<p>6. Next Steps (5 minutes)</p> <p>Summary of action items from meeting</p>	<p>Chief Justice Steve González</p>

5. Future Meetings <ul style="list-style-type: none"> • October 18, 3:00–5:00 • December 6, 3:00–5:00 	
6. Adjourn	
<p>Persons with a disability, who require accommodation, should notify Jeanne Englert at 360-705-5207 or Jeanne.englert@courts.wa.gov. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.</p>	



**Board for Judicial Administration (BJA)
Court Recovery Task Force (CRTF)
Wednesday, June 9, 2021, 2:30 – 4:30 p.m.
Videoconference**

DRAFT MEETING MINUTES

Participants:

Chief Justice Steven González, co-chair
Judge Scott Ahlf, co-chair
Judge Judith Ramseyer, co-chair
Vivienne Alpaugh
Linnea Anderson
Cindy Bricker
Alice Brown
Renea Campbell
Christy Carpenter
Darren Carnell
Adam Cornell
Dennis Cronin
Jerrie Davis
Todd Dowell
Colleen Durkin Peterson
Jeff Even
Laurie Garber
Brittany Gregory
William Hairston
Christopher Hoxie
Jessica Humphreys
Judge Carolyn Jewett
Justice Charles Johnson
Katrin Johnson
Ray Kahler
Mike Killian
Crystal Lambert
Kathryn Leathers
Bob Lichtenberg
Chris Love
Judith Lurie

Justice Sheryl Gordon McCloud
Sophia Byrd McSherry
Judge Rich Melnick
Ryan Murrey
Amy Muth
Sara Niegowski
Judge Marilyn Paja
Andrew Peterson
Terry Price
Judge Ruth Reukauf
Juliana Roe
Dawn Marie Rubio
Larry Shannon
Judge Jackie Shea-Brown
Judge Jeff Smith
Justice Debra Stephens
Fona Sugg
Judge Lisa Sutton
Sharon Swanson
Lee Thomas
Lorrie Thompson
David Wheeler

**Administrative Office of the Courts
(AOC) Staff:**

Jeanne Englert
Penny Larsen
Caroline Tawes

Call to Order

The meeting was called to order at 2:31 p.m. and Chief Justice González welcomed the participants. Dawn Marie Rubio introduced Brittany Gregory, the new Assistant Director of Judicial and Legislative Relations at AOC.

Approval of April 15, 2021, Meeting Minutes

It was moved by Linnea Anderson and seconded by Chief Justice González to approve the April 15, 2021, meeting minutes. The motion carried unanimously.

Statewide Updates

The Annual Supreme Court Symposium, *Behind Bars: the Increased Incarceration of Women and Girls of Color*, was held on June 2.

Court Orders Presentation

Justice Stephens provided an update on proposed court rules and the court rules proposal process. Some of the current emergency rules will be ended and some will be kept. The court community was invited to share input regarding COVID-19 emergency rules and orders, and a summary of the responses was included in the meeting materials. Three proposed rule changes regarding GR 40, CR 39, and CrR 3.4(e) have been submitted to date. If rule changes are approved, they would become effective in January. Emergency orders will not be removed before new rules take effect.

Justice Johnson gave an overview of the rules process.

Association Updates

The District and Municipal Court Judges' Association (DMCJA) finished their spring conference today. Judge Ahlf thanked Judge Gehlsen for her service as DMCJA President. Judge Short will be the new President, the new President-elect is Commissioner Rick Leo, and the new Vice President is Judge Jeff Smith.

Judge Ahlf expects the *Blake* decision to have a large impact on the courts of limited jurisdiction.

Chief Justice González said the new BJA co-chair position will transfer to Judge Tam Bui.

The new Superior Court Judges' Association (SCJA) president is Judge David Estudillo and the president-Elect is Judge Jennifer Forbes. The SCJA is preparing for implementation of recent legislation including the Uniform Guardianship Act, eviction statutes, and the *Blake* decision.

The SCJA is working with justice partners on bringing relief to those entitled to vacating and resentencing due to *Blake*. A scheduling referee will be hired to coordinate hearings among all 39 counties. They are also working with justice partners to look at how funds can be distributed in a fair and logical way.

Rescue Funds

Dawn Marie Rubio presented a funding overview. From the *Blake* decision, \$44.5 million will be used to reimburse counties for extraordinary expenses due to *Blake*;

\$23.5 million has been allocated for Legal Financial Obligations (LFO) reimbursement for the fiscal year 20–22; and \$2.25 million has been allocated for therapeutic courts in the courts of limited jurisdiction. Supplemental funds may need to be requested.

Of the Federal CARES funds, \$1.6 million remains of the \$13.5 million allocated to courts to respond to COVID-19.

Chief Justice González and Dawn Marie Rubio sent letters to the Legislature requesting consideration of the needs of the judicial branch when allocating the American Rescue Plan Act (ARPA) funds provided to Washington State. Presiding judges are encouraged to work with their cities and counties on fund distribution.

The Legislature provided funding for several AOC decision packages, including equity research in the Washington State Center for Court Research (WSCCR), creating a behavioral health team at the AOC, expanded trial court legal services, creating a court equity and access team, continued support of LFO calculator, language access and expanding the interpreter reimbursement program, and trial court security.

Dawn Marie Rubio is also working with the Department of Health on court level health directives.

Washington State Center for Court Research (WSCCR) presentation

Dr. Andrew Peterson, senior research associate with the WSCCR, presented *Justice System Involvement and Longevity in Washington State: A Study of 2017 Decedents*. The study examined disparities in death rate by court involvement level. The study provided an opportunity to improve reporting of court outcomes, to take a more holistic look at courts, and to look at outcome measures to get a better sense of person's well-being after involvement with the justice system.

Jeanne Englert will forward the presentation to the meeting participants.

Committee Updates

Therapeutic Courts

This committee has reminded justice partners that the therapeutic courts are open and available. Committee materials have been distributed through listservs and the CRTF website. Long-term goals include exploring funding for substance abuse testing and treatment and exploring options for courts to share information on what is or is not working. Therapeutic courts are working to stand up drug courts in courts of limited jurisdiction.

Criminal Matters Committee/Juvenile Criminal/Civil Juvenile Criminal

It was moved by Linnea Anderson and seconded by Judge Ramseyer to request CRTF endorsement to move forward with the recommended policy changes on fingerprinting as included in the meeting materials. The motion carried unanimously.

It was moved by Judge Reukauf and seconded by Justice Stephens to request CRTF endorsement to move forward with the recommended policy changes on diversion statutes as included in the meeting materials. The motion carried unanimously.

The Criminal Matters/Juvenile Committee will meet again in September.

Family Law

It was moved by Judge Ramseyer and seconded by Judge Jewett to send Committee comments to the Supreme Court in support of proposed rule IDRT GR 40. The motion carried unanimously.

This Committee is still working on GR 30 and post-pandemic changes.

Child Welfare

It was moved by Linnea Anderson and seconded by Dawn Marie Rubio to request CRTF endorsement to move forward with recommended samples of Pre-Trial Orders for Remote/Virtual Dependency Fact Finding or Termination of Parental Rights Trials, Discovery Agreement, and Witness List as included in the meeting materials. The motion carried unanimously.

It was moved by Linnea Anderson and seconded by Judge Ramseyer to request CRTF endorsement to move forward with revisions to CR 43 permitting testimony from a different location than the court and removing the requirement for the witness to stand while the oath is administered as included in the meeting materials. The motion carried unanimously.

Technology Considerations Committee

This Committee has no new reports after completing some significant deliverables. The Committee will meet again in August to discuss general recommendations for court websites.

General Civil Litigation

This Committee is looking closely at all civil rules and permanent authorization of certain rules. Remote jury trial guidance was sent electronically last week to the court community.

Appellate Courts Committee

This Committee has completed its work. Judge Sutton thanked the Supreme Court Rules Committee for expediting their proposals.

Lessons Learned Committee

This Committee plans to begin capturing and synthesizing the work of the other committees. To help this Committee compile information, they will send five questions to each of the other committees. The questions were included in the meeting materials.

The Lessons Learned Committee is recruiting additional members.

Criminal Matters Committee/Juvenile Criminal/Civil

Adult: Criminal:

The Committee report was included in the meeting materials. This Committee is also addressing interpreter concerns, especially around distancing requirements. This Committee is also looking at the fingerprinting issue for adult offenders, and will provide input to the CRTF.

Next steps

Work on court rules and court operations orders is ongoing.

The CRTF will follow up with recommendations to the BJA.

The Judicial Leadership Summit is June 18. Members of the executive and legislative branches will join in a discussion on improving communication among the branches of government.

There being no further business, the meeting was adjourned at 4:34 p.m.

Motion Summary from the June 9, 2021, Meeting

Motion Summary	Status
Approve the April 15, 2021, meeting minutes.	Passed
Request CRTF endorsement to move forward with the recommended policy changes on fingerprinting as included in the meeting materials.	Passed
Request CRTF endorsement to move forward with the recommended policy changes on diversion statutes as included in the meeting materials.	Passed
Send Committee comments to the Supreme Court in support of proposed rule IDRT GR 40.	Passed

Motion Summary	Status
Request CRTF endorsement to move forward with recommended samples of Pre-Trial Orders for Remote/Virtual Dependency Fact Finding or Termination of Parental Rights Trials, Discovery Agreement, and Witness List as included in the meeting materials.	Passed
Request CRTF endorsement to move forward with revisions to CR 43 permitting testimony from a different location than the court and removing the requirement for the witness to stand while the oath is administered as included in the meeting materials.	Passed

Action Items from the June 9, 2021, Meeting

Action Item	Status
Jeanne Englert will forward the presentation <i>Justice System Involvement and Longevity in Washington State: A Study of 2017 Decedents</i> to the meeting participants.	Done
The Lessons Learned Committee plans to begin capturing and synthesizing the work of the other committees. To help this Committee compile information, they will send five questions to each of the other committees.	

GR 9 COVER SHEET
Suggested Amendment to
WASHINGTON STATE COURT RULES:
CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION

RULE 3.3
TIME FOR TRIAL

- A. **Name of Proponent:** District & Municipal Courts Judges' Association (DMCJA)
- B. **Spokesperson:** Judge Charles Short, President, DMCJA
- C. **Purpose:** The DMCJA recommends amending CrRLJ 3.3, Time for Trial, to allow defense counsel to enter into agreements for continuance on behalf of their clients. The amendment will make the rule more congruent with recent amendments to CrRLJ 3.4 pertaining to the presence of the defendant. It also clarifies that defense counsel's signature constitutes a representation that the defendant has been consulted and agrees to the continuance, and that the court's notice to defense counsel of new hearing dates constitutes notice to the defendant. For these reasons, the DMCJA requests adoption of the proposed amendment.
- D. **Hearing:** A hearing is not recommended.
- E. **Expedited Consideration:** Expedited consideration is requested to address current practice and to make the rule congruent with the current CrRLJ 3.4.

Proposed Amendment:

**CrRLJ 3.3
TIME FOR TRAIL**

(a)-(e) [Unchanged.]

(f) Continuances. Continuances. Continuances or other delays may be granted as follows:

(1) *Written Agreement.* Upon written agreement of the parties which must be signed by defense counsel or the defendant or all defendants, the court may continue the trial to a specified date. Defense counsel's signature constitutes a representation that the defendant has been consulted and agrees to the continuance. The Court's notice to defense counsel of new hearing dates constitutes notice to the defendant.

(2) [Unchanged.]

(g)-(h) [Unchanged.]

GR 9 COVER SHEET
Suggested Amendment to
WASHINGTON STATE COURT RULES:
CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION

RULE 3.4
PRESENCE APPEARANCE OF THE DEFENDANT

- A. **Name of Proponent:** District & Municipal Courts Judges’ Association (DMCJA)
- B. **Spokesperson:** Judge Charles Short, President, DMCJA
- C. **Purpose:** Two recent events have prompted the DMCJA to propose revisions to the current CrRLJ 3.4. First, the global pandemic and associated Washington Supreme Court orders loosening restrictions on virtual or remote hearings have forced courts of limited jurisdiction to explore new ways to conduct court business to provide greater access to justice and to facilitate court operations. Most courts in the state made large investments to advance technology in the courtrooms to make these hearings not only possible, but even desirable for certain types of hearings. Allowing remote appearance for many hearings has decreased the financial impact of criminal charges on many defendants, by allowing defendants to appear in court without taking time off from work or arranging childcare for their family. It has also increased efficiency of courts by allowing attorneys to appear in courts in different jurisdictions without the need to travel between the courts. These advancements justify a broadening of the rule allowing for remote appearance by defendants.

Second, the recent Court of Appeals decision in State v. Gelinias, 15 Wn. App. 2d 484 (2020) has caused considerable confusion surrounding when courts of limited jurisdiction may require a defendant’s physical appearance for certain types of hearings, and when these courts have the authority to issue a bench warrant for non-appearance. The revisions in this rule are designed to codify the primary holding of Gelinias, that a defendant may appear through counsel for many types of hearings, and that a court of limited jurisdiction may not issue a bench warrant for the defendant’s failure to personally appear when counsel is appearing on their behalf.

These changes proposed by the DMCJA continue current appearance opportunities for defendants and allow limited jurisdiction courts to manage calendars and trial terms. Some language changes are proposed for clarity or grammar purposes. The current rule uses the terms “required” and “necessary,” resulting in lack of clarity. CrRLJ 3.3(c)(2)(ii) uses the term “required” when discussing the restarting of a commencement date. For clarity and consistency, the proponent recommends using “required” in place of “necessary.” The current version of CrRLJ 3.4 also uses the terms “presence” and “appearance.” For consistency and clarity, the proponent recommends using “appearance” or “appear” throughout the rule.

- Paragraph (a) is revised to clarify that an appearance by the defendant (or their attorney) is required at all hearings. This change allows the court to manage trial and pre-trial calendars while still permitting the defendant to appear through counsel.
- New Paragraph (b) defines what “appearance” means for purposes of this rule. This definition section clarifies that there are three ways in which a defendant may “appear” in court – in person, by video or remote appearance, and through counsel.
- Paragraph (c) is retitled “When Physical Appearance Required.” This clarifies that for certain types of necessary hearings, appearing only through counsel is not permitted. Thus, the defendant’s physical or remote appearance is required at the hearings listed. The revisions here also incorporate a separate holding of Gelinas, by clarifying that a trial court may find good cause to require a defendant’s personal appearance at certain types of hearings other than those explicitly listed. Finally, these revisions now allow a trial court to permit remote appearance of the defendant for required appearances.
- Paragraph (d) is identical to former paragraph (c), with the exception that it changes “by its lawyer” to “through counsel” to make the language consistent with the definitions in the new paragraph (b).
- Paragraph (e) clarifies that a trial court has the authority to issue a bench warrant if no appearance is made by the defendant. In other words, if a defendant fails to appear, and a defense attorney does not appear or appears but has no authority to act on behalf of the client and no information as to why the defendant is not present, the trial court has the discretion to issue a bench warrant. This is consistent with the Gelinas holding that a trial court may only issue a warrant for a defendant’s failure to appear if the defendant’s appearance was necessary to advance the case. If neither a defendant nor an attorney appear at a hearing, a hearing cannot take place and thus the case cannot advance.

Finally, the DMCJA recommends moving former paragraphs (e) and (f) related to when “videoconference” proceedings to a new ARLJ or GR. The pandemic forced, and the Supreme Court’s emergency orders permitted, courts around the state to adopt new methods and invest in technology to improve the quality and efficiency of video or remote hearings. The location within the rules of the current remote hearing guidelines could be interpreted as limiting their application to pre-trial proceedings. A new ARLJ or GR would be able to address remote hearing requirements for all civil, infraction and criminal proceedings. General remote hearing guidelines could be established with the ability of local courts to adopt procedures consistent with their access to technology.

Because of the benefits of this proposal, the efficiency of video proceedings; the holding in Gelinas, and aiding general language clarification, the DMCJA requests adoption of the proposed amendments.

D. Hearing: A hearing is not recommended.

E. Expedited Consideration: Expedited consideration is requested because of the change in the law and to facilitate the continuation of video proceedings.

CrRLJ 3.4 PRESENCE APPEARANCE OF THE DEFENDANT

~~(a) **Presence Defined.** Unless a court order or this rule specifically requires the physical presence of the defendant, the defendant may appear remotely or through counsel. Appearance through counsel requires that counsel either (i) present a waiver the defendant has signed indicating the defendant wishes to appear through counsel or (ii) affirm, in writing or in open court, that this is the defendant's preference. **Appearance Required.** The appearance of the defendant is required at all hearings set by the Court.~~

~~(b) **Definitions.** For purposes of this rule, "appear" or "appearance" means the defendant's physical appearance, remote appearance or appearance through counsel.~~

- ~~(1) "Physical appearance" means the defendant's appearance pursuant to the CrRLJ 3.3(a) definition of appearance.~~
- ~~(2) "Remote appearance" means the defendant appears through a telephonic or video conference platform approved by the Court.~~
- ~~(3) "Appearance through counsel" means that counsel appears on behalf of the defendant. Appearance through counsel requires that counsel affirm, in writing or in open court, that they have consulted with the defendant since the last appearance, and that the defendant waives the right to be present at the instant hearing.~~

~~(b) (c) **When Physical Appearance Is Required Necessary.** The defendant's physical appearance shall be present physically or remotely (in the court's discretion) is required at arraignment (if one is held), at every stage of the trial including the empaneling of the jury, and the returning of the verdict, and at the imposition of imposing the sentence, and at hearings set by the Court upon a finding of good cause, except as otherwise provided by these rules, or as excused or excluded by the court for good cause shown.~~

~~(e) (d) **Effect of Voluntary Absence.** The defendant's voluntary absence after the trial has commenced in his or her presence shall not prevent continuing with the trial to and including the return of the verdict. A corporation may appear by its lawyer through counsel for all purposes. In prosecutions for offenses punishable by fine only, the court, with the defendant's written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence.~~

~~(d) (e) **Defendant Not Present. Failure to Appear.** In order to require the defendant's physical or remote presence at any hearing other than those listed in subpart (b), the court must find good cause. If in any case the defendant fails to appear is not present when his or her personal attendance appearance is necessary required, the court may order the clerk to issue a bench warrant for the defendant's arrest, which may be served as a warrant of arrest in other cases.~~

~~(e) **Videoconference Proceedings.**~~

~~(1) *Authorization.* Preliminary appearances held pursuant to CrRLJ 3.2.1(d), arraignments held pursuant to this rule and CrRLJ 4.1, bail hearings held pursuant to CrRLJ 3.2, and trial settings held pursuant to CrRLJ 3.3(f), may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other. Such proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Any party may request an in person hearing, which may in the trial court judge's discretion be granted.~~

~~(2) *Agreement.* Other trial court proceedings including the entry of a Statement of Defendant on Plea of Guilty as provided for by CrRLJ 4.2 may be conducted by video conference only by agreement of the parties, either in writing or on the record, and upon the approval of the trial court judge pursuant to local court rule.~~

~~(3) *Standards for Video Conference Proceedings.* The judge, counsel, all parties, and the public must be able to see and hear each other during proceedings, and speak as permitted by the judge. The video and audio should be of sufficient quality to ensure participants are easily seen and understood. Video conference facilities must provide for confidential communications between attorney and client, including a means during the hearing for the attorney and the client to read and review all documents executed therein, and security sufficient to protect the safety of all participants and observers. For purposes of videoconference proceedings, the electronic or facsimile signatures of the defendant, counsel, interested parties and the court shall be treated as if they were original signatures. This includes all orders on judgment and sentence, no contact orders, statements of defendant on pleas of guilty, and other documents or pleadings as the court shall determine are appropriate or necessary. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.~~

~~**(f) *Videoconference Proceedings under RCW 10.77.***~~

~~(1) *Authorization.* Proceedings held pursuant to chapter 10.77 RCW, may be conducted by video conference in which all participants can simultaneously see, hear, and speak with each other except as otherwise directed by the trial court judge. When these proceedings are conducted via video conference, it is presumed that all participants will be physically present in the courtroom except for the forensic evaluator unless as otherwise provided by these rules, or as excused or excluded by the court for good cause shown. Good cause may include circumstances where at the time of the hearing, the court does not have the technological capability or equipment to conduct the conference by video as provided in this rule. Such video proceedings shall be deemed held in open court and in the defendant's presence for the purposes of any statute, court rule, or policy. All video conference hearings conducted pursuant to this rule shall be public, and the public shall be able to simultaneously see and hear all participants and speak as permitted by the trial court judge. Five days prior to the hearing date, any party may request the forensic evaluator be physically present in the courtroom, which may in the trial court judge's discretion be granted.~~

~~(2) *Standards for Video Conference Proceedings under Chapter 10.77 RCW.* The judge, counsel, all parties, and the public must be able to see and hear each other during the proceedings, and speak as permitted by the judge. Video conference facilities must provide for confidential communications between attorney and client and security sufficient to protect the safety of all participants and observers. In interpreted proceedings, the interpreter must be located next to the defendant and the proceeding must be conducted to assure that the interpreter can hear all participants.~~

GR 9 COVER SHEET
Suggested Amendment to
WASHINGTON STATE COURT RULES:
CIVIL RULES FOR COURTS OF LIMITED JURISDICTION

Amend RULE 43
TAKING OF TESTIMONY

Submitted by the District & Municipal Courts Judges Association

- A. **Name of Proponent:** District & Municipal Courts Judges Association
(DMCJA)
- B. **Spokesperson:** Judge Charles Short, President
DMCJA
- C. **Purpose:** It was recently brought to the attention of the DMCJA that CR 43(a)(1) includes a sentence pertaining to remote testimony that is absent from CRLJ 43(a)(1). The sentence reads, “For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.” Having considered the matter, the DMCJA Board determined that courts of limited jurisdiction would benefit from similar flexibility in permitting remote testimony. Further, it is good practice for the rules of the trial courts to remain congruent. Therefore, the DMCJA requests that an additional sentence be added to CRLJ 43(a)(1) making that subsection identical to CR 43(a)(1).
- D. **Hearing:** A hearing is not recommended.
- E. **Expedited Consideration:** Expedited consideration is requested to allow judges the flexibility to accommodate remote testimony during these uncertain times.

Proposed Amendment:

CRLJ 43
TAKING OF TESTIMONY

(a) Testimony.

(1) *Generally.* In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise directed by the court or provided by rule or statute. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(2) *Multiple Examinations.* When two or more attorneys are upon the same side trying a case, the attorney conducting the examination of a witness shall continue until the witness is excused from the stand; and all objections and offers of proof made during the examination of such witness shall be made or announced by the attorney who is conducting the examination or cross examination.

(b) - (k) [No change]

2021 Gender Justice Study

In order to gain a better understanding of gender bias in the courts today, the Washington State Supreme Court Gender and Justice Commission conducted the 2021 Gender Justice Study (2021 Study). The study focuses on the intersection of gender and race, poverty, and other identities.

The 2021 Study evaluates the status of the recommendations from the Commission's 1989 gender bias study; presents updated data, research, and literature on 17 topic areas related to the justice system; highlights areas where data and research are lacking; and presents goals and recommendations for addressing inequities identified in the study. In addition, the Commission conducted five projects to fill research and data gaps identified in the course of conducting the 2021 Study.

The Gender Justice Study contains a number of recommendations to address gender and other inequities identified in the course of analyzing data, reviewing the literature, conducting projects to fill gaps in the literature, and working with experts. The recommendations work toward meeting five goals:

1. Improve data collection in every area of the law that this report covers: ensure collection and distribution of accurate, specific, data, disaggregated by gender, race, ethnicity, and LGBTQ+ status, in the criminal, civil, and juvenile areas of law covered here.
2. Improve access to the courts in every area of the law that this report covers: expand remote access, adopt more flexible hours, increase access to legal help, reduce communication barriers, and ensure that courts treat all court users in a trauma responsive manner.
3. Address the impacts of the vast increase in convictions and detentions over the last generation: (a) recognize and remedy the increase in conviction rates and incarceration length of women, especially Black, Indigenous, and other women of color, and (b) recognize and remedy the consequences that the increased incarceration of Black, Indigenous and other men of color over the last generation has had on women and other family members.
4. Reduce reliance on revenue from court users to fund the courts.
5. Determine what evidence-based curricula work for judicial and legal education on gender and race bias.

Washington State Supreme Court Gender and Justice Commission Gender Justice Study Chapters

PART I: GENDER, THE LEGAL COMMUNITY, AND BARRIERS TO ACCESSING THE COURTS

- Chapter 1: Gender and Financial Barriers to Accessing the Courts
- Chapter 2: Communication and Language as a Gendered Barrier to Accessing the Courts
- Chapter 3: Gender and Barriers to Jury Service
- Chapter 4: The Impact of Gender on Courtroom Participation and Legal Community Acceptance

PART II: GENDER, CIVIL JUSTICE, AND THE COURTS

- Chapter 5: Gender and Employment Discrimination and Harassment
- Chapter 6: Gender Impacts in Civil Proceedings as They Relate to Economic Consequences Including Fee Awards and Wrongful Death
- Chapter 7: Gender Impact in Family Law Proceedings

PART III: GENDER, VIOLENCE, YOUTH, AND EXPLOITATION

- Chapter 8: Consequences of Gender-Based Violence: Domestic Violence and Sexual Assault
- Chapter 9: Juvenile Justice and Gendered and Racialized Disparities
- Chapter 10: Commercial Sex and Exploitation

PART IV: THE GENDERED IMPACT OF THE INCREASE IN CONVICTIONS AND INCARCERATION

- Chapter 11: Incarcerated Women in Washington
- Chapter 12: Availability of Gender Responsive Programming and Use of Trauma Informed Care in Washington State Department of Corrections
- Chapter 13: Prosecutorial Discretion and Gendered Impacts
- Chapter 14: Sentencing Changes and Their Direct and Indirect Impact on Women
- Chapter 15: The Gendered Impact of Legal Financial Obligations
- Chapter 16: Consequences of Incarceration and Criminal Convictions for Parents, Their Children, and Families

2021: Gender and Race Still Affect Justice

The 2021 Gender Justice Study found evidence of many gender inequities in Washington State’s justice system. These inequities most frequently impact Black, Indigenous, and people of color who are women, transgender, and gender nonconforming.

GENDER, THE LEGAL COMMUNITY, AND BARRIERS TO ACCESSING THE COURTS

- The costs of accessing Washington courts—such as user fees, child care, and lawyers—create barriers. This has the greatest impact on single mothers; Black, Indigenous, and women of color; LGBTQ+ people; and those with disabilities.
- Lack of affordable child care limits the ability of low-income women to get to court, underscoring the need for flexible court schedules and online access to court.
- Lack of court interpreters and translated materials disadvantages people with distinct communication needs. This is a particular concern for those seeking protection from domestic violence, including immigrant women and families.
- Black, Indigenous, and women of color are not well represented in jury pools. Higher juror pay and research on challenges for female jurors are needed.
- Women, particularly Black, Indigenous, and other women of color, continue to face bias and pay disparities in the legal profession. Women and men of color are also underrepresented in judicial and law firm leadership positions.

GENDER, CIVIL JUSTICE, AND THE COURTS

- The highest rates of workplace discrimination and harassment affect Black, Indigenous, and women of color; women doing farm work, domestic labor, and hospitality work; people with disabilities; and LGBTQ+ workers.
- Those most impacted by workplace discrimination and harassment have difficulty reporting incidents and finding lawyers. They may receive unequal court outcomes by gender, race, and ethnicity.
- A 2021 workplace survey of employees in Washington courts, superior court clerk offices, and judicial branch agencies found that employees who identified as American Indian, Alaska Native, First Nations, or other Indigenous Group Member (86%), bisexual (84%), gay or lesbian (73%), and women (62%) reported the highest rates of harassment.
- Current practices for valuing life for wrongful death and other tort claims devalue the lives of women and Black, Indigenous, and people of color.
- Data suggests that gender and other biases in family law proceedings can impact custody, child support, and maintenance decisions.

GENDER, VIOLENCE, YOUTH, AND EXPLOITATION

- Domestic violence and sexual assault mostly harm women and LGBTQ+ people—particularly those who are Black, Indigenous, people of color, immigrants, or living in poverty. They face barriers to reporting such gender-based violence.
- Despite improvements in the law and its enforcement, barriers to justice remain for victims of gender-based violence. The large numbers of missing and murdered Indigenous women and people remain a key concern.
- The law requiring mandatory arrests in domestic violence cases may have unintended adverse effects on women, people of color, immigrants, those living in poverty, and LGBTQ+ people.
- Girls, LGBTQ+ people, and youth with disabilities take different pathways into the juvenile justice system than youth who are not a part of these populations, and have different needs inside the system.
- Boys are targeted for commercial sexual exploitation in larger numbers than previously known. But women, youth of all genders, LGBTQ+ people, those in poverty, and Black, Indigenous and communities of color are the main targets.
- The justice system response to commercial sexual exploitation has greatly improved but still treats many in the sex industry, including exploited populations, as criminals.

THE GENDERED IMPACT OF THE INCREASE IN CONVICTIONS AND INCARCERATION

- While men of color have suffered the brunt of mass incarceration, the number of women incarcerated in Washington grew exponentially and largely in the shadows between 1980 and 2000. Their numbers continue to increase while the very high incarceration rates for men decrease.
- Our pilot project found that Black, Indigenous and women of color are convicted and sentenced at rates two to eight times higher than white women.
- Jail and prison programs and policies are developed for men and often do not meet the needs of women or transgender and gender nonconforming people.
- Incarcerated mothers are more likely than fathers to be primary caregivers. Mothers are thus more likely to lose their children to out-of-home care during their incarceration.
- Racial disparities in arrests negatively influence pretrial bail decisions, which influences plea deals, affects charging decisions, and creates a higher likelihood of incarceration and longer sentences for both men and women of color.
- There is little data on the gender impacts of legal financial obligations (LFOs). The available research suggests that while men face higher LFOs, women face greater challenges trying to pay both their own LFOs and those of people close to them.

**Court Recovery Task Force
Lessons Learned Committee (LL) Report
8/04/2021**

Progress on Goals and Activities

(Attach work products and recommendations for the Task Force to consider)

Short term Goals:

Coordinating and implementing surveys: The Lessons Learned Committee will conduct surveys as identified by CRTF. The LL Committee will be a clearinghouse and help coordinate surveys where possible so committees don't duplicate efforts and overload our respondents.

Activities

LL opened the unrepresented litigant's survey that focuses on the court user's access (technology and getting help) and their experience of what is working or not working. Due to low response rate, the survey will remain open through August.

Long term Goals

Identify and recommend innovations and best practices.

- A. LL will work with other committees to identify and compile into a report experiences, recommended innovations, and best practices. It will compile and make available associated resources resulting from the work of the CRTF.

LL has been collecting responses to the TF committees and will start compiling information in the next few months.

- B. The Committee will help coordinate proposed court rule changes and emergency orders resulting from innovations and lessons learned over the past year.

LL committee assigned the various court rules issue to TF committees and other outside group. The committee provided instructions on how to review and report on the assigned court rule issues, a form for reporting their reviews, and a list of the various comments that relate to the committee's assigned issues. These are due by Sept 3.

- C. The committee will expand membership to assist in preparing its final work product. The committee has added several members.

Challenges

N/A this reporting period.

Data Collection Efforts

Unrepresented Litigants survey is available through June.

**Court Recovery Task Force
Juvenile Criminal Civil Subcommittee Report
August 4, 2021**

JCC Mission: The Juvenile Criminal Civil Committee (JCC) will identify and make recommendations on the short-term operation modifications needed to recover from the pandemic and the opportunities for long-term juvenile criminal and civil system changes. This committee will consider race, gender, equity, access to justice, practices that align with the science of health youth development, technology, and funding needs when developing committee goals and activities to ensure positive outcomes for youth.

Progress on Goals and Activities

Share information on local orders, statewide court orders, and/or RCW's that need to be addressed before the emergency orders end.

The Juvenile Criminal Committee completed proposals to the BJA Legislative Committee to consider recommended policy changes on diversion extensions and remove finger printing for hearings. Materials shared at last meeting.

Long Term Goals

- 1) Identify what we need to preserve for youth and families to access services and the court remotely
Activities – TBD
- 2) Explore what the consequences, processes, and expectations are as people move through the system as it relates to changing systems resulting from COVID
Activities – TBD

Data Collection Efforts - N/A

**Court Recovery Task Force
Family Law Committee Report
August 4, 2021**

Progress on Goals and Activities

(Attach work products and recommendations for the Task Force to consider)

Short Term Goals

Activities

Monitor Informal Domestic Relations Trial comments on AOC website

- Review comments for substantive issues
- Discuss with various stakeholders about submitting a comment

Long Term Goals

Activities

Continue to review GR 30 for possible changes

- Created Google doc to gather GR 30 issues:

<https://docs.google.com/document/d/1A3O27X4YI8b89KGpRXXCfiAA1q34b1UwLJWv9IkITjo/edit?usp=sharing>

- Created Box doc to gather GR 30 issues:

<https://app.box.com/s/v7snohji5ywpaai4n5pjy5naij28cgr3>

Challenges

GR 30 has many potential stakeholders; much input to gather

Data Collection Efforts

Local orders, statewide court orders, and/or RCW's that need to be addressed before the emergency orders end

**Court Recovery Task Force
Child Welfare Committee Report
August 4, 2021**

Progress on Goals and Activities

(Attach work products and recommendations for the Task Force to consider)

Short Term Goals

Activities

Reviewed and created the following sample documents (endorsed by CRTF) and made available to juvenile court judicial officers, court administrators, and attorneys:

- Sample Pre-Trial Order for Remote/Virtual Dependency Fact Finding or Termination of Parental Rights Trials
- Sample Discovery Agreement
- Sample Witness List

Also included a resource, Guidance for [Resuming Dependency and Fact Finding and Termination of Parental Rights Trials in Washington State](#)

The Committee is in the process of reviewing and updating the guidelines to include broad guidance related to further lessons learned including a blueprint for all hazards emergency planning

The CW Committee discussed the importance of bringing together stakeholders as quickly as practical to convene a multidisciplinary roundtable discussion in the face of any hazard emergency for planning and continuity of operations.

The Committee also completed and submitted answers to the Lessons Learned Committee inquiry.

Long Term Goals

Activities

Reviewed current Court Rules to recommend flexibility for remote hearings are preserved. The committee also discussed some outdated language that appeared to be insensitive contained in CR 43 and made recommendations to the CRTF to support the changes CW committee recommends. During discussion on this motion at the CRTF June 2021 meeting, Justice Stephens suggested the Committee review proposed amendment to CR 39, which are currently out for comment, as our proposed language for amending CR 43 is more permissive. We asked the following questions of the King County judicial officers that proposed the amendment:

1. What is the definition of a “videoconference trial”? Would this court rule apply when any person appears remotely? When the court is participating remotely? Or when everyone is participating remotely?
2. In paragraph (3), where does the 30 days come from? Different trials have different

needs, some 10 days, some 15 days--30 days seems long for some trials. While it may work for King County and your processes there, it may not for other counties.

Committee members expressed concern that the requirement to simultaneously see, hear, and speak, would exclude telephone participation. There are times when telephone, while not the best form of communication, is an only option, and we would not want to see that excluded.

The committee will discuss this issue further, once we receive clarification, and determine if we need to provide comments in order to provide congruency between the two court rules.

Challenges

Crisis fatigue

Data Collection Efforts

Local orders, statewide court orders, and/or RCW's that need to be addressed before the emergency orders end

**Court Recovery Task Force
Technology Committee Report
August 4, 2021**

Progress on Goals and Activities

(Attach work products and recommendations for the Task Force to consider)

The Technology Committee went on hiatus in June and July after completing two very significant deliverables, guidelines and principles for adopting and implementing technology in Washington courts and a summary of information available from Washington court websites. Meetings will resume in August.

Short Term Goals

The short term goal of identifying principal objectives for courts in using and implementing technology has been completed.

Activities

Long Term Goals

The Technology Committee completed guidelines/principles for courts to use in adopting and implementing technology in Washington courts. The Final Technology Committee Guiding Principles Report was distributed in February 2021. A synopsis of the court inventory spreadsheet was created, along with an executive summary, and submitted to the CRTF in March 2021.

Activities

The next project for the Committee is to develop guidelines for court websites, based on the court inventory website research conducted by this Committee as well as research on why people access court websites; a review of translation and language access across all levels of court websites; and structured interviews for court users on the efficacy of court websites.

Challenges

Data Collection Efforts

Local orders, statewide court orders, and/or RCW's that need to be addressed before the emergency orders end

There may be court orders and procedures that need to be revised or modified to resolve barriers to accessing technology and to allow court users remote access. Uniform technology access will be difficult to resolve without a greater degree of uniformity amongst the various courts, funding, and technological assistance.