

BJA COURT RECOVERY TASK FORCE



**WASHINGTON
COURTS**

MEETING PACKET

**JUNE 9, 2021
2:30 – 4:30 P.M.**

VIDEOCONFERENCE

BOARD FOR JUDICIAL ADMINISTRATION

Court Recovery Task Force

BJACOURTRECOVERYTASKFORCE@listserv.courts.wa.gov

Voting Members

Name	Court/Association/ Organization	E-mail	Phone
Chief Justice Steve González, Co-Chair	Supreme Court	J_S.Gonzalez@courts.wa.gov	360-357-2030
Judge Judith Ramseyer, Co-Chair	King County Superior SCJA President	Judith.ramseyer@kingcounty.gov	206-477-1605
Judge Scott Ahlf, Co-Chair	Olympia Municipal Court, DMCJA	sahlf@ci.olympia.wa.us	360-753-8312
Linnea Anderson	San Juan Juvenile Court Administrator, WAJCA	linneaa@sanjuanco.com	360-370-7440
Renea Campbell *	Klickitat Superior Court, Washington State Association of County Clerks	reneac@klickitatcounty.org	509-773-2340
Jerrie Davies	Kitsap County District Court Office Manager, DMCMA	jdavies@co.kitsap.wa.us	360-337-4890
Judge David Estudillo	Grant Superior Court, SCJA President-Elect	destudillo@grantcountywa.gov	509-754-2011
Justice Debra Stephens	Supreme Court	Debra.stephens@courts.wa.gov	360-357-2050
Judith Lurie	Northwest Justice Project, OCLA Representative	JudithL@nwjustice.org	
Jessica Humphreys	Yakima Superior Court Administrator, AWSCA	jessica.humphreys@co.yakima.wa.us	509-574-2736
Judge Carolyn Jewett	San Juan District Court DMCJA	carolynje@sanjuanco.com	360-914-9440
Mike Killian*	Benton/ Franklin Superior Court, Washington State Association of County Clerks	michael.killian@co.franklin.wa.us	509-546-3365
Sophia Byrd McSherry	OPD Deputy Director	Sophia.ByrdMcSherry@opd.wa.gov	360-586-3164, ext. 107
Judge Ruth Reukauf	Yakima Superior Court, SCJA	Ruth.reukauf@co.yakima.wa.us	509-574-1785
Dawn Marie Rubio	State Court Administrator, Administrative Office of the Courts	Dawnmarie.rubio@courts.wa.gov	360-357-2120
Judge Jeffrey Smith	Spokane District Court, DMCJA	jsmith@spokanecounty.org	509-477-2959
Judge Lisa Sutton	COA Division 2	J_L.Sutton@courts.wa.gov	360 481-1074

*Sharing position for their respective associations, one vote

Consulting Members (updated 10.12.2020)

Name	Court/ Association/ Organization	E-mail	Phone
Judge Johanna Bender	King County Superior Court, MJC	johanna.bender@kingcounty.gov	206-477-1495
Cindy Bricker	Commission on Children in Foster Care, AOC	Cindy.bricker@courts.wa.gov	360-870-4372
Alice Brown	Managing Attorney, GEICO Staff Counsel, WDTL	alibrown@geico.com	206-931-5779
Judge Faye Chess	Seattle Municipal Court, MJC	faye.chess@seattle.gov	206-684-8712
Adam Cornell	Snohomish County Prosecutor, WAPA	acornell@snoco.org	425-388-3409
Theresa Cronin	Law Office of DC Cronin, MJC	tk@dccronin.com	509-328-5600
Cynthia Delostrinos	Supreme Court Commissions: Gender & Justice, Minority & Justice, Interpreter, AOC	Cynthia.delostrinos@courts.wa.gov	360-705-5327
Judge Anthony Gipe	Kent Municipal Court, MJC	agipe@kentwa.gov	253-856-5734
PJ Grabicki (Peter J.)	Attorney, Randall Danskin, WSBA	pjg@randalldanskin.com	509-747-2052
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Amy Muth	Law Office of Amy Muth, PLLC, WACDL	amy@amymuthlaw.com	206-940-0294
Briana Ortega	Stamper Rubens, P.S., MJC	bortega@stamperlaw.com	509-326-4800
Judge Marilyn Paja*	Kitsap County District Court, GJC	MPaja@co.kitsap.wa.us	360-337-4972
Terry Price	UW School of Law, ATJ Board	tprice@uw.edu	206-221-6030
Juliana Roe	Policy Director for Public Safety and Human Services, WSAC	jroe@wsac.org	253-376-8022
Jason Schwarz	Attorney, Director Snohomish County OPD, WDA	Jason.Schwarz@co.snohomish.wa.us	425-388-3032
P. Diane Schneider	Northwest Language and Cultural Center, MJC	pdianes25@hotmail.com	425-232-2326
Judge Jackie Shea-Brown *	Benton/Franklin County Superior Court, GJC	Jackie.SheaBrown@co.benton.wa.us	509-781-4384
Sharon Swanson	Government relations Advocate, AWC	sharons@awcnet.org	360-753-4137
Sheriff Brad Thurman	Cowlitz County Sheriff, WASPC	ThurmanB@co.cowlitz.wa.us	360-577-3092
AOC Staff			
Jeanne Englert	Administrative Office of the Courts	Jeanne.englert@courts.wa.gov	360-705-5207
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BJA Court Recovery Task Force

June 9, 2021, 2:30-4:30 pm

ZOOM Meeting

AGENDA

1. Welcome (5 minutes)

Approve April Minutes pg. 4

Chief Justice Steven González
 Judge Judith Ramseyer
 Judge Scott Ahlf

2. Statewide Updates (40 min)

Court Orders Presentation:

Court Rules Proposed and Court Rules Proposal Process (Materials in Box) Pg. 9

Association Updates

Rescue Funds

Legislative Session Sharing

Chief Justice Steven González

 Justice Debra Stephens/ Justice Sheryl Gordon/McCloud
 Justice Charles Johnson/Justice Mary Yu

 Judge Scott Ahlf
 Judge Judith Ramseyer

 Dawn Marie Rubio

3. Presentations: WSSCR – Mortality Findings (20 min) Pg. 54

Dr. Andrew Peterson

4. Committee Updates (60 minutes)

Share remaining goals and activities, sticking points, data collection efforts, and policy changes needed

- Technology Considerations
- General Civil Litigation
- Appellate Courts Pg. 70
- Lessons Learned Pg. 71
- Criminal Matters
 - Juvenile Criminal Civil Pg. 72

Motion: CRTF endorsement to move forward with recommended policy changes on fingerprinting and diversion statutes as included in the meeting materials

- Therapeutic
- Adult Pg. 74

- Family Law Pg. 75

Motion: CRTF endorsement to send Committee comments to the Supreme Court in support of proposed rule IDRT GR 40

- Child Welfare Pg. 77

Dawn Marie Rubio/Judge David Estudillo
 Justice Debra Stephens
 Judge Lisa Sutton
 Judge Judith Ramseyer
 Judge Scott Ahlf
 Judge Ruth Reukauf/Linnea Anderson

Judge Jeff Smith
 Amy Muth

Terry Price

Linnea Anderson

<p><u>Motion</u>: CRTF endorsement to move forward with recommended samples of Pre-Trial Order for Remote/Virtual Dependency Fact Finding or Termination of Parental Rights Trials, Discovery Agreement, and Witness List (attached).</p> <p><u>Motion</u>: CRTF endorsement to move forward with revisions to CR 43 (attached) permitting testimony from a different location than the court and removing the requirement for the witness to stand while the oath is administered.</p>	
<p>5. Next Steps (5 minutes) Summary of action items from meeting</p>	<p>Chief Justice Steve González</p>
<p>5. Future Meetings</p> <ul style="list-style-type: none"> • August 4, 2:30–4:30 • October 4, 3:00–5:00 • December 6, 3:00–5:00 	
<p>6. Adjourn</p>	
<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)
Thursday, April 15, 2021, 2:00 – 4:00 p.m.
Videoconference**

DRAFT MEETING MINUTES

Participants:

Chief Justice Steven González, co-chair
Judge Judith Ramseyer, co-chair
Vivienne Alpaugh
Linnea Anderson
Jim Bamberger
Justin Bingham
Kwesi Booker
Cindy Bricker
Alice Brown
Kelvin Brown
Darren Carnell
Adam Cornell
Theresa Cronin
Jerrie Davis
Todd Dowell
Colleen Durkin
Ambrosia Eberhardt
Jeff Even
Wendy Ferrell
Luisa Garcia
Judge Jeff Goodwin
Elizabeth Halsey
Chris Hoxie
Jessica Humphreys
Noah Jaffe
Judge Carolyn Jewett
Katrin Johnson

Sophia Byrd McSherry
Judge Rich Melnick
Ryan Murrey
Amy Muth
Judge Rebecca Pennell
Judge Marilyn Paja
Sara Niegowski
Terry Price
Judge Ruth Reukauf
Dawn Marie Rubio
P. Diane Schneider
Jason Schwarz
Judge Jackie Shea-Brown
Judge Jeff Smith
Fona Sugg
Judge Lisa Sutton
Lee Thomas
Lorrie Thompson
Paul Weideman
James Wells

Administrative Office of the Courts

(AOC) Staff:

Jeanne Englert
Penny Larsen
Caroline Tawes

Call to Order

Chief Justice González called the meeting to order at 2:01 p.m. and welcomed the participants.

Approval of February 17, 2021, Meeting Minutes

There being no changes to the February 17, 2021, meeting minutes, Chief Justice González deemed the minutes approved.

Statewide Updates

The statewide emergency orders still stand; there has been no decision to change or revoke the orders. Justice Sheryl Gordon McCloud and Justice Debra Stephens are working on amendments to orders that may be needed.

Association Updates

The Superior Court Judges' Association (SCJA) is busy with the legislative session. There are hundreds of bills with court implications. The SCJA is convening a workgroup to address the ramifications of the *Blake* decision. The CRTF can be used to collect best ideas, proposals, and court rules the court community has learned over last year and be a conduit for new proposals.

The District and Municipal Court Judges' Association (DMCJA) is monitoring a number of bills, and working with legislators on funding for therapeutic courts. There was a webinar yesterday on pro tempore training, with a focus on encouraging diversity among pro tempores. The DMCJA Spring Conference will be held virtually June 6–9, 2021. The SCJA Spring conference will be held later this month with some joint programs with courts of limited jurisdiction judges.

Federal funding

AOC received \$13.5 million in CARES funding for local courts to address the public health crisis. To date, 330 applications have been approved, \$11.5 million has been distributed, and \$2.2 million in funds remains. In February, the focus on funding shifted to case backlog reduction; hiring pro tempore judges, non-judicial staff, and security; securing off-site facilities; and juror costs. The funding is being approved in two-month increments.

Chief Justice González and Dawn Marie Rubio sent a letter to Legislators requesting a portion of the flexible funding from the American Rescue Plan Act (ARPA). The request was to support access to justice; court case backlog; and court technology. Chief Justice González and Dawn Marie Rubio have met with Legislative leadership to ask for support of the \$85–202 million request.

Presentation: Courthouse Facilitators

Elizabeth Halsey from San Juan County Superior Court Services and Kelvin Brown, Pierce County Superior Court, presented courthouse facilitator program changes to cope with the public health crisis.

Presentation: Interpreter Commission

Luisa Gracia, Court Interpreter Coordinator, Seattle Municipal Court and Interpreter Representative on the Interpreter Commission and James Wells, Court Program Specialist at AOC, presented information on changes to CR 11.4 and 11.3, results of a

survey of court interpreters, and the shift in interpreters' work since the onset of the public health crisis.

Luisa Gracia provided tips to improve access to justice with interpreters, listed on-site interpretation requirements, and requirements to move forward with remote interpreting.

The Interpreter Commission has court interpreting COVID resources, example instructions on how to use technology, and links to videos on how to use platforms.

Task Force Administration/Logistics

The CRTF website has been refreshed. It contains information on the CRTF and committees as well as reports and surveys. Additional materials and resources will be added as they become available.

Feedback and recommendations for e-signatures was included in the meeting materials, including possible next steps.

Committee Updates

Family Law Committee

The Supreme Court Rules Committee will post a rule change proposal for informal family law trials or informal domestic relations trials. The rule change will be posted for comment from May 1 through July 31, 2021.

This Committee is monitoring HB 1320, the protective order bill. This bill could have a big impact on courts. Section 13 requires technological changes, and there is concern about the digital divide getting bigger.

Child Welfare

Policy recommendations revolve around making lasting court rule changes for remote hearings. This will increase access and create better outcomes. The more options are available the better for youth and families. More attorneys can be available remotely for parent representation programs, especially in remote areas.

There is a challenge of maintaining flexibility with court rules. This Committee is working on best practice guidelines.

Technology Considerations Committee

This Committee is focused on establishing guiding principles on using technology in courts. The guidelines document was finalized this month and sent to the CRTF members. This Committee invites feedback on the information.

In addition, each Committee member reviewed court websites from a user perspective, and a prepared summary of those findings has been provided.

The next step will be providing a template or best practices for court web pages.

General Civil Litigation Committee

This Committee is looking at challenges in litigating civil cases. They have recommended updates to the Supreme Court Emergency Orders. This Committee has recently shifted focus to looking at civil rules and which rules should be made permanent or rescinded after the pandemic ends. This Committee is also reviewing GR 19, GR 30, and GR 35. A short report was included in the meeting materials.

Appellate Courts Committee

SB 5225, allowing direct transfer of certain Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA) appeals to the Court of Appeals, has passed and is on its way to the Governor. Judge Sutton thanked Jeanne Englert, the SCJA, and Jeff Even for their support.

Lessons Learned Committee

This Committee is working on compiling the work of the CRTF committees to make that information accessible. Judge Ramseyer reminded the committee members to submit their work product to Jeanne Englert or to Judge Ramseyer to keep track of the work. Three separate surveys have been published directed at jurors, defendants, and unrepresented litigants to gather information from a court user point of view. Judge Ramseyer thanked the Washington State Center for Court Research for their assistance with the surveys.

Criminal Matters Committee/Juvenile Criminal/Civil

Recommendations from this Committee were included in the meeting materials. The recommendations take into consideration different points of view and will offer solutions that provide consistency and flexibility. They are focusing on recommendations for diversion statute changes and fingerprinting procedures.

Criminal Matters Committee/Therapeutic Courts

This Committee distributed a draft letter and talking points to the CRTF. This information was included in the meeting materials and is available on the website. Judge Smith thanked Judge Paja and Judge Logan for their work.

Criminal Matters Committee/Adult Criminal

Amy Muth thanked Jeanne Englert and Andrew Peterson for their work on the surveys. Links to the surveys have been shared with professional organizations with a request to share the links with clients.

This Committee is also working on getting information about accommodations that courts have developed during the pandemic. Their work will be guided by feedback they receive about provisions that courts would like to see retained after the pandemic.

Facilities and Logistics Committee

This Committee has completed all its projects.

Public Outreach and Communication Committee

This Committee has shifted to supporting role, and will coordinate work among the other committees.

Next steps

For the next meeting:

- participants would like feedback on rules;
- reminder to apply for emergency funds;
- a report back on ways signature can be applied on documents;
- report back on surveys;
- recommendations on the fingerprint issue, warrants, and other criminal matters.

There being no further business, the meeting was adjourned at 3:53 p.m.

Responses to April 2, 2021, Seeking Input Regarding COVID-19 emergency rules and orders e-mail

	From	Response
District Court Responses		
1.	Black Diamond Muni Judge Krista Swain	<p>In our small court in Black Diamond, I have found that the zoom platform works amazingly well. I am hoping to keep this platform for some types of arraignments, infractions and pretrials. However, I do plan to move to in person hearings for DUI/DV arraignments unless there is a request and agreement of the parties, dispositions and of course motions and trials.</p> <p>I am hoping that most courts of limited jurisdiction keep this alternative appearance available as it definitely increases the likelihood of appearance in many circumstances. The defendants we see in municipal court oftentimes do not have vehicles, or resources to get to court. So the option to call in or zoom in is very helpful.</p>
2.	Mason District Judge George Steele	<p>We need to start easing off the in-person restrictions with the preference for remote attendance. I do not mean eliminate allowing remote appearances but give the courts more flexibility on which cases to allow for such remote hearings and when not to. I believe that individual courts can and will make prudent decisions on when and how to conduct in-person hearings. One issue with remote appearances is allowing for attorneys to have confidential communications with their clients. I had one instance where we arranged for a breakout room and an observer managed to follow into that room. I am not sure how that happened.</p> <p>The ability to have people appear remotely, for non-evidentiary hearings should continue and be made a normal rule, not just an emergency order. This court has conducted some cases with evidence remotely and we have had mixed results. Many of these cases I have re-set to appear in person. I definitely will re-set when one party is in person and the other remote, as that can give the side in court an unfair advantage.</p>

		<p>I have not selected a jury using remote means as I believe that parties and the court need to be present with potential jurors to help decide which jurors should be excused. Other judges, with whom I have spoken, love the remote selection procedures which they adopted.</p> <p>I intend to continue with ZOOM capabilities even after the pandemic is declared over as it affords the public a means to observe court, advancing the goal of open courtrooms.</p> <p>Finally, while this has nothing to do with the emergency orders, I believe the Supreme Court needs to re-visit CrRLJ 3.4 to allow courts to require individual appearances at pre-trial hearings to help manage case load. Since State v. Gelinas, the result has been , in my court, exactly how I expected it to be. Most cases set for trial who failed to appear except through counsel at earlier hearings, failed to appear for trial. Our prosecutors and public defenders are having to devote time preparing for cases that are not going to go forward and we are being crushed by the number of cases that need to be processed on our trial date.</p> <p>I hope this helps.</p>
3.	Pierce District Judge Lloyd Oaks	<p>I note that you are collecting information on best practices from the courts of the state.</p> <p>I am on the DMCJA Long Range Planning Committee.</p> <p>We are amending our priorities to ensure continuity of operations in all courts of limited jurisdiction throughout the state.</p> <p>I am likely a DMCJA Trustee for the coming year (unopposed on the ballot) for Full Time Judges of the District Court.</p> <p>I would love to be tied in somehow on the data coming in so that I can facilitate DMCJA help in addressing any shortfall by pairing up fully COOP'd courts with those that need help, or by other DMCJA education programs or plans.</p> <p>My interest in this is also spurred by my education and experience.</p>

		<p>I have the FEMA Continuity Professional certification, and am all but final test for the FEMA Master Continuity Professional. Testing delayed due to COVID. I am all but one course from FEMA Advanced Series Completion, and that course 0205/0210 is scheduled for May 17-21, 2021 by virtual delivery.</p>
4.	Island Co. District Judge Bill Hawkins	<p>I believe it would be helpful for the court to provide some guidance regarding a thorny set of issues around consideration of vaccine as one of the factors for deciding which of the backlogged jury trial cases to try in which order. Would it be appropriate to consider whether the lawyers and witnesses had been vaccinated so that the trial can actually proceed when called, versus the opposite that could occur if we do not inquire and on the eve of trial or the day of one of the parties realizes they have one or more necessary participants balking at testifying or otherwise going forward because they have not been vaccinated?</p> <p>It would appear inappropriate to require vaccination, as that could come into conflict with the defendant's or the victim's access to justice. But may it be considered as a factor, along with all others the trial courts traditionally consider?</p> <p>I believe remote hearing technology is and should be here to stay as one additional, valuable tool at our disposal. My is one of two consisting of islands separated by water. The trip from Camano Island to this courthouse in Oak Harbor is a 3-hour or 4-hour round trip drive for most residents of Camano Island. With the videoconferencing equipment installed at the Camano county building, the commute for most Camano residents is reduced to a 20-30 minute round trip drive. Similarly, the drive from South Whidbey up to Oak Harbor is 1 1/2 -2 hours round trip, which could be greatly reduced by technology as well. Savings of time, energy, pollution, wear and tear on the roads, etc., all militate in favor of continues use of remote hearing access.</p> <p>Those are the most immediate impressions I can share for now.</p> <p>Your leadership on these COVID-driven matters is essential and greatly appreciated in my courthouse, I can tell you.</p>

5.	Kitsap District, Judge Jeffrey Jahns	<p>I request the “Alternative Signature Methods for Judicial Officers” dated April 2020 and attached to several Supreme Court COVID emergency orders be extended indefinitely.</p> <p>Like other courts, Kitsap District had to evolve because of the pandemic and figure out ways to accept electronically filed documents (with electronic signatures authorized by GR 30). We also had to redraft our orders so that electronic signatures of judicial officers could occur. Now that we have templates capable of accepting electronic judicial signatures, it would be helpful to continue the order/rule permitting judicial electronic signatures.</p>
Municipal Court Responses		
6.	Black Diamond Muni, Judge Krista Swain (2 nd submission)	<p>In Black Diamond Municipal Court, I would like to keep the option of video/zoom court for all hearings. Although I do plan to move back to some in person hearings, it would be so nice to have the option to do all hearings via zoom.</p> <p>We have found that it supports the defendants’ ability to appear, it makes it easier for defense attorneys to appear in multiple courts and it cuts down the cost of security for the court. I find that the court can be incredibly effective having most hearings via zoom.</p> <p>I implemented zoom court in May of 2020, and we are all used to this method of court. We are hoping to keep as much in place as possible.</p>
7.	Shelton Muni, Judge Stephen Greer	<p>General thoughts as a part time Municipal Court Judge, pro-tem District Court Judge, and as attorney that practices in Superior Court (mental health inpatient). I believe any ongoing Rules should allow flexibility for hybrid Courts. For example, civil infractions, civil motions, and criminal pre-trials by remote video or in person. However, no Civil Jury trial or Criminal trial of any kind should ever be anything but in person – pollution risk of the jury by outside influences is too great and no two dimensional screen can replace in person observation of demeanor, for example. Remote Court is here to stay, however, we need to temper that with the potential</p>

		<p>creation of detachment that may occur by lack of personal contact that may erode justice.</p> <p>Finally, remote Court proceedings are not openly available to all, they discriminate against the poor, homeless, and people who are illiterate, speak languages that have no written form, and the mentally ill.</p>
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<p>8.</p>	<p>Bellingham Municipal Court, Debra Lev, Judge and PETE SMILEY, Bellingham Municipal Court Commissioner</p>	<p>We are writing on behalf of the Bellingham Municipal Court in response to the invitation from Justices Stephens and Gordon McCloud for comments regarding emergency rules relating to the Covid-19 pandemic. We greatly appreciate the opportunity to provide input to the Supreme Court to assist in its rule-making capacity.</p> <p>Most of the emergency orders issued by the Washington Supreme Court during the pandemic have been extremely helpful as our Court attempts to provide access to justice in a manner that is also consistent with the safety of courthouse participants. We have safely operated largely by telephonic and video conferencing during the pandemic, and we intend to resume in-person trials, including jury trials starting May, 2021.</p> <p>Our Court particularly appreciated the opportunity to make local decisions consistent with the best available medical advice available, including waivers and extensions of speedy trial, which has been critical during the pandemic. One change that we would like to see on a permanent basis is to allow attorneys, when authorized, to verbally waive the right to speedy trial on behalf of their clients. This reduces the need for written waivers which would otherwise consume paper while requiring in-person contact between attorneys and clients, which is both cumbersome and dangerous during a pandemic. It is consistent with recent rules and court rulings permitting more appearances by attorneys on behalf of their criminal defendant clients. This change would, at the CLJ level, necessitate amending CrRLJ 3.3(c)(2)(i), or at least suspending the written waiver rule for the duration of the pandemic.</p> <p>The one provision in the emergency rules that, in our opinion, has not been helpful, and has proven both burdensome and inconsistent with public safety, is the bench warrant provision. State-wide emergency orders now provide that courts must determine on the record whether a warrant is “necessary for the immediate preservation of public or individual safety,” whether the defendant has received “actual notice” of the hearing, whether there are alternatives available</p>
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		<p>other than the warrant, and to consider the impact of Covid-19. While courts have always been free to consider notice, the severity of the crime, alternatives such as re-summonsing individuals who have already failed to appear, and health issues, these additional formal standards have proven unworkable and unhelpful.</p> <p>Like most courts of limited jurisdiction, the Bellingham Municipal Court hears a wide range of criminal cases ranging from non-violent offenses such as trespassing and thefts to charges involving serious danger to the public as in many DUI and domestic violence cases. While our Court continues to issue warrants for serious offenses, limiting warrants to those necessary for the “immediate preservation of public or individual safety” this means that many defendants who fail to appear for court or comply with court orders do not receive issued warrants and their cases essentially remain in limbo. Before these emergency orders, in most cases, minor offenders with warrants would have been contacted by police and released to a court date due to booking restrictions at our local jail. However, without warrants, our Court now has literally hundreds of criminal cases with failures to appear but no warrants issued, and the backlog is growing rapidly. Defendants have quickly learned that they have no reason to appear at the court hearing or comply with court orders (such as not committing new crimes) for anything other than the most serious offenses. Many of our defendants, who would otherwise have been ordered, post-conviction, to obtain evaluations and comply with any treatment recommendations or placed on pretrial monitoring to ensure compliance with release conditions in an effort to prevent more crimes, are instead getting the message that they are free to receive new criminal charges and ignore summonses without consequences. And they are doing so. Many of our defendants are now being charged with large numbers of lower-level offenses which are only being addressed after their behavior escalates to felony-level crimes that result in greater harm and incarceration. Only after arrest for increasingly severe crimes can we address these CLJ level cases. Some have over a dozen charges for criminal trespass, shoplifting and other non-violent offenses, and then frequently, the criminal behavior escalates. Our citizens suffer increased criminal activity while our City government must pay the costs of</p>
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		<p>providing indigent legal services and other administrative costs for the large numbers of crimes filed in our Court.</p> <p>These additional warrant standards and requirements that were adopted, although well-intentioned, are also unworkable and unnecessary. Our Court has always considered notice and, if there is no actual notice, whether an alternative such as a summons would be helpful. In most cases, however, these defendants are failing to appear after notice and another summons is unlikely to secure their attendance. Having to make additional findings on the record serves little purpose but does make our already difficult calendars more challenging. Our court staff is already stretched thin by having to call dozens of defendants per day for their telephonic hearings, and adding more time in court and entering more written findings in the record increases their workload. Our local jail has implemented changes to address the risks of COVID-19, and our Court lacks reliable medical information needed to make judgments about who is and who is not most at risk for Covid, so the final warrant requirement is unnecessary and unhelpful. It is our understanding, after communications with other courts, that many courts have interpreted these warrant requirements differently and are simply issuing warrants on all types of cases. While our Court has followed the Supreme Court's emergency orders regarding warrants, we and our community seem to be paying a heavy price for doing so. We would respectfully suggest instead that the Supreme Court remove these unnecessary additional warrant requirements and trust that trial courts know how best to operate based upon their local conditions and existing court rules.</p> <p>Thank You for your consideration.</p>
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Superior Court Responses		
9.	Whitman County Clerk, Jill Whelchel	Whitman County would like to be able to continue to accept filings via email.
10.	Pierce County Superior Court, Dept. 5 Judge Shelly Speir-Moss	<p>This email is my response to the Washington Supreme Court’s “Lessons Learned” Committee’s request for feedback on possible rule changes after the COVID emergency is over.</p> <p>I would like to see updates in the Civil Rules to allow continued use of remote technology in hearings and trials. I would also like clarity on what would constitute an “open court” where remote technology were being used in a hearing or trial, and direction as to what a court would have to do to ensure public access if remote technology was being employed.</p>
11.	King Superior Judge David Keenan	<ul style="list-style-type: none"> • I support continuing to authorize and encourage remote jury selection, as provided for in the Order Re: Modification of Jury Trial Proceedings, <i>In the Matter of Statewide Response by Wash. State Cts. to the Pub. Health Emergency</i>, No. 25700-B-631, ¶ 4 (Wash. June 18, 2020). <ul style="list-style-type: none"> ○ Continuing remote jury selection can at least partially address the challenges of in-person jury selection, regardless of public health conditions, including, for example: <ul style="list-style-type: none"> ▪ Transportation challenges prospective jurors encounter when traveling to and from a courthouse, including paying for transit and parking. ▪ The need to secure childcare during jury selection. ▪ The need to take at least an entire day off of work, particularly where jury pay is relatively low and many prospective jurors do not have employer-provided paid jury service leave. ○ If remote jury selection is continued, courts should plan to address access issues, including, for example: <ul style="list-style-type: none"> ▪ Hardware, e.g., ensuring that prospective jurors have access to a tablet or other device, provided by the court if necessary, to be able

		<p>to see and hear the proceedings and be seen and heard by parties, counsel, and the court.</p> <ul style="list-style-type: none"> ▪ Software to access the proceedings, e.g., Zoom. ▪ Access to training in how to use the software. ▪ Reliable internet to access the proceedings, including court-provided portable WiFi if necessary. ▪ Accessibility, e.g., ensuring that individuals with vision impairments have access to a screen reader (e.g., JAWS), and those with hearing impairments have assisted-listening devices and/or court-provided sign language and closed captioning on the remote platform. ▪ Solutions for individuals who cannot fully participate in remote jury selection, e.g., the ability to accommodate such jurors in person or in another suitable, convenient space. <ul style="list-style-type: none"> ○ If remote jury selection is continued, courts should receive funding for the necessary staff and technology. <ul style="list-style-type: none"> ▪ For example, while King County has jury staff and a web portal for jurors to access and provide their email addresses through, after receiving a mailed summons, other courts do not have the necessary staff or technology.
12.	King Superior Judge Michael Scott	<p>Here are my thoughts:</p> <ul style="list-style-type: none"> • I would like rules allowing remote telephonic and video hearings and trials to continue. This tool has proven very reliable and valuable during the pandemic. It promotes access to justice and reduces costs for parties and lawyers. This should apply to criminal as well as to civil matters. • Similarly, I would like to see the civil rules permit greater use of remote depositions. • I would also like to see continued liberalization and improvement of rules relating to electronic filing and signatures.
13.	King Superior, Judge Sean O'Donnell	<p>I am hopeful that the Supreme Court will authorize trial courts to have the option to use video voir dire prospectively. Video voir dire is immensely convenient for jurors and we are seeing, anecdotally, increases overall participation (response rates) diversity (age and race). With video voir dire, jurors can budget an hour of</p>

		<p>their time vs. a entire day or days for doing their civic duty. While there are valid concerns about access to technology, the ubiquity of camera-enabled, internet-connected devices is trending in one direction: toward almost universal access. For those who will not, or cannot, use these devices (probably 5% of all jurors, or less) to do their civic duty, Courts have been incredibly mindful of this issue and have provided accommodations. These accommodations are easy, they allow for the vast majority of jurors to continue to participate remotely via video, and they ensure that those who want to serve as jurors can.</p> <p>The video platforms used to host juries are also improving and will (soon) become much more court-friendly. More time, better questionnaires, and fewer jurors per panel (the practice we've adopted in King County) have allowed lawyers ample and meaningful opportunity to assess jurors' qualifications to serve. While in-person voir dire may be preferable to some (for the ability to assess body language and the like), that is practice that GR 37 discourages because of its historic, improper application. In other words, the "X" factor benefits of in person voir dire seems to be significantly outweighed by convenience and increases in participation and juror diversity.</p> <p>Washington could be, and should be, the first state to adopt such a policy that is so friendly to jurors and, from what we're seeing in the past year, increases civic participation and expands our jury pools.</p> <p>Thank you for considering this request.</p>
14.	King Superior, Judge Andrea Darvas	<p>I realize I am responding somewhat at the last minute, and unfortunately, I haven't had the time to truly refine my thoughts. However, there are some innovations our court adopted during the pandemic which I believe are worth keeping after the public health emergency ends.</p> <p>Chief among these is the opportunity to conduct on-the-record hearings and bench trials remotely via Zoom or similar widely-available videoconferencing program. Remote hearings and bench trials substantially enhance convenience</p>

		<p>for parties, witnesses, and counsel. They promote equity in providing ready access to the court for people who do not have ready access to transportation, for those who have limited physical mobility, and for those who have limited time and for whom a lengthy commute to the courthouse would cause a hardship. While our court had significant concerns last year about whether a lack of access to a device with video and audio conferencing capability, along with access to the internet, would create inequities, especially for poorer people, we found that in practice, the vast majority of people (some 90+%) are able to participate in a virtual hearing or voir dire, especially if given information about free wireless hot spots, due to the ubiquity of “smart” cellular phones. Even many people who are homeless appear able to participate in remote court hearings.</p> <p>Remote hearings also are beneficial for lawyers because they minimize commuting time (and consequent charges to clients who are paying by the hour). It’s inefficient for a lawyer to expend an hour or more commuting round trip to court for a hearing that may last no more than 10-20 minutes. And with Zoom, the court can create the opportunity for lawyers to speak confidentially with their clients by creating a virtual “breakout room” for this purpose.</p> <p>With respect to jury trials, the Supreme Court should seriously consider making voir dire via videoconferencing an option. Jurors seem to love it, and counsel also seem to like it a great deal once they have experienced it.</p> <p>Thank you for taking the time to consider my thoughts on these matters.</p>
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15.	King Superior, Judge Mafe Rajul, Bob Lichtenberg	<p>Judge Rajul, the Interpreter Commission Chair, has requested that the latest Supreme Court emergency rules related to requiring translation of the emergency procedures in the most common languages and the other arranging for remote interpreters remain in full force and effect in the new rule announcement. I believe they are sections 18 and 19 of the Fourth Extended and Revised Order:</p> <p>18. Courts must provide clear notice to the public of restricted court hours and operations, as well as information on how individuals seeking emergency relief may access the courts. Courts are encouraged to provide such notice in the most commonly used languages in Washington, and to make every effort to timely provide translation or interpretation into other languages upon request. The Washington State Supreme Court Interpreter Commission may assist courts in this process.</p> <p>19. The availability of interpreter services should not be restricted by emergency operations. Interpreting should be done by remote means whenever possible, consistent with protocols developed by the Washington State Supreme Court Interpreter Commission.</p>
16.	Benton & Franklin Superior Judge Jackie Shea-Brown	I am the Chair of the SCJA Unlawful Detainer Work Group and the SCJA Eviction Resolution Program (ERP) Pilot County Work Group.

		<p>I am grateful for the request for input by Justice Stephens and Justice Gordon McCloud.</p> <p>In response thereto, I am attaching the Order Authorizing Eviction Resolution Program in Superior Courts (“Order”) signed by Justice Stephens on September 9, 2020 as Chief Justice. If and when 2ESSB 5160 becomes law, it is the intent of the SCJA ERP Pilot Work Group to submit suggested changes to the Order for consideration by the Supreme Court.</p>
17.	Douglas Juvenile Court, Jack Murphy, Administrator	<p>In my opinion JuCR 7.16 should be modified or withdrawn. When JuCR 7.16 was ordered, I believed the JuCR was temporary and would be rescinded after COVID, but that does not appear to be the situation.</p> <p>The court rule does not allow courts to issue warrants unless there are “individual circumstances of the alleged, Violation of a Court Order or Failure to Appear, pose a serious threat to public safety.” Courts are doing a fantastic job of contacting respondents and advising them of court dates. One of the court operations improvements resulting from the pandemic is the ability of courts to use ZOOM and provide court by phone or other means. Previously frowned upon methods used for court notice are now commonplace. For example, at this time courts are contacting respondents by phone, emails and texts regarding upcoming court dates. If someone fails to appear for a hearing today, with the many available options to attend, a warrant should be an option for a Judge. If a warrant can never be issued, a respondent will never appear for court and the matter will remain unresolved forever.</p> <p>Some of the problematic results of the JuCr are:</p> <ul style="list-style-type: none"> Juveniles who are near 18YO and fail to appear for court, even after much effort by the probation department and defense attorneys, will have the charges in juvenile court dropped and then refiled in adult court after they turn 18. This adult filing will not afford the juveniles the ability to seal their records and many other advantages (diversion) of processing a case through juvenile court.

		<ul style="list-style-type: none"> • The court rule completely disregards victims' rights and places the probation departments and prosecutors in a position to provide no relief to victims of physical harm or monetary damage. Calls from victims regarding their cases are told: the Superior Court cannot compel the respondent to ever attend a hearing and your case may never be heard by a Judge. • The court rule does not allow the court to issue warrants based on the seriousness of the underlying offense. For example, if a respondent commits a Rape in the 1st degree and fails to appear for court, the Judge can only issue a warrant if the individual circumstances of the failure to appear poses a serious threat to public safety. If a respondent never comes to court and then stays in their home and does not contact the victim, how is a Judge to find "individual circumstances of the failure to appear" poses a threat to public safety? • Probation conditions are ordered, in many circumstances, as both an alternative to detention and to provide services to the respondent resulting in a reduction in recidivism and more positive outcomes in adult life. A respondent may now, due to the JuCR, not complete any ordered conditions and then fail to appear for court and there will never be a resolution. For example, a respondent who assaults another while under the influence of methamphetamine will often be required to complete a drug/alcohol evaluation and attend treatment. Often these drug/alcohol evaluations result in the discovery of a serious problem. Treatment is then required and many respondents are successful with treatment and recidivism is lowered leading to less victimization of others. JuCR 7.16 does not allow a Judge to enforce conditions now authorized by statute, because after a probation violation is filed, a Judge cannot determine an individual circumstance poses a "serious threat to public safety" exists in most cases. <p>Juveniles are very smart. They already realize there is no reason to attend juvenile court. Judges are not issuing warrants and new charges/probation violations will remain pending for years.</p> <p>Our justice system relies on the society putting faith in the system, delivering "justice" to all parties involved. Respondents AND victims are members of this</p>
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		<p>society. Removing all accountability for people who violate the law will result in chaos. I would drive 100 mph to Seattle if there was no legal consequence. I believe I can drive I-90 safely at that speed and if WSP would ticket me, and I never had to appear for court, I would drive 100 mph every day. I am 51YO my brain is supposedly fully developed. We can expect less moral and ethical reasoning from juveniles.</p> <p>I propose a graduated response to issuing warrants.</p> <p>1) Superior Courts may not issue warrants due to a failure to appear at a first scheduled hearing. If a respondent fails to appear at a hearing, the Superior Court shall set a new hearing date and direct notice to be mailed to the respondent requiring attendance at the hearing either in person, by phone, ZOOM or other electronic means. If the respondent fails to appear for the new hearing and the Judge finds “best efforts” were made to contact and advise the respondent of the hearing, a warrant may be issued.</p>
18.	Spokane Superior, Judge Harold Clarke and Snohomish Superior, Judge Bruce Weiss	<p>Attachment</p> <p>This letter constitutes our comments to the Fifth Revised and Extended Order Regarding Court Operations (2S700-B-658). It also addresses the Order RE: Modification of Jury Trial Proceedings (25700-B-631).</p> <p>The leadership of the Supreme Court during the present health crisis is to be applauded. The court has worked hard to keep the Branch open and functioning in a safe manner. However, it is time for a substantial portion of the Supreme Court's Emergency Orders to be withdrawn. There are certain provisions within the orders referenced above that most trial courts will agree should be retained for the foreseeable future. In the current version of the Order, these would include paragraphs or subparagraphs as follows: Paragraph 1. Subsections (a) and (b) of Paragraph 4. Subsections (a) and (b) of Paragraph 5. Paragraphs 6, 9, 12, 13, Paragraph 14 Subsection (b), and Paragraphs 21 and 23. Additionally, Paragraphs 2, 4, and 7 of the Order RE: Modification of Jury Trial Proceedings should be retained. Paragraph 15 is specifically not included as it is now common and accepted practice to accelerate bond hearings for COVID issues of inmates.</p>

		<p>We would suggest that Paragraph 15 from your Order 25700-B-607 be included in any new Order to give some protection to Trial Courts for any Orders they may have entered in the execution of the emergency orders.</p> <p>The remainder of the orders referred to should be withdrawn. The trial courts, having conducted business for an entire year with the pandemic existing in our communities, understand how to successfully operate in an efficient and safe manner.</p> <p>Thank you for your consideration of this position.</p>
19.	Barbara Miner Director, Department of Judicial Administration King County Clerk	<p>Thank you for the opportunity to give you our input. Collectively we submit the following information, on behalf of all county clerks.</p> <ol style="list-style-type: none"> 1. Signatures – Clerks feel that the sanctity of judicial signatures got a little uncomfortably loose during the pandemic. Many many varieties of signatures were seemingly allowed as judges and others interpreted the orders of the supreme court. Emailed judicial officer signatures were allowed in some instances. This created risk' opened the door to forgery and is not a good long term practice. Not every county had/has access to docuSign or similar. Forms of acceptable attorney signatures also were opened up to many interpretations and not well governed during this time. Only courts and clerks with official eFiling systems had good alternatives for ink signatures during this time. Others were left to very problematic risky practices. 2. It would be great to have a rule about digital service or electronic service, so that people know what is sufficient proof of service. If the police post something on Facebook to notify a respondent that there is a protection order against him – how do they prove he knew so they can arrest him if he violates it? This is unclear. Did he or did he not see the text service? Electronic service, if continued to be allowed, is a big enough deal that it deserves a good solid rule. Electronic service is very efficient,

		<p>however a rule would help make clear what circumstances can be electronic and what MUST remain as in person service.</p> <ol style="list-style-type: none"> 3. We would like to see remote hearings continued, in several instances. On a local level, it would be great to have the continued ability for our in custody folks to continue to be seen from the jail, for instance. However many courts and clerks need to incorporate the technology that meets electronic signature parameters, and many were not/are not in a position to do so. Remote/ZOOM hearing for Civil Commitment (ITA) hearings are very efficient and should be remain in place. Remote trials worked well in several situations as well. However, video, audio, recording, signatures, and document flow components all need to be in place for this to be successful, and many courts didn't get all the pieces in place successfully. 4. Remote judicial officers created some difficulties for clerks. Many times throughout the pandemic in several courts, the only one physically present in court was the clerk. We have concerns that the clerk has been tasked with meeting the open court standard rather than the Court itself. 5. Several clerks initiative e-mail submissions of protection orders by customers during the pandemic, and across the board report that it did not go well. Many many issues arose from an email protection order system, including security of information for the petitioner with respect to the respondent having access to a home computer; E-mail documents sent by the clerk or court can easily be redirected as spam, or clutter and not seen by the petitioner or vice versa; E-mail submissions can be denied by firewall blocks and the fear of losing the documents in the ether sphere of e-mail; potential exposure of confidential information to the public; inefficiency involved in multiple messages back and for the between the petitioner and clerk to perfect the petition. We don't specifically comment on any supreme court order with this input, but we share it none the less. Protection order petitions are so unique and demand special handling by courts and clerks. These were perhaps the most challenging things to
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		<p>handle well during the pandemic for the courts and clerks who tried to accommodate some form of electronic practices to allow for petitioners to submit from home.</p> <p>6. Similarly Clerks need options in facilitating access to justice, be it drop boxes, electronic stamps, or electronic submissions of court documents, efilings systems. Many of us independently created opportunities, such as electronic processes for Ex Parte document processing, issuing writs and signing and filing of Search Warrants. Many of us added drop boxes in front of court buildings to allow for less customers coming inside. Several other innovations came from clerks, including telephonic facilitator appointments; telephonic protection order interviews or zoom appointments with the clerk; social distance queuing system for clerk's office lobbies.</p> <p>7. To the fullest extent possible court documents need to remain public record, accessible and able to be viewed by the public. We acknowledge and appreciate that clerks provided access to the records during these challenging times and that no rules or orders were put in place that limited these things in any way.</p> <p>Thanks again for the opportunity to submit feedback. Please feel free to contact me or WSACC president Tim Fitzgerald about any of these comments.</p>
20.	King Superior, Presiding Judge Jim Rogers	<p>Attachment Here is our letter on your request regarding emergency orders and future rules.</p>
21.	Yakima County Juvenile Court, Judge Ruth Reukauf, Candi Shute, Jessica Humphreys	<p>Attachment Response to Inquiry into Permanently Adopting Emergency Court Practices, 4/16/2021</p> <p>The Yakima County Juvenile Court is in favor of permanently implementing the following emergency provisions:</p>

		<ol style="list-style-type: none"> 1. Page 7, Number 8—Continue to hear out of custody matters via telephone, video, or other means that do not require in person attendance when appropriate. <ul style="list-style-type: none"> • The Yakima County Juvenile Court has implemented Zoom and telephonic capabilities in its courtrooms. Attorneys, respondents, and other interested parties have been using the Zoom format for approximately one year now. • This format has been very successful. This format protects individual health, promotes better court attendance from respondents and reduces financial hardship for guardians residing outside of the Upper Yakima Valley such as fuel and lost wages. 2. Page 7, Number 10— Courts should continue to hear in custody criminal and juvenile offender matters by telephone, video or other means that do not require in person attendance when appropriate. <ul style="list-style-type: none"> • The Yakima County Juvenile Court has implemented a virtual courtroom for in custody juveniles to appear in court via Zoom. • This format has been very successful. It allows defense attorneys to appear with his/her client from the courtroom, from the detention virtual courtroom, or from another location via Zoom. Defense attorneys can mute their clients to prevent them from making statements against their interest on the record. • This format promotes safety in the courtroom. If a respondent has a physical outburst, detention staff are better able to safely de-escalate the respondent. • This format better serves youth with serious mental health issues as they appear less anxious appearing via Zoom. 3. Page 8, Number 13— Defense counsel is not required to obtain signatures from respondents on orders to continue criminal juvenile offender matters. An attorney’s signature on an order to continue constitutes a representation that the client has been consulted and agrees to the continuance.
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		<ul style="list-style-type: none"> • When a respondent appears via Zoom or telephonically, the presiding judge has asked the respondent, on the record, if s/he may sign on the respondent's behalf. If the respondent is not present, the defense attorney has made a record indicating s/he has spoken to the client and the client agrees and is aware of the continuance. • This practice decreases the need for respondents to appear in court in person, which promotes the wellness of all parties and increases respondent court appearances. <p>The Yakima County Juvenile Court is not in favor of permanently implementing the following emergency provisions:</p> <ol style="list-style-type: none"> 1. Page 8, Number 11—Extending Juvenile Court Jurisdiction. <ul style="list-style-type: none"> • The juvenile justice system is designed to rehabilitate persons under the age of 18. Once the public health safety measures have been relaxed, individuals who would regularly have their cases handled in the adult system, should be sent to the appropriate adult court. 2. Page 9, Number 14—Courts may exercise discretion in deciding whether a bench warrant should issue for failure to appear for criminal or juvenile offender court hearings. <ul style="list-style-type: none"> • We believe the courts should take the safety of the respondent into consideration when deciding to issue a bench warrant. This is especially important when a parent of a respondent appears and tells the court their child's whereabouts are unknown or they have reason to believe their child's safety and wellbeing is currently at risk. 3. JuCR 7.16-Page 3, (a)----No new warrants shall issue unless a finding is made that the individual circumstances of the alleged violation of a court order pose a serious threat to public safety.
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		<ul style="list-style-type: none"> • We believe the court should take the safety of the juvenile probation client into consideration when deciding to issue a warrant for violations of court ordered conditions. • Juvenile probation clients with a history of chronic drug use and chronic absconding/whereabouts unknown are at great risk in the community. Recent increases of fentanyl use and overdose deaths, risk of exploitation and trafficking are all increased when a youth's whereabouts are unknown. • Juvenile detention centers have evolved in very positive ways in recent years. The centers serve as screening and assessment centers. They provide needed medical, emotional, and psychological intervention to help stabilize juveniles with high needs. Numerous service referrals and in-house services such as continued family therapy are provided to prepare the juveniles for returning home. • This practice unfairly penalizes communities who lack alternative resources such as crisis residential centers and other services to assist youth and families.
22.	Island County Superior Court, Judge Christon Skinner	<p>I apologize for the late response. I believe the consensus in Island County Superior Court is that we will want to continue to allow court appearances via video or telephone without leave of court except in the case of criminal jury trials. And, with respect to criminal proceedings, we suggest that the rule permitting criminal defendants to appear at pretrial proceedings via video or telephone should also be extended unless the court orders otherwise (such as in cases where a defendant failed to appear at an earlier hearing or has not remained in contact with defense counsel.)</p> <p>Thank you for providing this opportunity for input.</p>
23.	San Juan County Superior Court, Judge Kathryn C. Loring	<p>Caroline, I respectfully suggest the following rule changes to make provisions in the Supreme Court's Orders permanent, and to clarify what types of hearings may not be publicly available on the internet:</p>

		<ol style="list-style-type: none"> 1. Modify GR 30(d) to waive the requirement for a user ID and password to electronically file documents (though this may be resolved with Odyssey e-filing); 2. Expressly allow all forms of electronic signature (and/or copy or scan) to be accepted for filing as an original signature, and revise GR 30 to the extent necessary; 3. Similarly clarify that signatures of judicial officers and clerks also may be electronic; 4. Consider clarifying any types of hearings that may not be livestreamed or available for public online access (for example, 18 U.S. Code § 2265(d)(3) prohibits states from making “available publicly on the internet” information regarding the filing of a petition for a protection order if the publication would be likely to publicly reveal the identity or location of the protected party).
24.	Whatcom County Superior Court, Judge Lee Grochmal	<p>Attachment</p> <p>Please see attached the response from the Whatcom County bench and bar regarding COVID-19 emergency rules and orders.</p>
25.	Skagit County Superior Court, Judge Laura Riquelme	<p>Thanks for extending this opportunity to provide input on the post-pandemic rules. One thing that comes to mind is signatures. The use of electronic signatures in filings should be expanded since those won't be going away any time soon. That also needs to be allowed when a party appears remotely for a hearing. Currently, we're writing “/s/” on an order when a person appears remotely and is present when we enter an order. I quite often write “/s/ over video” or something to that effect on an order. This is especially common in criminal cases. Under CrR 3.4, we expect to have many defendants appearing for court remotely, so the ability to indicate their signature in this manner is crucial for demonstrating their actual knowledge of an order.</p> <p>As chair of the SCJA's criminal law and rules committee, I just submitted a revised CrR 3.4 for review, which incorporates some of the above suggestions and</p>

		<p>guidelines for conducting remote hearings. Most courts appreciate the expanded access to justice provided by remote hearings, but some guidelines for how local courts provide this should be in place, particularly when testimony is being taken.</p> <p>Similarly, I would like something in the criminal rules to reflect that defense attorneys have an obligation to provide court orders to defendants when their clients opt to have counsel appear on their behalf, or when their clients appear remotely. Logistically, that's just not something the courts can handle, however it seems to have been contemplated when the defense bar proposed that they appear on behalf of their clients. Presumably, this is because the defendant and attorney have a working attorney-client relationship where the attorney can provide court documents to the client. If that isn't the case, then I don't see how the defense attorney can claim to be appearing on behalf of the client for court. In order for CrR 3.4(a) to truly work after the current emergency orders expire, the requirement that defense counsel provide orders to clients should be retained. Courts rarely have good working contact information for defendants, but the defense attorney should have that access to a client.</p> <p>I'm not sure if you will receive comments about the current standards re: the issuance of bench warrants, but I would like to mention this in case you have (para. 14 of Fifth Revised and Extended Order). Some counties have alternatives to standard warrants. For example, my county established "book and release warrants" last year, where the person is booked into the jail and then immediately released upon signature of a promise to appear at a future court date. For defendants who completely stopped engaging with counsel or appearing in court, we found that this method was able to get some of them back on track with their court appearances.</p> <p>More options for remote jury selection seem to make sense, particularly for civil trials (other than SVPs, which should be treated similarly to criminal cases in terms of protections). One concern is a push for counties to adopt remote practices when they don't have extensive or equitable access to broadband. I have heard some comments that remote jury selection improves jury diversity,</p>
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		<p>which is definitely not the case for many counties. I would be worried about a rule that mandates things that might work wonderfully in King County but not in very may smaller jurisdictions given local resources, not just court resources.</p> <p>This isn't pandemic-related, but as I've looked at the rules I've noticed that they're inconsistent in their use of gender. For example, CrR 3.5(b) refers to the defendant as a "he." CrR 4.1(c) uses "his or her" pronouns in reference to the defendant. The new CrR 3.4 also uses "his or her." I don't see this as requiring an urgent review of all the rules since the current priority is to transition from emergency mode to the new normal, but it seems like we should look at using gender neutral they/them pronouns as we update rules. This was something we struggled with in providing the proposal for CrR 3.4, but we decided to remain consistent with the first half of the rule and use gendered pronouns, despite a preference for they/them. Just some food for thought.</p> <p>Thanks, again, for this opportunity to provide feedback. Good luck organizing all of this.</p>
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Appellate Court Responses

26.	COA III, Judge Tracy Staab	<p>Greetings and thank you for the opportunity to provide input on COVID-19 rules. I have the unique perspective of working in a high-volume municipal court as well as the Court of Appeals during this pandemic. As a third dimension, in municipal court I was presiding over a DUI Therapeutic Court.</p> <p>As background, before the pandemic hit, our municipal court was working with the National Center for State Courts to develop procedures to reduce the number of hearings and set firm standards for resolving cases. One factor driving up our jail population as well as time-to-disposition is the high number of failures to appear (FTA).</p> <p>When the pandemic hit, it became clear that virtual hearings were going to be necessary. During the first closure, we used grants to purchase video equipment for each courtroom. Within a few weeks of the initial closure, the DUI court was up and running on Zoom. As things began to open up, we allowed hearing to be</p>
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		<p>held by zoom. With fewer hearings and the option to appear by video, our FTA rate decreased dramatically.</p> <p>The ability to appear by video is an access to courts issue and needs to be continued. Suddenly, it takes 15 minutes to "go to court" instead of several hours at considerable expense (parking, day care, time from work, etc.) At the Court of Appeals, our Division covers 20 counties over an expansive geographical area. To appear for oral argument means some attorneys must dedicate 24 hours of their time for a 15 minute argument (driving to Spokane, staying in a hotel, speaking for 15 minutes, and then driving home). This makes oral argument an inefficient use of time and resources. Appearing by video is a game-changer.</p> <p>When I was on the board of the DMCJA, I made several requests to hold the meetings virtually, but was told it was not feasible or possible. Turns out, we just needed some motivation.</p> <p>As Courts, we need to keep in mind the big picture: what is our purpose? How can we achieve that purpose better? Instead of being constrained by the box we live in. This pandemic has been horrible, but it has certainly created opportunities to provide better justice.</p>
Stakeholder Responses		
27.	Legal Counsel for Youth and Children, Randy Hall, staff attorney	<p>I am a staff attorney with Legal Counsel for Youth and Children, and my legal practice is centered on the representation of children who are accused of committing criminal conduct and who are involved as the subjects of dependency and termination of parental rights proceedings.</p> <p>Since the coronavirus outbreak in January of 2000, I have regularly appeared on court calendars in the King County Superior Court in connection with the legal representation mentioned above. During this time period, I have been the defense counsel in two fact finding hearings (trials) for clients charged with Class A sex offenses. Additionally, I have regularly appeared on the motions and review calendars in dependency court, and case setting, plea and disposition, and other calendars in offender court. I typically have matters on these various calendars 3</p>

		<p>– 5 times per week. I also regularly participate in various work groups that are designed to improve court operations.</p> <p>In my opinion, the quality of justice has suffered greatly because of the steps that were necessary for the protection of those working in the courts and the general public. My clients are typically low income people of color. They typically do not have sophisticated technology available for their use. Arranging for remote court appearances consume a significant amount of my time. Reduction, and in some cases completely eliminating, in person contact with my clients has had a very detrimental effect on my ability to fully explain considerations that are important to know prior to making decisions of great importance. Additionally, I find great value in participation in the formality of an in person court appearance. In my opinion, respect for the rule of law in our society is under attack, and remote court appearances do not enhance the respect for the legitimacy of important judicial decisions. I fear that when the health risks associated with the COVID-19 diminish, that the measures taken to address them will remain. If that fear becomes reality, the quality of justice, in my opinion, will greatly be diminished.</p>
28.	Office of the Attorney General Social and Health Services, Carissa Greenberg, Asst. AG	<p>Attachment</p> <p>Pursuant to the email soliciting input regarding COVID-19 emergency orders (below), I am emailing you to let you know that the Office of Public Defense, the Office of Civil Legal Aid, and the Attorney General’s Office have started initial conversations about amendments to the currently effective order, <i>Extended and Revised Order Re: Dependency and Termination Cases</i>, No. 25700-B-647 (October 14, 2020) (available here). I recognize that the email below requests initial responses by April 16. Unfortunately spring break and planned leave have impacted our ability to have everyone we think is necessary at the table at the same time, so we don’t anticipate being in a position to have agreed recommended revisions to the emergency order to provide to the Court by April 16. We expect we could have these recommendations to the Court by April 23 or shortly thereafter. Because this collaborative approach has been an effective way to present recommendations to the Court during the pandemic, I hope that this</p>

		<p>email informing the Court that we have started this process can serve as our initial response. If the Court needs our group proposal earlier, please let us know and we will do our best to provide one by working with those who are available.</p> <p>Thank you for your help, both with this request and your service to the Court Recovery Task Force as a whole. If you have any questions, please do not hesitate to contact me. Thank you!</p>
29.	Chris Van Vechten WSBA 47320	<p>There is increasing discussion about the use of remote or Zoom technology to conduct civil and criminal court proceedings in a post-pandemic world. This even includes jury trials.</p> <p>While I understand this is a cost saving solution which many in our field were already in support of prior to the pandemic, as a practicing attorney in civil and criminal practice who has been dealing with this now for quite some time, I want to assure the committee that it has caused – and will continue to cause – significant damage to both the solemnity of the judiciary as well as undermine the ability of parties to have the merits of their cases be fairly evaluated.</p> <p>Constitutional concerns aside, there is no shortage of research to suggest that the behavior and interpretations of what people perceive from behind a keyboard is significantly diminished because of this experience. So too is the attorney client relationship. So too is the Court’s ability to ensure due process and the integrity of testimony from witnesses – many of whom are clearly reading prepared statements rather than giving oral testimony.</p> <p>In one case I recently had concerning a domestic violence protection order in which a teenage daughter was accusing her father of rape; the petitioner’s mother literally told her daughter how to respond to one of my inquiries from the other side of the kitchen table just outside the camera’s view. Her instructions were picked up via the microphone, but nothing could really be done about it by the commissioner or myself other than to simply ask the mother to please refrain from instructing her daughter how to respond. It is clear to me that remote testimony allows for prolific clandestine witness coaching which cannot be adequately controlled under this model.</p>

		<p>Then there are the technological inferiorities involved in this process. I have yet to experience a hearing of any substance where the streaming bandwidth did not cut out, or the microphone did not drop off, and I repeatedly find myself missing things which are being said on the record.</p> <p>Being primarily a criminal defense attorney, I also cannot write such a letter without expressing my ongoing concern about the long-term dehumanization of my clients' by failing to bring them into a courtroom during sentencing and substantive hearings. I am sure there will soon be data suggesting that – on the contrary – since courts embraced remote technology, bails have been lowered as have sentences for criminal convictions. But that data is a reflection of (1) fear of Covid 19 spreading if defendants are taken into custody & (2) the current political climate surrounding policing and the recognition of the inequities of this system – inequities which are sure to ultimately be inflamed by this model once the political climate shifts again.</p> <p>Pre-pandemic data from courts that had experimented with video hearings demonstrated that defendants who were subjected to this system received harsher outcomes than those in traditional settings.^[1] I have experienced this firsthand in courts which long ago embraced video sentencing as a cost saving measure for in custody defendants. Additionally, although the defendant's right to be present for these sentencing hearings had been preserved pre-pandemic, there has always been a fear that asserting it could also lead to an even harsher sentence because it is contrary to the standard established by said jurisdiction's video court system. I am concerned about something similar happening here in a post-pandemic world.</p> <p>You could argue that these disparities are rather a function of being sentenced while in custody vs while out on bail, but my older colleagues inform me they saw a similar imbalance take place when Department of Licensing Hearings transitioned to an exclusively remote format.</p> <p>There are admittedly some in my field who feel this new model is preferable because it has allowed them to enjoy a lifestyle as attorneys that was previously unattainable. But I have yet to find anyone who believes it has improved the attorney client relationship; or made us more effective in our arguments; or increased respect for the judicial process or solemnity for what transpires in a courtroom. While there may be many fields where a remote work model makes sense – nothing that is commonly referred to as “essential”</p>
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		<p>seems to work well on Zoom. Schools have imploded under this model; doctors and psychologists find that remote consultations or services often fail their patients; and courts seem to function only so long as judicial safeguards that were developed through centuries of experience are discarded or ignored.</p> <p>For criminal practice, the best arguments for remote hearings dissolved with the new CrR 3.4 rule, and with the Legislature’s amendment of the bail jumping statute. These changes, in themselves, will accomplish many of the supposed long-term aims of virtual courtrooms without degrading the actual courtroom experience for those who require/desire it, nor unfairly prejudice either party when a dispute comes before the bench.</p> <p>Another innovation I am concerned about is broadcasting what happens in a courtroom to the public online. On the one hand, I like that it has made the court more accessible who have a vested interest to see what is happening. On the other hand, it makes it easier for witnesses to see what happened in the courtroom before they were called to testify. There's a reason we have always had courts exclude witnesses from the courtroom prior to testifying and while there have been occasions when I caught members of the gallery relaying messages to the witness prior to testifying (particularly in domestic violence cases) this new model makes employing a confederate totally unnecessary. In the context of warring parties, it is natural for one side to have uniform testimony in the presentation of their case because it is in their personal interests that everyone have their story straight. But that frustrates the aims of justice and furthermore frustrates the attorney's abilities to demonstrate discrepancies that would otherwise be obvious and often important to the case.</p> <p>I strongly encourage the judiciary to interpret what happened in 2020 as an experiment that was necessary because of a public health crisis that was mismanaged and nothing more. We serve an essential need in our community and failing to treat that role with the seriousness it requires can result in our client’s losing their business, losing their children, and even going to prison for a crime they did not commit. There needs to be a physical place where these important issues are resolved, and where people are expected to show up to participate in it.</p>
30.	Ray Kahler	

		<ol style="list-style-type: none"> 1. Giving attorneys and parties the option of appearing remotely (such as via Zoom) to argue motions or appear for court hearings. I would like to see courts continue to offer this as an option. The savings in time and money is considerable due to the travel time required to appear in person, as well as find parking and get through court security. It allows parties to handle court appearances without having to take time off work. 2. The rules already allowed for remote/video depositions, so that is only new in the sense that it became the presumed means of conducting depositions. Again, the savings in time and money is considerable compared to the travel time required to appear in person for a deposition, and I would like to see remote depositions continue. Doing depositions remotely allows me to spend my time more productively vs. half a day or more in a car driving to and from an in-person deposition. I talked to the owner of a court reporting firm who said that doing depositions remotely allows them to cover more depositions in a day than they can when they have to travel in person to depositions. This is an issue now because there is a court reporter shortage. 3. Electronic signatures and filing (as the federal courts have used for years now) also saves time and makes things easier.
31.	P Diane Schneider	<p>I serve on the Recovery Task Force as well as the Minority and Justice Commission. I am also a Washington State Court certified Spanish interpreter. It has become clear to me that courts are paying for services of which they are not taking full advantage.</p> <p>For hearings and consultations which can be conducted remotely, this can save time and resources. It is possible now, when holding remote hearings, to place attorney and client in a separate “room” in order to consult privately. The language interpreter can also be added to the same “room” for the attorney/client consultation.</p> <p>But the same courts do not usually take advantage of the interpreter function wherein the interpreter may interpret proceedings simultaneously on a separate band. This function does not interfere with proceedings. When necessary this</p>

		<p>function also allows the interpreter to switch to speak on the record when the non-English speaking party needs to communicate.</p> <p>When simultaneous interpretation is not facilitated, the entire proceedings must be interpreted consecutively. This takes much longer of course. It is not only the interpreter who experiences increased fatigue in these situations.</p> <p>Thank you for your consideration</p>
32.	WAPA, Adam Cornell et al.	<p>Attachment Three-page letter, attached separately</p> <p>Received 4/26/21</p> <p>Re: WAPA Input Regarding WACDL/WDA Fingerprinting Proposal</p> <p>Dear Ms. Tawes,</p> <p>I write on behalf of the Washington Association of Prosecuting Attorneys (hereinafter WAPA) in my capacity as its Chair of the ad hoc Committee on COVID-19.</p> <p>While I recognize that the Court’s preferred deadline for comment regarding COVID-19 emergency rules and orders has passed, the recent WACDL/WDA (hereinafter WACDL) proposal related to fingerprinting compels this response, particularly in light of the fact that the court did not request input on that topic, so our original letter did not address it. Because there are inaccuracies and significant legal concerns raised by the WACDL proposal but not addressed in their letter, WAPA is compelled to reply.</p> <p>Because time is short, I will only outline WAPA’s concerns, as set forth below.</p> <p>WACDL asserts that the court needs to “intercede” on two statutes:</p>

		<p>RCW 10.64.110</p> <p>Fingerprint of defendant in felony convictions.</p> <p>“Following June 15, 1977, there shall be affixed to the original of every judgment and sentence of a felony conviction in every court in this state and every order adjudicating a juvenile to be a delinquent based upon conduct which would be a felony if committed by an adult, a fingerprint of the defendant or juvenile who is the subject of the order. When requested by the clerk of the court, the actual affixing of fingerprints shall be done by a representative of the office of the county sheriff. The clerk of the court shall attest that the fingerprints appearing on the judgment in sentence, order of adjudication of delinquency, or docket, is that of the individual who is the subject of the judgment or conviction, order, or docket entry.”</p> <p>There are many reasons prints are placed on a J&S. One is to ensure that when a defendant has a delayed reporting date for jail the correct person is actually incarcerated. Another is that the fingerprints on a J&S support the State’s proof of identity when we need to extradite the defendant from another state when the defendant escapes or commits a violation of community custody in that other state. The fingerprints on the J&S allow the FBI and the Washington records people to link convictions obtained under one alias with a defendant’s other convictions. The fingerprints exonerate people who were the victim of the defendant’s identity theft or criminal impersonation. And, only “fingerprint-based” convictions are accepted by the FBI for national criminal records databases.</p> <p>The fingerprints on the J&S are used routinely in future criminal prosecutions where the prior convictions is an element of the crime – failure to register as a sex offender, unlawful possession of a firearm, escape, etc. The fingerprints are also</p>
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		<p>frequently used to confirm identity of the defendant as to priors that constitute the defendant's first and second strike in a current third strike case. Absent fingerprints—the defendant's prior attorney would generally need to be called to establish this was the person who was convicted in the prior case. Calling defense attorneys to perform this function, is generally prohibited by a relatively recent amendment to RPC 3.8:</p> <p>(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:</p> <ol style="list-style-type: none"> (1) the information sought is not protected from disclosure by an applicable privilege; (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and (3) there is no other feasible alternative to obtain the information; <p>And</p> <p>RCW 10.98.050</p> <p>Officials' duties.</p> <ol style="list-style-type: none"> (1) It is the duty of the chief law enforcement officer or the local director of corrections to transmit within seventy-two hours from the time of arrest to the section fingerprints together with other identifying data as may be prescribed by the section, and statutory violations of any person lawfully arrested, fingerprinted, and photographed under RCW 43.43.735. The disposition report shall be transmitted to the prosecuting attorney, county clerk, or appropriate court of limited jurisdiction, whichever is responsible for transmitting the report to the section under RCW 10.98.010. (2) At the preliminary hearing or the arraignment of a felony case, the judge shall ensure that the felony defendants have been fingerprinted and an arrest and
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		<p>fingerprint form transmitted to the section. In cases where fingerprints have not been taken, the judge shall order the chief law enforcement officer of the jurisdiction or the local director of corrections, or, in the case of a juvenile, the juvenile court administrator to initiate an arrest and fingerprint form and transmit it to the section. The disposition report shall be transmitted to the prosecuting attorney.</p> <p>Fingerprints must be taken with each arrest, each new felony prosecution. These allow everyone to know that the “George Smith” charged in the specific case is the same “George Smith” who is later arrested on a warrant for failure to appear or extradited. The fingerprints protect individuals with similar names and physical traits who are the victims of identity theft from sitting in jail for a prolonged period of time following an arrest.</p> <p>Fingerprints associated with the new charge enable the State to satisfy the identity requirements for extradition in which we need to prove that the “George Smith” in Utah is the “George Smith” who stands charged in the Ferry County Superior Court.</p> <p>Fingerprints at the time of arrest/arraignment allow us to determine the defendant’s true name and true criminal history. This is how we link convictions obtained under past aliases.</p> <p>The provision for fingerprinting after the preliminary hearing or arraignment if not done prior is what allows police officers to decrease the number of custodial arrests and bookings. Otherwise, as paragraph 1 indicates, an arresting officer would have a duty to transport every felon to jail for booking photo and fingerprints:</p> <p>RCW 43.43.735 Photographing and fingerprinting—Powers and duties of law enforcement agencies—Other data. (1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law</p>
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		<p>enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor. (a) When such juveniles are brought directly to a juvenile detention facility, the juvenile court administrator is also authorized, but not required, to cause the photographing, fingerprinting, and record transmittal to the appropriate law enforcement agency; and (b) a further exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.</p> <p>(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all adults lawfully arrested.</p> <p>(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons whose photograph and fingerprints are required or allowed to be taken under this section when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he or she is charged.</p> <p>Allowing a defendant to get fingerprinted where they live, rather than as defined in the statute creates opportunities for fraud and identity theft. We rely on fingerprints because paper IDs can be faked. In addition many of the defendants lack even paper ID. Also, the legislature only authorizes the judge to order the chief law enforcement of the jurisdiction (which would be the sheriff) to do the fingerprinting. A King County Superior Court Judge in State v. George Smith does not have the power to order the Tacoma City Police Department to fingerprint the individual.</p>
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33.	<p>Office of the Attorney General Social and Health Services – Olympia, Carissa A. Greenberg Assistant Attorney General, Carrie Hoon Wayno</p>	<p>Thank you for coordinating feedback regarding COVID-19 emergency rules and orders. I am submitting the following feedback on behalf of Assistant Attorneys General who represent the Department of Children, Youth, and Families in dependency and termination cases statewide.</p> <p><u>Practices to continue beyond the state of emergency include:</u></p> <ul style="list-style-type: none"> • The expanded use of electronic signatures without the affidavit required under GR 17. See <u>Fourth Revised and Extended Order Regarding Court Operations</u>, No. 25700-B-646 (Oct. 13, 2020), Paragraph 21. The current emergency order has enabled parties to drastically reduce the time to circulate orders at dockets and enabled efficient signing by judicial officers. • The option for parties and attorneys to appear remotely either by video or telephone. While this option may not be possible in all types of hearings, it would be beneficial to continue to have this option when such an appearance is agreed and/or comports with due process. <p><u>Other modifications:</u></p> <ul style="list-style-type: none"> • Re-evaluating the “compelling circumstance” standard in CR 43(a) as it relates to presenting witness testimony “in open court by contemporaneous transmission from a different location.” Due to advances in technology and courts’ technological capabilities since this rule’s adoption, more latitude for remote testimony should be considered. It would be beneficial to continue this option for some witnesses to testify remotely, even if the reason does not rise to a “compelling circumstance.”

		If you have any questions, please let me know. Again, thank you for inviting our input.
34.	Washington State Office of Public Defense, Brett Ballew Managing Attorney	OCLA and OPD are just confirming our intention to work with the AGO to collaborate and submit comments by April 23 as set forth in the email from Carissa Greenberg below.
35.	BJA Court Recovery Taskforce Criminal Matters Adult Offenders Subcommittee, Amy Muth	<p>I write as Chair of the Criminal Matters Adult Offenders Subcommittee of the BJA Court Recovery Taskforce; other members of our subcommittee are copied on this email. We understand that WAPA, on behalf of the prosecuting attorneys, and WDA and WACDL, on behalf of the criminal defense bar, have submitted their feedback related to the COVID-19 emergency rules and orders. Our subcommittee, which includes both prosecuting and defense attorneys, has only just received the submissions from WAPA and WDA/WACDL, and has not had an opportunity to meaningfully review and discuss them. WAPA, WDA, and WACDL collaborated to draft the original emergency order and have consistently worked together to locate areas of agreement to all proposed court operations modifications brought on by the pandemic. If it would be helpful to the Court, our committee would be pleased to review the feedback from WAPA, WDA, and WACDL, and discuss and identify the areas where there is agreement. We are aware that the deadline for submission of feedback is today, and while we would not be able to complete our review and prepare a response by the end of the day, we would be able to do so by the end of next week. Please let us know if this would assist the Court, and if so, whether next Friday would be an acceptable deadline by which to provide a response.</p> <p>We are grateful for the Court's continued attention to the COVID-related needs of the criminal courts and its numerous efforts to ensure equal access to the courts during the public health emergency.</p>
36.	Northwest Justice Project,	I am writing to you on behalf of the Northwest Justice Project (NJP) to share our thoughts on Emergency Rules and Orders that we believe this Court should make permanent after the pandemic has ended.

<p>Jefferson Coulter, Spokane, WA</p>	<p><u>Regarding remote appearances.</u></p> <p>1. Scheduled Hearings and Remote Appearances. Prior to the pandemic, many counties in Washington lacked scheduled hearings for routine matters (family law hearings, civil motions, out-of-custody hearings for post-conviction and pre-trial matters) and provided no or little ability for litigants to appear remotely. Both “calendar calls” and even scheduled, in-person hearings often cause low-income and witnesses to miss an entire day of work, organize transportation (including in areas with non-existent public transportation), and find childcare for several hours for a 10-minute hearing. During the pandemic, however, many courts expanded the ability of litigants, witnesses and counsel to appear remotely via video at specific times scheduled for the court and litigants. Prior to the pandemic, several counties in Washington used CourtCall for telephonic appearances, and charged litigants a fee (often \$65 to \$70) to use this service. Litigants should not bear the costs of remote appearances, whether by phone or video. Anecdotally, we have heard from our clients that scheduled, remote hearings allowed them to understand when and how to appear and we believe it has reduced FTAs and rescheduling.</p> <p><u>Regarding the Court’s Fourth Revised and Extended Order.</u></p> <p>2. Accessible filing. This Court stated, in relevant part, that “Courts must provide an accessible process for filing petitions for civil protection orders and motions for temporary restraining orders, which may include filing petitions in person or remotely. Courts are encouraged to provide alternative means for filing, including electronic filing options whenever possible, especially when the courthouse is closed to the public or public clerk’s office hours are restricted due to the public health emergency” (No. 25700-B-646, ¶ 4.) During the pandemic, many courts, in addition to remote hearings, began allowing remote and electronic filing for the first time. This provided pathways for low-income litigants to seek protection orders more quickly and in less costly ways. Requiring parties to travel to a courthouse merely to file documents demands that low-income parties in some</p>
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		<p>cases lose a day’s wages, struggle to find transportation in rural areas not served by public transportation, and to arrange childcare.</p> <p>In addition to reducing barriers for pro se litigants, remote filing would also reduce barriers and expenses for counsel. This is particularly relevant in rural areas where counsel not infrequently work at a great distance from the courthouse and may even work in a different county than the courthouse. For civil legal aid providers such as NJP and volunteer lawyer programs around the state, the inability to file documents remotely delays justice and needlessly increases costs.</p> <p>We predict that the passage of SB 5160 and the assignment of counsel in unlawful detainer actions will increase the number of out-of-county attorneys representing low-income tenants in superior courts around the state. Those attorneys’ practices will be significantly hampered if they are not allowed to file pleadings electronically or via fax, access dockets and pleadings online, and appear in court via phone or video.</p> <p>Accordingly, NJP urges the Court to explore ways to encourage, support or require courts to allow electronic filing not only in civil protection and restraining order cases, but in all cases, allow electronic or fax service upon counsel (not original service), and require courts to make their dockets and pleadings available online. Courts should charge no fees for electronic filing, or should allow fee-waivers for electronic filing to avoid disproportionately impacting access to justice for low-income parties.</p> <p>3. Out of Custody Criminal and Civil Matters. (No. 25700-B-646, ¶ 8.) This Court’s Fourth Revised and Extended Order also stated that “Courts should continue to hear out of custody criminal and juvenile offender matters by telephone, video or other means that do not require in person attendance when appropriate. In addition, courts may hear matters that require in person attendance if those hearings strictly comply with social distancing and other public health measures.” In many out-of-custody matters (ability-to-pay hearings, status conferences, etc.) the presence of the litigant is not needed in court. We encourage the court to consider making permanent remote hearings for post-conviction/adjudication criminal and juvenile matters unrelated to safety.</p>
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37.	King County Department of Public Defense, Anita Khandelwal Director	<p>Attachment Three-page letter</p>
38.	University of Washington School of Law, Terry J. Price, MSW, JD	<p>At the risk of repeating myself, I wanted to make sure that my Family Law subcommittee's concerns about GR 30 and digital signatures are included on your list. Even though the Emergency Order suspended the requirement that self-represented litigants provide a wet signature, Laurie Garber's (NJP) research</p>

	<p>Executive Director, Graduate Programs</p>	<p>among her colleagues showed that the courthouses were extremely variable in how they handled this. My fear is that they will return to business as usual after the pandemic.</p> <p>One thing that was mentioned in yesterday's CRTF meeting was putting together an inventory of which documents actually need a wet signature. For example, in my world of family law, my understanding is that orders that are going to be filed with other states under the UCCJEA or UIFSA need a wet signature. But do we need we require that for child support orders that stay in the state? I think this inventory would be extremely useful in narrowing the field.</p> <p>But if we really want to move the needle, here is my idea: What if the AOC created a central portal to provide a digital e-signature for self-represented litigants?</p> <p>Problems this solves:</p> <ol style="list-style-type: none"> 1. This is consumer friendly. 2. In reality, the e-signature does not need to be county-specific. In fact, making the litigant have an e-signature in each county is <u>user-unfriendly</u>. We know that self-represented litigants often have multiple cases in different counties. 3. The AOC can take the lead on this. (I believe this would readjust the power dynamic between the counties and AOC in a positive direction.) 4. It could connect nicely with some technological advancement by the courts. <p>AOC--</p> <ul style="list-style-type: none"> • Create a simple log-in and password portal for e-signatures. • Once signed in, the program generates a random number. • The random number counts as the e-signature for the day.
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		<ul style="list-style-type: none"> • The self-represented litigant can use that number and the date on their filings that day, in lieu of a wet signature-- <u>in any county</u>. • The technology for this is rather simple. <p>Clerks--</p> <p>Once a document is filed with the random number and date, the clerks can access the central portal to confirm the signature.</p> <p>Resistance-- it is different from how the clerks already do things, so they will be resistant.</p> <p>And if this worked, this could become a state portal for paying LFOs. I have often said, if middle class folks were paying LFOs, they would never accept a system as <u>user-unfriendly</u> as paying county by county. But that's another story for another day.</p> <p>I sent this to Dirk Marler after the last CRTF meeting in February, but with the legislative session and all that, he has not had time to digest this. I completely understand.</p> <p>I did not share this (below) with Dirk because it just happened:</p> <p>The most recent development in this is the passage of HB 1320 the other day, completely rewriting the protective order statutes. I assume you know about this bill, and Section 14, which calls out the technology going forward. Pursuant to the Access to Justice Tech Principles, it is important to think about the user experience and historically under-represented folks with every new technology. Section 14's requirements for petitioner notifications at every step (the order has been served, the guns have been removed, etc) anticipates e-filing, e-service, and text/email notifications. If we don't get self-represented litigants digital signatures right now, then they likely will not be able to take advantage of all</p>
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		<p>that HB 1320 has to offer, if they have to go into the courthouse. So this is a challenge with new technology, but it is an opportunity as well.</p> <p>I can be available to talk more about these issues.</p>
39.	Jason Schwarz, Director Snohomish County Office of Public Defense	<p>Attachment (2) Attached you will find a memo from WDA, WACDL, and OPD expressing our member's recommendations for the adoption of future court rules. Our work was guided from input by our members through the defense attorney survey distributed in December. I have included that final report as well for reference.</p>
40.	Columbia Legal Services, Janet Chung, Advocacy Director	<p>Attachment Dear Ms. Tawes: Please find attached a letter with input from Columbia Legal Services addressed to Justices Stephens and McCloud regarding the Court's COVID-19-related rules and orders.</p>
41.	ACLU, Michele E. Storms, Executive Director	<p>Attachment (2) One attachment is the same as Schwarz This email is in response to your request of April 2 requesting input on lessons learned during the COVID-19 pandemic and comments on which of the Supreme Court's emergency orders should stay in effect, etc. Please accept my apologies for replying somewhat late and I hope our views can be considered.</p> <p>ACLU-Washington endorses in full the joint comments and recommendations provided by The Washington Defender Association, Washington Association of Criminal Defense Lawyers, and Office of Public Defense. A copy of their submission is attached again for your convenience. We appreciate and support their comprehensive analysis and requests.</p> <p>ACLU-Washington also requests one additional action by the Court, and that is to keep in effect the "Delayed FTA Reporting to the Department of Licensing Order" that is also attached. This order should stay in effect for all the reasons the Court gives in the order itself regarding difficulties accessing court during the pandemic</p>

		<p>that is still going on, the need for people to have access to vehicles during this time when alternate forms of transportation can be unsafe, and the disparate impact of these access and transportation problems on historically marginalized communities. Unless and until all people can have full and equal access to the courts, those courts should not take steps to have drivers' licenses suspended while the pandemic continues.</p> <p>Thank you very much for your consideration of our comments. Michele</p>
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Justice System Involvement and Longevity in Washington State:

A study of 2017 decedents

Dr. Andrew Peterson

Washington State Center for Court Research

What We Are Studying and Why

- This is an opportunity to improve reporting of court outcomes
- We need to refocus our attention on court outcomes beyond recidivism to longevity and other measures of well-being for justice-involved populations
- Not an indicator of the court or justice system's effect on individual longevity. We are not looking at causation, only associations.

Presentation Overview

- The Data and Methods
- Longevity and Manner of Death
- Demographics
- Neighborhood Level SES
- Offending Histories and Criminal Careers
- Conclusions

The Data

- WA Department of Health – Records of all mortalities in Washington State, plus information on cause of death, age, personal information (education, residence, race/ethnicity)
- WA AOC – Records of all criminal court contacts since approximately 1980.
- Area Deprivation Index: Developed by U.S. Health Resource and Service Administration. University of Wisconsin medical researchers calculated at the census block level for all U.S. census blocks

Methods

- We started with all decedents in Washington State in 2017 (N=58,392)
- We matched to WA AOC records and only included males over the age of 10 (N=30,018)
- We removed cases with an unknown cause of death (N=29,801)
- We limited the study to WA residents (N=28,253)
- The portion that included ADI/neighborhood affluence matched 77.9% of known addresses (N=22,015). No identified commonalities among non-matched.
- Four levels of court involvement: No court involvement, Infraction/violation, Misdemeanor charge/conviction, and Felony charge/conviction.

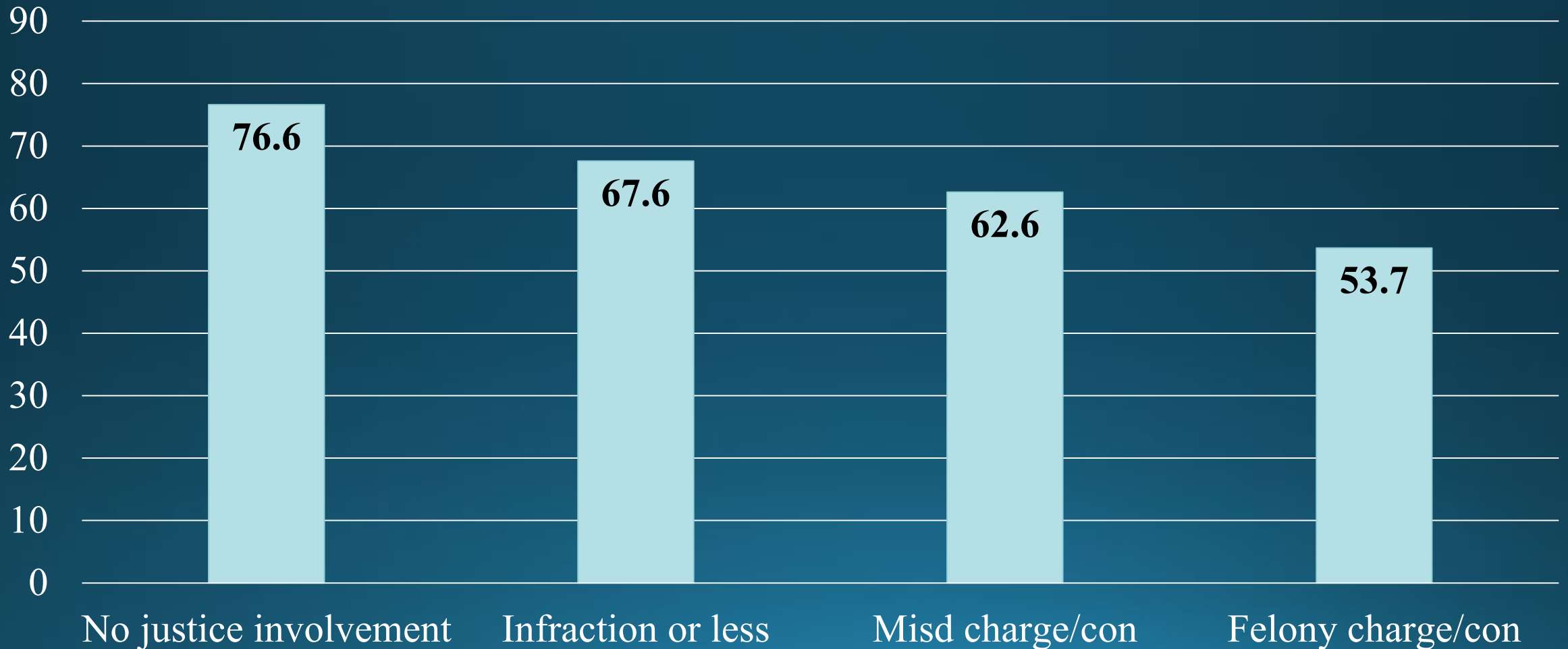
Methodological Reasoning

- Only including 10+ year olds:
 - Individuals need to have a chance to offend or not.
 - Otherwise, the non-court involved group would have all the very young decedents
- Only including WA residents:
 - Residents would be more likely to have Washington State criminal records than non-residents.
 - Otherwise, they would likely go into the non-court involved group and bias those results.
- Only including males:
 - Males are overrepresented in the justice system, but not in the population and die earlier, generally.
 - This would skew the results and increase the longevity differences between non-court involved and court involved groups
 - We matched based upon name and dob. Women are more likely to have name changes and could have resulted in false criminal history negatives.

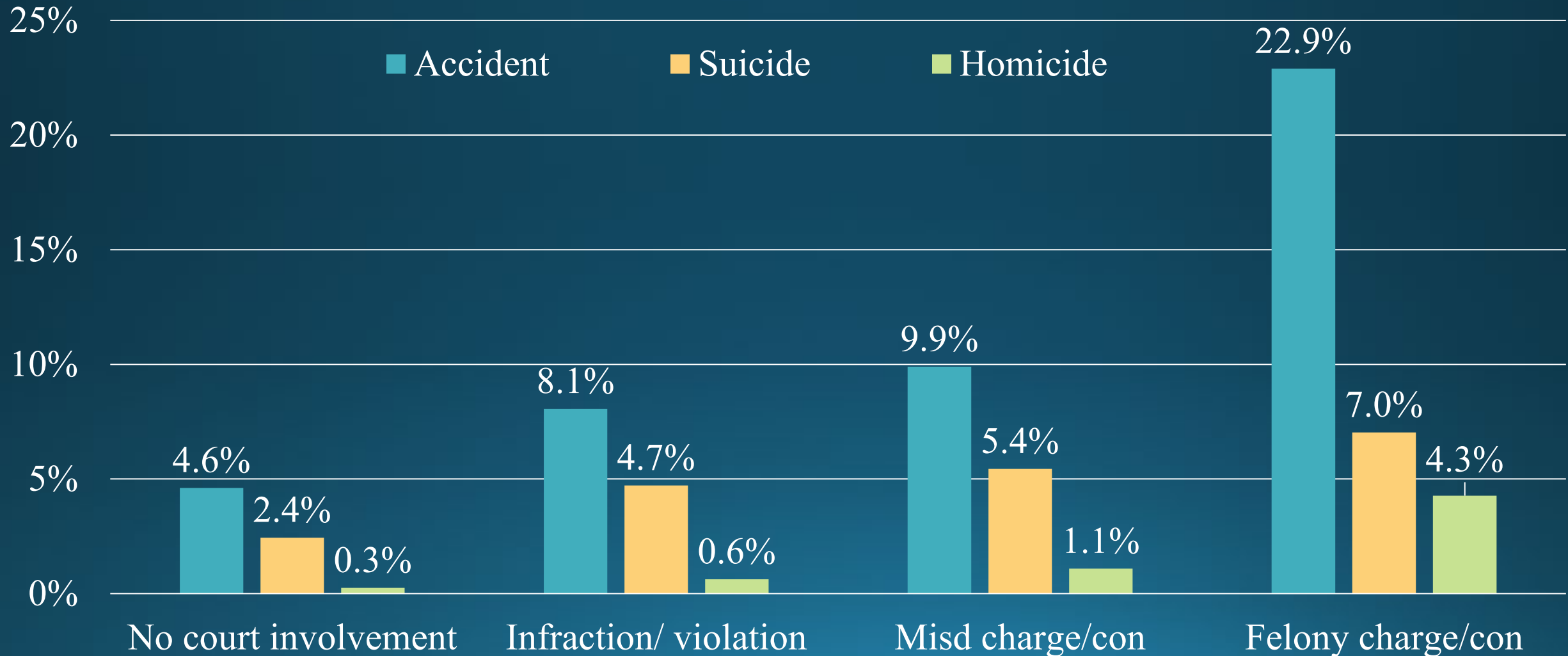
Longevity and Manner of Death Analysis

Average Age at Death by Most Serious Justice Involvement

Age at Death



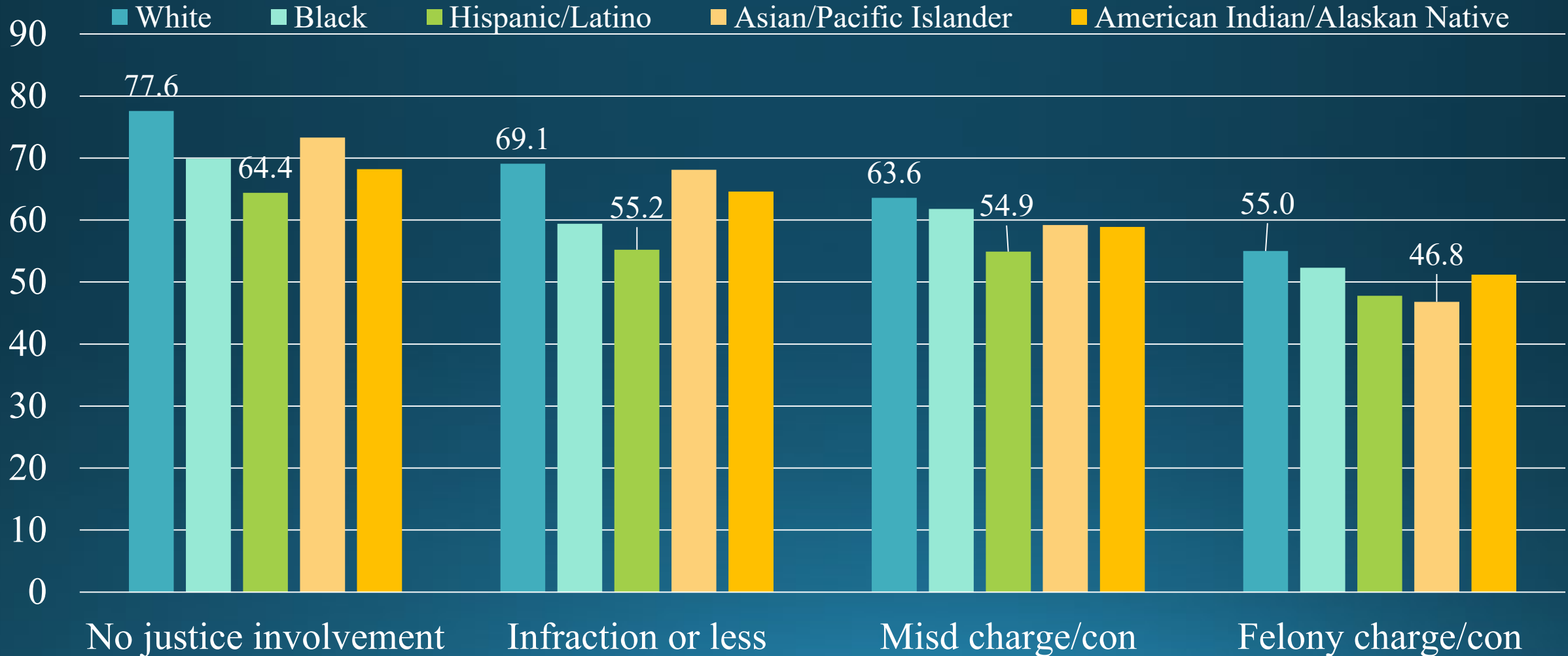
Other than Natural Causes of Death by Most Serious Justice Involvement



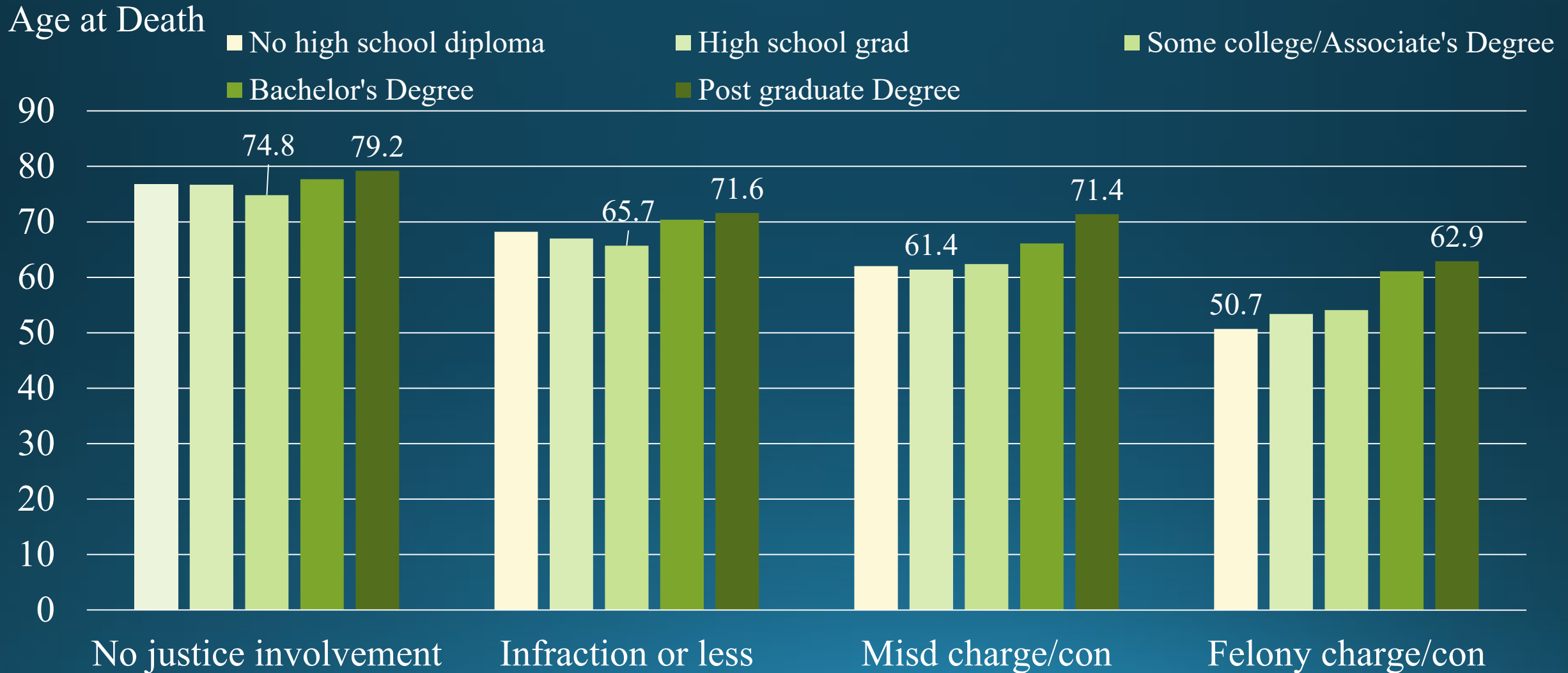
Demographic Analyses

Average Age at Death by Race/Ethnicity and Most Serious Justice Involvement

Age at Death



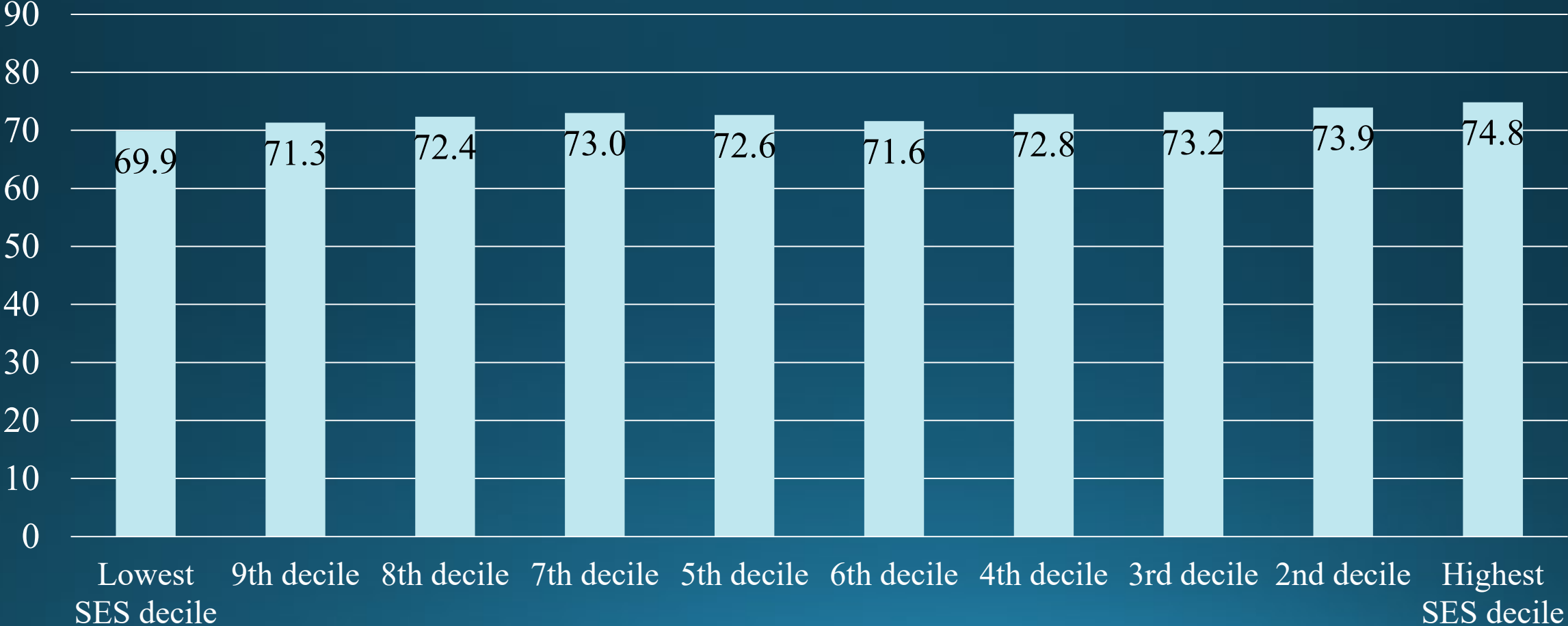
Average Age at Death by Educational Attainment and Most Serious Justice Involvement



Neighborhood-level SES analysis

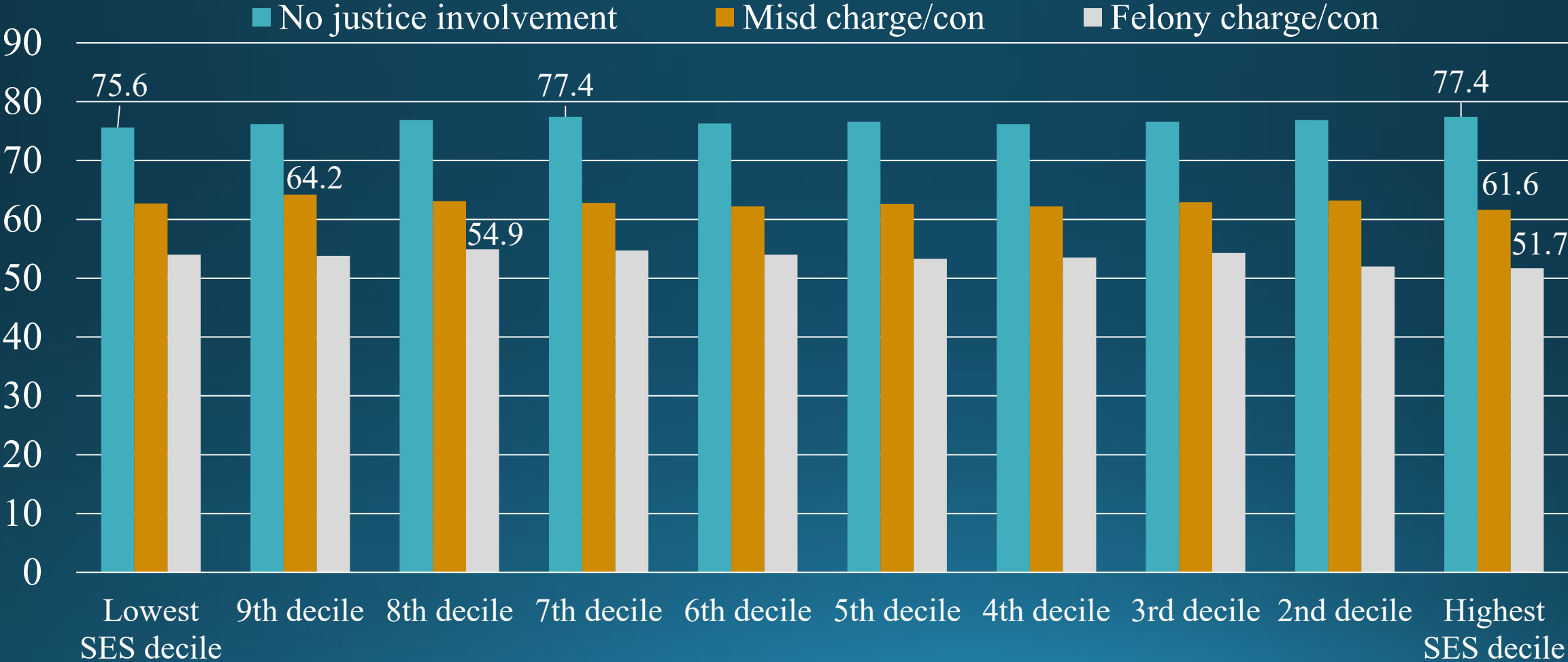
Average Age at Death by Washington State ADI Deciles

Age at Death

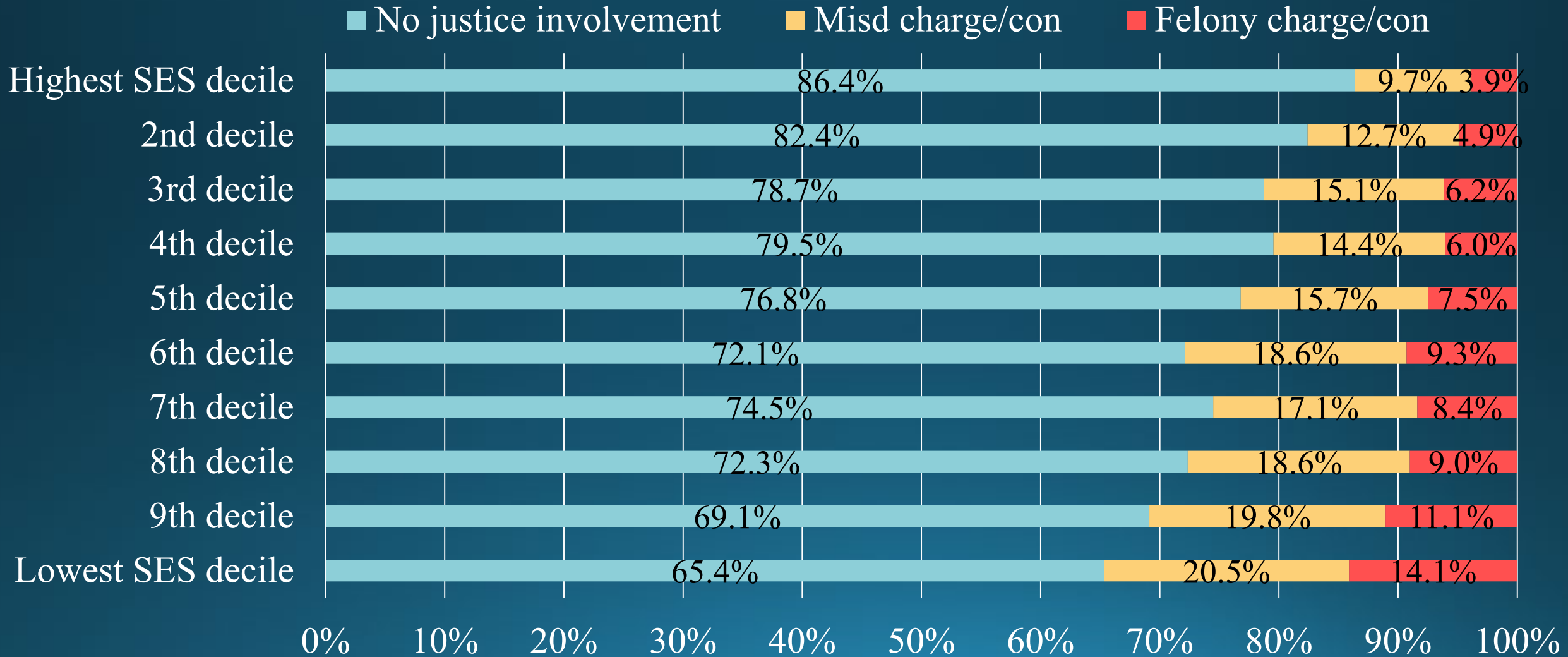


Average Age at Death by Washington State ADI Deciles and Most Serious Court Involvement

Age at Death

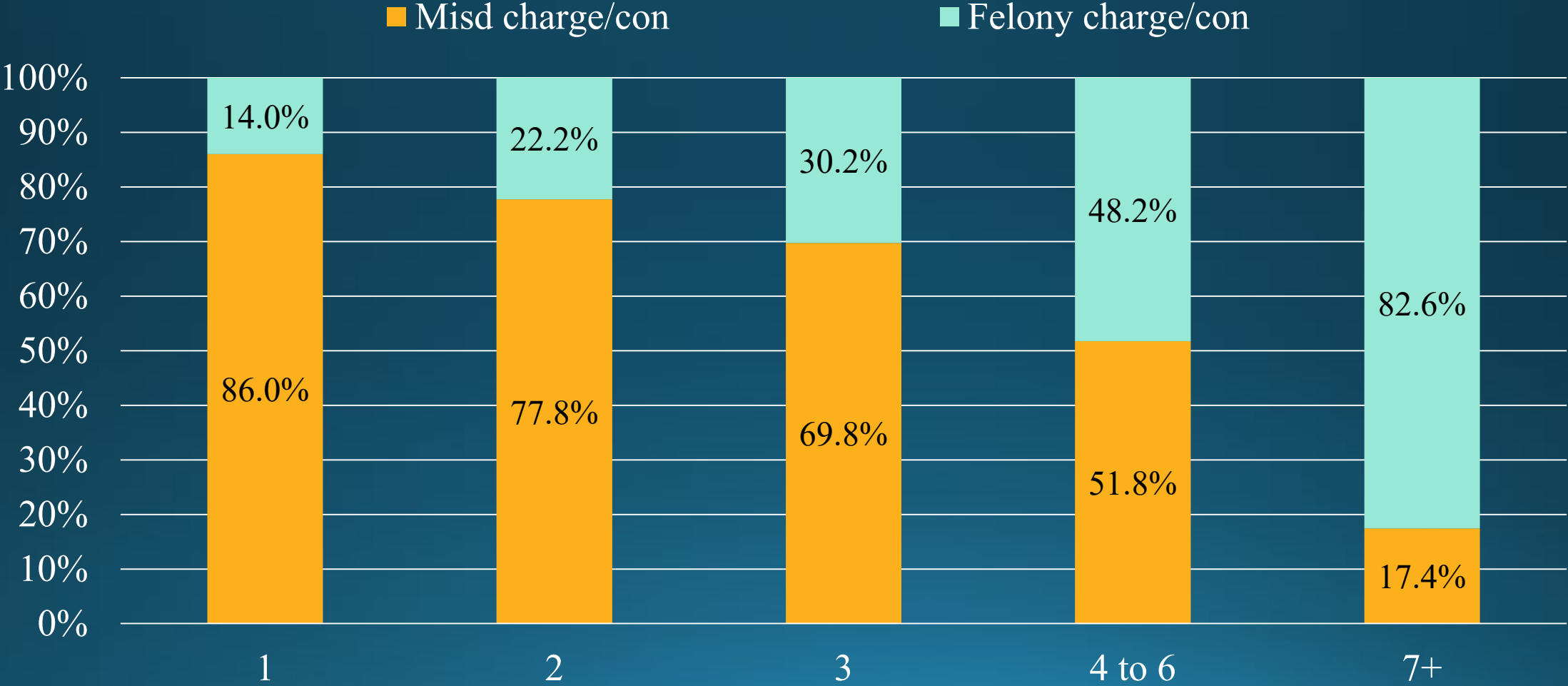


Washington State Decedent Composition of ADI deciles by Court Involvement

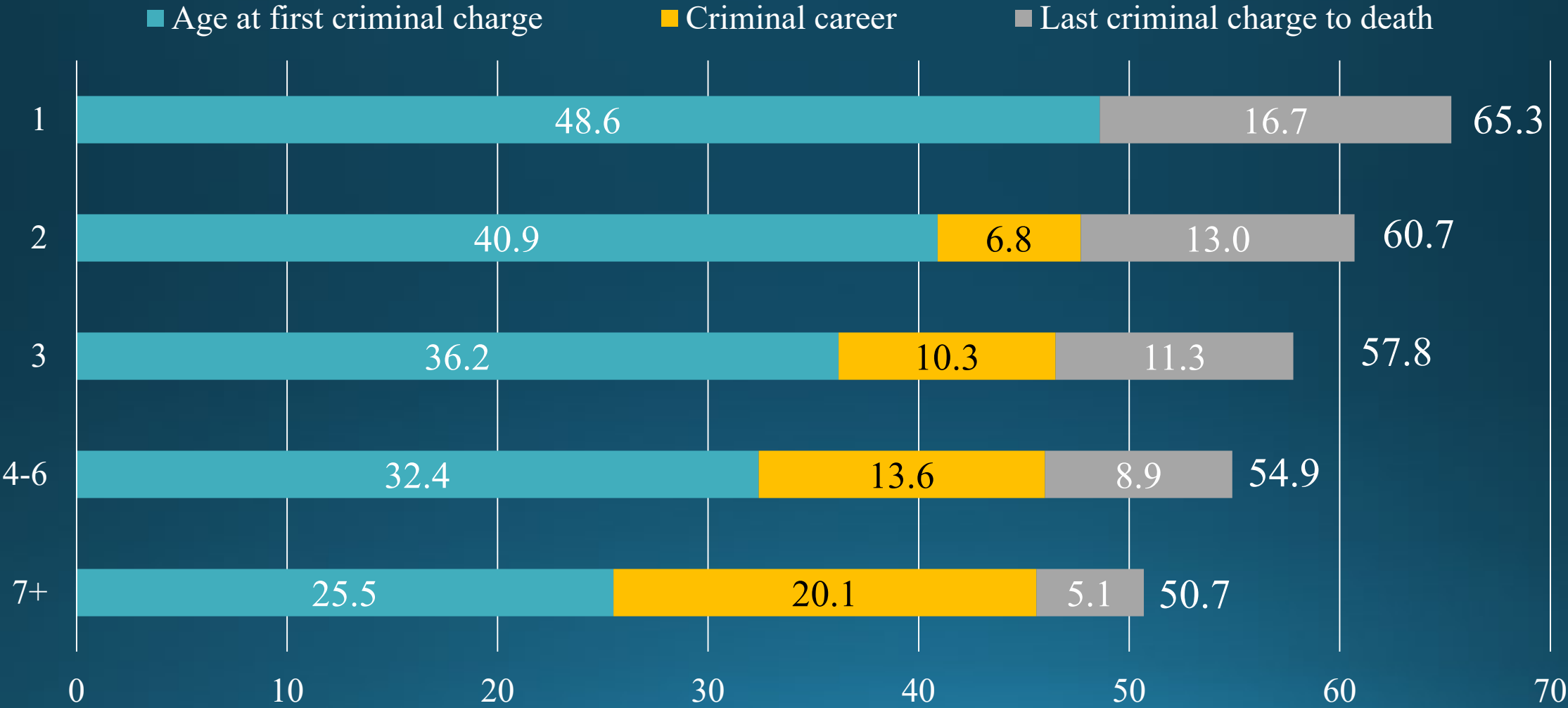


Justice Involved Only

Most Serious Offense by the Number of Criminal History Events



Life Course of Offenders by the Number of Criminal History Events



Conclusions

- There are substantial decreases in longevity as justice system involvement increased, regardless of race/ethnicity, educational attainment, and neighborhood affluence
- Some might think of justice system involvement as an opportunity for interventions to improve life outcomes.
- First, we need to add to traditional outcome measures (i.e., recidivism, cost, and case processing speed), to include other factors like longevity, health, education, and employment.



WASHINGTON STATE CENTER
FOR COURT RESEARCH



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**Court Recovery Task Force
General Civil Litigation Committee Report
June 2, 2021**

Progress on Goals and Activities

This Committee's scope is general civil litigation, i.e. other than family law, dependency and termination, civil commitment and special proceedings. The committee has met regularly since July 2020, addressing challenges in litigating civil cases including service of process, discovery, pre-trial motions and trial.

Current Activities

To date our committee's work to date has focused on:

1. Compiling sample trial orders and best practices guidance for utilizing remote discovery, alternative dispute resolution, and pre-trial processes.
2. Recommending updates to the Supreme Court emergency orders in the areas of remote hearings and trials, conducting depositions remotely, establishing presumption of electronic service, etc.

At our most recent meeting, the committee considered:

- (1) a list of proposed rule changes and assessed what existing court rules those proposals would implicate. The current list of implicated rules is included as an attachment to this report. We will next look at what CrRLJs and MARs are implicated by the proposed rule changes.
- (2) a proposed amendment to CR 39 (Jury Trial by Video Conference). Our committee anticipates submitting a formal comment during the comment period.
- (3) the Remote Jury Trials Work Group's "Best Practices in Response to Frequently Asked Questions (FAQ)" document, which considers remote proceedings.
- (4) issues related to court reporter availability and the use of services like StoryCloud.
- (5) concerns around inquiring about juror's vaccination status, continuing with mandating masking, etc.

Our committee will continue to gather input from our various stakeholder groups and to refine the resources we have compiled as new issues rise to the forefront, particularly with an eye towards addressing the civil litigation backlog once the state is fully reopened.

General Rules Affected by Remote Proceedings

GR 11.3: Remote Interpretation

This rule requires in-person interpretation unless the court makes a “good cause” finding that an in-person interpreter is not practicable, only then will the alternative, remote interpretation be allowed. Stakeholders may want to take a closer look at this standard and “good cause” requirement given the increased frequency of remote proceedings.

GR 11.4: Team Interpretation

This rule lays out the situations where team interpretation (needing more than one interpreter) is necessary and gives baseline guidance on interpreting logistics. As it is written, the rule does not mention procedures for remote team interpretation, and additional guidance on remote team interpretation may be helpful.

GR 12.4(h): Washington State Bar Association Access to Records

This provision establishes the procedure for review of WSBA records access decisions. The process includes a review proceeding by the Bar’s Executive Director. Additional language permitting remote review proceedings may be necessary.

GR 15: Destruction, Sealing, and Redaction of Court Records

Under this rule, parties must request a hearing to seal, redact, or destroy court records. It may be helpful to include the authorization of remote hearings.

GR 16: Courtroom photography and Recording by the News Media

This rule allows “[v]ideo and audio recording and still photography by the news media . . . *in the courtroom.*” Additional guidance is needed authorizing and providing logistical guidance for media access to remote proceedings, including streaming, screen recording, etc.

GR 19: Video Conference Proceeding

This rule authorizes AOC to provide standards related to technical assistance for video conference proceedings. It may be helpful to provide further guidance for

remote proceedings in this rule, and to consider whether to clarify AOC's role in light of broad authorization of remote proceedings.

***GR 30: Electronic Filing and Service:**

This rule outlines the authorization and processes for electronic filing and electronic signatures. The rule allows local court rules to be adopted regarding electronic filing/signatures, and it may be helpful to provide a more uniform rule. We may also want to review the rule's prohibition of certain documents from being filed electronically. (Justice Stephens mentioned that someone else would be looking at this, but we included it for completeness)

***GR 34: Waiver of Court and Clerk's Fees and Charges in Civil Matter on the Basis of Indigency:**

This rule governs when a waiver of fees is permitted based on indigency. Under GR 34(a)(2), it may be helpful to provide guidance on electronic filing of an indigency application.

GR 36: Trial Court Security:

This rule outlines security measures to ensure the safety of courthouses. It does not provide much guidance on security for remote proceedings, and it may be helpful to outline procedures for the safe administration of remote proceedings.

GR 37: Jury Selection

This rule provides standards to eliminate bias in jury selection. We did not have any specific section that needs to be changed. But it may be helpful to consider whether new dynamics of remote jury selection may require further refining this rule to combat new possible sources of bias involved in remote jury selection.

GR 38: Open Access to Courts (Civil Arrests):

This rule outlines the prohibitions on civil arrests without a warrant or judicial order for arrest. These prohibitions on civil arrests are framed as applying to a physical court. GR 38(a)(1) (applying the prohibition when a person is "inside a court of law"). We might need to adjust these rules to allow for no arrests during any court proceedings to ensure the rule encompasses remote proceedings.

Civil Rules Affected by Remote Proceedings

CR 7: Pleadings Allowed; Form of Motions

This rule governs pleadings and motion procedures. CR 7(b)(5) provides that oral argument on civil motions “may be heard by conference call in the discretion of the court.” This rule could be amended, or an additional subsection could be added, to allow oral argument on civil motions via videoconference.

CR 16: Pretrial Procedure and Formulating Issues

This rule empowers the court to “direct the attorneys for the parties to appear before it for a conference.” CR 16(a). Any such appearances will be impacted by the possibility of remote proceedings.

CR 26: General Provisions Governing Discovery

This is a comprehensive rule governing discovery practice.

- CR 26(f) empowers the court to order “the parties to appear before it” for a discovery conference upon motion by any party. This rule could be modified to allow remote appearances.
- CR 26(i) provides for discovery conferences between counsel “in person or by telephone,” which the court may want to amend by including a video-conferencing option.

CR 28: Persons Before Whom Depositions May Be Taken

This rule outlines the persons before whom depositions may be taken within Washington, the United States, and in foreign countries. The court may want to clarify that a deposition may be taken “before” certain officers *virtually*.

CR 30: Depositions Upon Oral Examination

This is a comprehensive rule governing deposition practice.

- CR 30(b)(1) provides that “notice shall state the time and place for taking the deposition.” This could be amended to allow notice of a virtual deposition.
- CR 30(b)(2)(A) provides that leave of court is not required for the taking of a deposition if the notice “states that the person to be examined is about to go out of state and will be unavailable for examination unless the person’s deposition is taken before expiration of the 30-day period.” This rule could be re-imagined or eliminated entirely given the possibility of remote depositions.

- CR 30(b)(7) provides that the “parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or by other electronic means.” This rule could be amended to specifically provide for depositions taken by videoconference.
- CR 30(b)(8) governs video recording of depositions. As written, the rule does not contemplate video recordings in the context of remote depositions (e.g., CR 30(b)(8)(F) requires a video-recorded deposition to start with a statement on the record of the camera operator’s name, contact information, employer, etc.). This rule and its subparts could be amended to account for a remote setting.
- CR 30(c) governs direct and cross examination, records of examination, oaths, and objections. This rule already provides that the “oath and recording may be administered by the officer from a location remote from the deponent,” but it also includes limiting language: “[a] judge of the superior court, or a special master . . . may make telephone rulings on objections made during depositions.” This rule could be amended to allow objections via videoconference.

CR 32: Use of Depositions in Court Proceedings

This rule governs use of depositions at hearings and trial.

- CR 32(3)(B) allows use of a witness’s deposition by any party for any purpose if the court finds that the witness resides out of the county and more than 20 miles from the place of trial. The court may wish to reevaluate this rule in the context of remote trials.
- CR 32(5)(A) allows use of the deposition of an expert witness “who resides outside the state of Washington” where reasonable notice is provided to all parties before the trial date. The court may wish to reevaluate this rule in the context of remote trials.

CR 35: Physical and Mental Examination of Persons

This rule allows the court, upon motion by any party, to order a physical or mental examination of a person whose mental or physical condition is in controversy. The court may consider expressly allowing virtual CR 35 examinations when feasible given the prominence of tele-health appointments.

CR 38: Jury Trial of Right

This rule governs the procedures for demanding a jury trial. This rule could be amended to allow parties to demand a remote jury trial.

CR 41: Dismissal of Actions

This rule governs mandatory, voluntary, and involuntary dismissals. Rule 41(e) requires counsel to notify the court of any settlement “by telephone or in person.” This rule could be amended to permit other remote methods of providing notice.

CR 43: Taking of Testimony

This rule governs procedures for witness testimony.

- CR 43(a)(1) requires witness testimony to be taken orally in open court, but the court may for “good cause in compelling circumstances . . . permit testimony in open court by contemporaneous transmission from a different location.” The court may wish to relax the requirements surrounding remote witness testimony.
- CR 43(d)(1)(C) requires witnesses to stand while taking oaths. This may be unnecessary in remote settings.

CR 45: Subpoena

This rule governs subpoena procedures.

- CR 45(a)(1)(C) requires all subpoenas to command the recipient to give testimony “at a time and place therein specified.” This language could be amended to provide for remote testimony.
- CR 45(e)(2) (“Place of Examination”) discusses the deposition attendance requirements for witnesses who reside in and out of state. These requirements could be reevaluated given the possibility of remote depositions.
- CR 45(f) provides that a witness is excused after cross-examination unless a party moves “in open court that the witness remain in attendance and the court so orders.” This language does not explicitly contemplate remote proceedings and could be amended to that effect.

CR 47: Jurors

This rule governs procedures related to juries, including juror examination, alternate jurors, and notetaking. This entire rule could be amended to create formal procedures for remote voir dire and remote trials.

- CR 47(i) provides for separation or sequestration of the jury. This language could be amended to account for a remote setting.
- CR 47(j) provides that jurors may take written notes and allows jurors “to keep these notes with them in the jury room during recesses.” This language could be amended to account for a remote setting.

CR 51: Instructions to Jury and Deliberation

This rule governs additional procedures related to juries, including jury instructions and deliberation. CR 51(h) (“Deliberation”) provides that when retiring for deliberation, the jury “shall take with all exhibits received in evidence” but “[p]leadings shall not go to the jury room.” This language could be amended to account for remote settings.

CR 53.4: Procedures for Mandatory Mediation of Health Care Claims

This rule governs procedure for all claims subject to mandatory mediation under RCW 7.70.100 and .110.

- Rule 53(f)(2) provides that the mediator “shall fix a time and place for the mediation conference.” This language could be amended to expressly provide for remote settings.
- Rule 53(f)(5) requires that all parties, counsel, and insurers “shall attend the mediation in person.” This language could be amended to allow remote mediations.

CR 54: Judgments and Costs

This rule governs entry of judgments. Rule 54(f)(2)(C) provides that no order judgment shall be signed or entered until opposing counsel receives notice unless “presentation is made after entry of verdict or findings and while opposing counsel is in open court.” This rule could be amended to account for remote proceedings.

CR 60: Relief from Judgment or Order

This rule governs relief from court orders based on clerical mistakes, inadvertence, newly discovered evidence, etc. CR 60 (e)(2) requires upon a motion for vacation of judgment that the court “enter an order fixing the time and place of the hearing thereof.” This language could be amended to account for remote hearings.

CR 65: Injunctions

This rule governs preliminary injunctions and TROs. CR 65(b) provides that if a TRO is granted, a hearing must be set for the motion for a preliminary injunction. The rule could be amended to expressly allow remote hearings.

CR 71: Withdrawal by Attorney

This rule governs procedures related to an attorney’s withdrawal. CR 71(b) provides that the client of a withdrawing court-appointed attorney must be given notice of the motion to withdraw and “the date and place the motion will be heard.” This language could be amended to account for remote hearings.

CR 77: Superior Courts and Judicial Officers

- CR 77(8)(B) governs visiting judges and provides that “whenever a visiting judge has heard or tried any case or matter and has departed from the county, the visiting judge may require the argument on any posttrial motion . . . at any such place within the state as the visiting judge may designate” This language could be amended to allow remote hearings.
- CR 77(f) governs regular and special sessions: “The superior court shall hold regular and special session at the county seats of the several counties at such times as the judges may determine and at such other places within the county as” the judge may designate. This language could be amended to allow remote hearings.
- CR 77(j) requires that “all trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom . . . but no hearing, other than one ex parte, shall be conducted outside the county in which the cause or proceedings are pending without the consent of all parties affected thereby.” This rule could be amended to allow remote hearings.

Criminal Rules Affected by Remote Proceedings

CrR 3.2(b), (c): Release of the Accused

These provisions govern court determinations of the likelihood accused individuals will appear if released. Factors such as the accused's access to technology and etiquette during virtual proceedings could be considered.

CrR 3.4(e): Presence of the Defendant

This provision contains language outlining videoconference proceedings and should be reviewed to avoid conflict.

CrR 4.2(d): Pleas

This provision requires the court to ensure the defendant enters into a plea deal voluntarily and the defendant understands the nature of the charge. While sound and connection problems may not be impactful in other areas of these rules, in this case interruptions may impact a defendant's ability to fully engage with the court and satisfy the requirements of this provision.

CrR 4.3.1: Consolidation for Trial

This rule governs consolidation of defendants for trial. Language regarding how to organize consolidated defendants during virtual proceedings may be helpful.

CrR 4.5(c)(iii): Omnibus Hearing

This provision give the court authority to determine if any procedural issues need to be considered. As the structure of virtual proceedings becomes more developed, providing guidance for the court to resolve virtual issues will be important if this provision is asserted.

CrR 4.6(c): Depositions

This provision refers criminal deposition proceedings to the civil rules. This should be kept in mind when examining virtual civil deposition proceedings.

CrR 4.10(b) Material Witness

This provision governs hearings after warranted arrests. It contains language requiring that the hearing be held in the county from which the warrant was issued.

It should be considered how virtual proceedings could affect this, as it does not define whether presence must be physical or if it can be virtual.

CrR 6.1(c): Trial by Jury or By the Court

This provision governs what the options are available if a juror is unable to continue their duty. Language addressing whether or not a juror who is experiencing technical difficulties (such as a computer crash) constitutes being unable to continue may be helpful.

CrR 6.2 Jurors' Orientation

This rule governs materials given to jurors when they report for duty. For virtual proceedings, it would be pertinent to decide whether materials should be provided physically or electronically.

CrR 6.3: Selecting the Jury

This rule governs selection of jury members. Language guiding courts on how to conduct this process virtually may be helpful.

CrR 6.4(b): Challenges

This provision governs *voir dire*. It should be examined in conjunction with GR 37 as the virtual setting may provide new issues determining the ability of jurors to serve.

CrR 6.5: Alternate Jurors

This rule governs alternate jurors. Issues could arise from protecting jurors who are temporarily excused from influence in a virtual setting.

CrR 6.7: Custody of Jury

This rule governs the restriction of the jury. Restricting or sequestering jury in virtual setting may present new issues protecting them from outside influence or bias.

CrR 6.8: Note-Taking by Jurors

This rule governs how jurors may take notes during proceedings. Language specifying whether jurors can take digital or physical notes would be helpful. Issues may arise regarding confidentiality if jurors are in separate spaces and their

notes are visible to others. Destruction of digital notes should also be addressed if those are allowed.

CrR 6.12(c): Witnesses

This provision outlines who is incompetent to testify. Issues may arise from trying to determine if a witness is intoxicated. While they will most likely demonstrate visible characteristics of intoxication, it may still be difficult to be certain over a virtual conference.

CrR 6.15(f): Instructions and Argument

This provision covers the process of juries submitting written questions to the court during deliberation. Language covering submission of questions during virtual proceedings would be helpful.

CrR 7.8(b): Relief from Judgement or Order

This provision provides examples of when the court may relieve a party from final judgement. It would be worth considering if there are any issues that could arise from virtual proceedings that would merit relief from final judgement. If not, perhaps language specifying why certain aspects of virtual proceedings are not eligible for relief.

CrR 8.10 Electronic Recording Log

This rule governs the recording of proceedings that are electronically recorded. It should be considered during further considerations of virtual proceedings.

**Court Recovery Task Force
Appellate Courts Committee (ACC) Report
June 9, 2021**

Progress on Goals and Activities

Attached are the Final Bill Report on SSB 5225, the bill as passed by the legislature, and a one page summary of the bill prepared by Administrator for the Courts.

Goals

Facilitate the transfer of certain appeals under the Administrative Procedures Act (APA) and the Land Use Petition Act (LUPA) from the superior court to the court of appeals.

Activities

- [SB 5225](#) was passed by the legislature and signed into law by Governor Inslee on May 13, 2021. The new law takes effect on June 13, 2021, however sections 5 and 6 take effect on July 1, 2021. Sections 2, 3, 5 and 6 of SSB 5225 have a sunset date of July 1, 2026. Prior to that date, the legislature will have to determine whether to continue with the APA and LUPA direct appeal process or revert back to the prior appeal process.
- Judge Chris Lanese is preparing summary materials about the new law to be shared with superior court judges, the clerks of the superior courts, and impacted parties. Judge Sutton is exploring a WSBA hosted information sharing session with WSBA APA and LUPA sections and possibly the Washington Appellate Lawyers Association. Two committee members have volunteered to work with the WSBA to organize this sharing session.
- Appellate Court rule amendments (RAPs) related to SSB 5225 were submitted to the Supreme Court Rules Committee for consideration. That committee met this month and plan to meet en banc in early June to adopt the RAP amendments on an expedited basis, prior to the new law's effective date of June 13, 2021.
- The Court of Appeals is issuing a General Order related to SSB 5225 allowing for direct appeals of APA and LUPA case to be transferred to the Courts of Appeal. The superior courts and Courts of Appeal are preparing for the transfer of direct appeals to begin.

The Appellate committee will disband after the information sessions are completed as their goals have been met.

Data Collection Efforts

Justice Debra Stephens has requested feedback during the five year initial implementation period prior to the sunset of the new law in July 1, 2026. It is anticipated that the Court of Appeals Court Administrators will assess this new direct appeals process after consulting with superior court judges, the superior court clerks, and those impacted by the new law, to include WSBA APA and LUPA sections, and others.

**Court Recovery Task Force
Lessons Learned Committee (LL) Report
6/09/2021**

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.

To begin the process of synthesizing the work of the CRTF, Lessons Learned will send contact all committees to answer the following questions:

1. What was the primary objective of your Committee?
2. What procedure(s) did you use to gather information to respond to this objective?
3. Did you create concrete work products, such as questionnaires/surveys, best practices, bench cards, training materials, etc.? If so, please provide them to the LL Committee.
4. What are the primary lessons your Committee recommends be carried forward to
 - (a) Respond to an unexpected crisis (pandemic, earthquake, etc.)
 - (b) Institutionalize those rules/procedures/resources/insights we have gained overcoming COVID challenges.
5. Examples/anecdotes of exceptional personal efforts that have contributed to successes.

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.
- B. The Committee will help coordinate proposed court rule changes and emergency orders resulting from innovations and lessons learned over the past year.
- C. The committee will expand membership to assist in preparing its final work product.

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
June 9, 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.

Motion request:

The Juvenile Criminal Committee seeks the CRTF endorsement to move forward with recommended policy changes on fingerprinting (attached) and diversion (below) statutes.

- 1) Explore barriers to remote hearings, including fingerprinting issue**
See attached recommended policy change.
- 2) Recommend diversion statute changes to have continued flexibility with diversion extensions to help juveniles be successful.**

The diversion statute RCW 13.40.080(5) can be amended to read:

(5)(a) *A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee.*

(b) *If additional time is necessary for the juvenile to complete **the terms of the agreement** or restitution to a victim, the time period limitations of this subsection may be extended by an additional six months **provided the juvenile agrees to the extension.***

(d) *A diversion agreement may be completed by the juvenile anytime prior to an order **terminating the agreement, even if completed after the initial six month period and/or any extension.***

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

Bill Draft Eliminating Fingerprints at Juvenile Dispositions

AN ACT Relating to eliminating fingerprints at a juvenile court disposition, modifying RCW 10.64.110.

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

Sec. 1. RCW 10.64.110 is amended to read as follows:

10.64.110. Fingerprint of a Defendant in Felony Convictions

Following June 15, 1977, there shall be affixed to the original of every judgment and sentence of a felony conviction in every court in this state ~~and every order adjudicating a juvenile to be a delinquent based upon conduct which would be a felony if committed by an adult,~~ a fingerprint of the defendant ~~or juvenile~~ who is the subject of the order. When requested by the clerk of the court, the actual affixing of fingerprints shall be done by a representative of the office of the county sheriff. The clerk of the court shall attest that the fingerprints appearing on the judgment in sentence, ~~order of adjudication of delinquency,~~ or docket, is that of the individual who is the subject of the judgment or conviction, order, or docket entry.

**Court Recovery Task Force
Adult Criminal Subcommittee Report**
June 9, 2021

Progress on Goals and Activities

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

Short Term Goals

Address immediate impacts of COVID on courts and court users and identify what changes should move forward.

- The Committee finalized and opened two surveys – juror and defendant surveys. These are on the website and have been distributed via listservs.
- The Committee provided an initial response to a letter sent by the Interpreter Commission on interpreting in jail situations and is seeking additional information

Long Term Goals

Once the survey data is received, the committee will assess what impact, if any, COVID accommodations have on criminal court hearings, share the information with the larger task force, and make recommendations for any changes to current practices. In addition, the committee plans to seek feedback from criminal courts about the creative accommodations courts have made to allow for criminal proceedings to proceed remotely.

Activities

Monitor court procedure practices and discuss modifications to court rules as the issues come up, and otherwise be in a supportive role for the larger taskforce. As vaccination rates increase and court operations return to normal, other unforeseeable issues may likely arise, and we will continue to seek feedback from the criminal bar about issues that may come up.

Challenges

Data Collection Efforts

Developed and opened surveys for defendants and jurors.

**Court Recovery Task Force
Family Law Committee Report
June 1, 2021**

Progress on Goals and Activities

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

Short Term Goals

Activities

Informal Domestic Relations Trials—drafted comment in support of IDRT rule for CRTF approval (attached).

Informed other stakeholders about IDRT Proposed Rule posting in order to get additional comments submitted.

Long Term Goals

Activities

Digital signatures—how to address this for self-represented family law litigants?

1. Need for guidance to courts for post-pandemic practice/acceptability of digital signature technology.
2. Role of AOC in creating/distributing digital signatures to superior courts.
3. Identifying what documents need a “wet” signature. Currently there is no list of those documents. Without a list, it leads to county-by-county variation.

Challenges

Variance among courthouses in litigation practice/willingness to adopt new technology, either by judges or court personnel.

Data Collection Efforts

Await responses to self-represented litigant survey just sent out.

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

GR 30 for self-represented litigants—amend the rule to keep pandemic-era flexibility.

The Family Law Committee of the CRTF would like a motion to endorse sending the following comment to the Supreme Court on behalf of the Committee.

SEND TO supreme@courts.wa.gov

Dear Justices of the Washington Supreme Court:

This comment is in support of proposed rule IDRT [NEW] GR 40, the Informal Domestic Relations Trial Rule, that has been posted for comment on the Administrative Office of the Courts' website. The Court Recovery Task Force Family Law subcommittee supports adoption of the proposed rule for the following three reasons:

1. According to the Administrative Office of the Courts annual Domestic Relations caseloads, currently only 3-4% of domestic relations matters per year go to trial. However, there are potentially many more cases with self-represented litigants where they likely settled because they are intimidated by the litigation itself. The option to go to a simplified trial rather than settle would give them more choices in the process, and possibly more just outcomes.
2. Thurston County has had good success with these trials in the last three years, and King County adopted a similar rule last year. Apparently Clark County also uses a variation of the Informal Domestic Relations Trial rule. These three counties represent almost 40% of the state's population. In other words, this rule is already an option for a large proportion of Washington's population, and it would be fair to bring it to the rest of the state. Also, as noted on the Cover Sheet, our surrounding neighbor states (Oregon, Idaho and Alaska) all have variations of this rule as well.
3. There is no downside. If the parties do not want to avail themselves of the Informal Domestic Relations Trial rule, then they will not. But if they do, then the judges in these matters will have more robust guidance about how to deal with those matters.

This Informal Domestic Relations Trial rule will go a long way to helping litigants who cannot afford representation to get their fair day in court. We fully support the proposed rule and encourage the Supreme Court to adopt it.

Sincerely, Terry Price, Chair, on behalf of the Family Law Subcommittee

**Court Recovery Task Force
Child Welfare Committee Report
June 9, 2021**

Progress on Goals and Activities

Short Term Goals

Activities

Developed the following sample documents for dependency trials (attached):

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

Long Term Goals

Activities

Drafted suggested revisions to CR 43 (attached) permitting testimony from a different location than the court and removing the requirement for the witness to stand while the oath is administered.

Challenges

Data Collection Efforts

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

Revisions to CR 43 (attached) permitting testimony from a different location than the court and removing the requirement for the witness to stand while the oath is administered.

Motion Request: The Child Welfare Committee seeks the CRTF endorsement to move forward with recommended samples of Pre-Trial Order for Remote/Virtual Dependency Fact Finding or Termination of Parental Rights Trials, Discovery Agreement, and Witness List (attached).

Motion Request: The Child Welfare Committee seeks the CRTF endorsement to move forward with revisions to CR 43 (attached) permitting testimony from a different location than the court and removing the requirement for the witness to stand while the oath is administered.

CR 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 should~~ 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) and (c) [Reserved. See ER 103 and 611.]

(d) Oaths of Witnesses.

(1) *Administration.* The oaths of all witnesses in the superior court

(A) shall be administered by the judge; ~~and~~

(B) shall be administered to each witness individually; ~~and.~~

~~(C) the witness shall stand while the oath is administered.~~

(2) *Applicability.* This rule shall not apply to civil ex parte proceedings or default divorce cases and in such cases the manner of swearing witnesses shall be as each superior court may prescribe.

(3) *Affirmation in Lieu of Oath.* Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions.

(1) *Generally.* When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(2) *For injunctions, etc.* On application for injunction or motion to dissolve an injunction or discharge an attachment, or to appoint or discharge a receiver, the notice thereof shall designate the kind of evidence to be introduced on the hearing. If the application is to be heard on affidavits, copies thereof must be served by the moving party upon the adverse party at least 3 days before the hearing. Oral testimony shall not be taken on such hearing unless permission of the court is first obtained and notice of such permission served upon the adverse party at least 3 days before the hearing. This rule shall not be construed as pertaining to applications for restraining orders or for appointment of temporary receivers.

(f) Adverse Party as Witness.

(1) *Party or Managing Agent as Adverse Witness.* A party, or anyone who at the time of the notice is an officer, director, or other managing agent (herein collectively referred to as "managing agent") of a public or private corporation, partnership or association which is a party to an action or proceeding may be examined at the instance of any adverse party. Attendance of such deponent or witness may be compelled solely by notice (in lieu of a subpoena) given in the manner prescribed in rule 30(b)(1) to opposing counsel of record. Notices for the attendance of a party or of a managing agent at the trial shall be given not less than 10 days before trial pursuant to CR 6. For good cause shown in the manner prescribed in rule 26(c), the court may make orders for the protection of the party or managing agent to be examined.

(2) *Effect of Discovery, etc.* A party who has served interrogatories to be answered by the adverse party or who has taken the deposition of an adverse party or of the managing agent of an adverse party shall not be precluded for that reason from examining such adverse party or managing agent at the trial. Matters admitted by the adverse party or managing agent in interrogatory answers, deposition testimony, or trial testimony are not conclusively established and may be rebutted.

(3) *Refusal To Attend and Testify; Penalties.* If a party or a managing agent refuses to attend and testify before the officer designated to take the party's deposition or at the trial after notice served as prescribed in rule 30(b)(1), the complaint, answer, or reply of the party may be stricken and judgment taken against the party, and the contumacious party or managing agent may also be proceeded against as in other cases of contempt. This rule shall not be construed:

(A) to compel any person to answer any question where such answer might tend to be incriminating;

(B) to prevent a party from using a subpoena to compel the attendance of any party or managing agent to give testimony by deposition or at the trial; nor

(C) to limit the applicability of any other sanctions or penalties provided in rule 37 or otherwise for failure to attend and give testimony.

(g) Attorney as Witness. If any attorney offers to be a witness on behalf of the attorney's client and gives evidence on the merits, the attorney shall not argue the case to the jury, unless by permission of the court.

(h) Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was reported is admissible in evidence at a later trial, it may be proved by the certified transcript thereof.

(i) [Reserved. See ER 804.]

(j) Report of Proceedings in Retrial of Nonjury Cases. In the event a cause has been remanded by the court for a new trial or the taking of further testimony, and such cause shall have been tried without a jury, and the testimony in such cause shall have been taken in full and used as the report of proceedings upon review, either party upon the retrial of such cause or the

taking of further testimony therein shall have the right, provided the court shall so order after an application on 10 days' notice to the opposing party or parties, to submit said report of proceedings as the testimony in said cause upon its second hearing, to the same effect as if the witnesses called by either party in the earlier hearing had been called, sworn, and testified in the further hearing; but no party shall be denied the right to submit other or further testimony upon such retrial or further hearing, and the party having the right of cross examination shall have the privilege of subpoenaing any witness whose testimony is contained in such report of proceedings for further cross examination.

(k) Juror Questions for Witnesses. The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. The court may refuse on its own motion to allow a particular question from a juror to a witness.

[Adopted effective July 1, 1967; Amended effective January 1, 1977; April 2, 1979; September 1, 1988; October 1, 2002; September 1, 2006, September 1, 2010; April 28, 2015; September 1, 2015; February 1, 2021.]

State of Washington
County of _____
Discovery Agreement

The below-signed parties agree to the following terms with regard to provision and requests for discovery in dependency and termination of parental rights proceedings under chapter 13.34 RCW. The timelines agreed to herein may be altered in a specific case based on agreement of the parties. Nothing in this agreement shall be construed as a waiver of a party's or participant's right to seek discovery from other non-parties.

Documentary discovery will be provided in an electronic format. The Department of Children, Youth, and Families (DCYF) will provide all information in their file regarding parents named in a dependency petition (excluding legal, financial, and any privileged or otherwise confidential records), which have not been provided, in the following secure electronic format: (insert electronic format DCYF uses). Other parties that will rely on documents in court will provide them to the parties within ___ days before the hearing at issue.

Discovery will be provided under the following timeframes:

1. Shelter care hearing: Pursuant to RCW 13.34.090(4), DCYF will provide documentation related to the allegation(s) in the petition a reasonable period of time prior to the hearing. If there is significant pre-petition DCYF history that is not included in the discovery provided before the hearing, DCYF will notify the parties of non-disclosed information and will make this information available upon written or emailed request from any party.
2. Non-contested dependency fact-finding hearing: DCYF will provide to the parties discovery that was not previously provided to the parties ___ days before the hearing.
3. Contested dependency fact-finding hearing: DCYF will provide to the parties discovery that was not previously provided to the parties ___ days prior to the hearing, then ___ day/s prior to the hearing if additional discovery, not already provided, is obtained by DCYF.
4. Following entry of dependency fact-finding and disposition orders: DCYF will provide discovery to the parties that was not previously provided every ___ days.
5. Other contested hearing: DCYF will provide discovery that was not previously provided ___ days prior to the hearing, or as otherwise agreed to by counsel.
6. Termination trial: [] As provided in the court's scheduling order; or [] DCYF will provide to the parties discovery that was not previously provided to the parties ___ days prior to the trial, then ___ day/s prior to the trial if additional discovery, not already provided, is obtained by DCYF.

Evaluations and assessments:

1. DCYF shall provide these documents to all parties within ___ days of receipt.
2. DCYF shall provide any service providers' progress reports (not including visit reports) in its possession to all parties every ___ days.

Specific requests for discovery:

1. Specific requests for discovery made outside the above timelines will state the specific document(s), not previously provided, being requested. Discovery requests will be in writing or email and will be clearly noted as such in the subject line of the document requesting discovery. Specific requests shall be sent to: (insert title of recipient/s).
2. The requested discovery shall be provided in ___ days of receipt of the request, but not more than 15 days after the request, unless otherwise agreed upon by the parties or ordered by the Court.
3. Specific requests for discovery shall not be made more than every ___ days, unless the requestor provides compelling reasons for the requested discovery.

When discovery is not provided pursuant to this policy, the following procedures apply:

1. The party entitled to the discovery shall notify (insert title/s of recipient/s) of the failure to provide discovery under these timelines. The document/email notifying the above individual/s of failure to provide properly requested discovery shall be clearly noted as such in the subject line. Discovery shall be provided within ___ days of this notification, unless otherwise agreed to by the parties. If discovery is not provided within this timeframe, the parties shall meet and confer, as contemplated by CR 26(i).
2. If the discovery is not provided within this additional time, the party entitled to the discovery may bring a motion to compel discovery, providing at least five days' notice to all parties. If the parties met and conferred under subsection (1) above, this will be considered a CR 26(i) conference under the motion to compel.

All discovery received shall be retained by all parties until the case is closed. When a case is transferred to a new attorney or guardian ad litem, the previously assigned attorney or guardian ad litem shall provide all previously provided discovery to the new attorney or guardian ad litem, who shall obtain it from the previously assigned attorney or guardian ad litem.

Failure to comply with the discovery policy may result in the imposition of sanctions and/or continuance of the hearing.

Approved by:

Juvenile Court Presiding Judge

Date

County Public Defenders

Date

Counsel for DCYF

Date

DCYF Regional Administrator

Date

Juvenile Court Administrator

Date

Superior Court of Washington
County of _____

In re the Dependency of:

D.O.B.

No.

Pre-Trial Order for Remote/Virtual
[Dependency Fact Finding:] [or]
[Termination of Parental Rights:]

Due to the current global coronavirus pandemic and in consideration of our State Supreme Court's emergency orders, this Superior Court's emergency orders, and our Governor's proclamations.

The parties agree that the fact-finding trial in the above-captioned matter will be held remotely be held in person with some parties, attorneys and/or witnesses choosing to participate remotely.

The parties are not in agreement to proceeding at least in part by remote means. The Court has considered the private and public interests and the risk of error in proceeding at least in part remotely, including any identified below, and has decided to so proceed. The Court weighed the private and public interests and risk of error of proceeding at least in part by remote means as follows:

In order to ensure minimally adequate participation in this trial, which will proceed at least in part by remote means, the following additional rules will apply:

- 1) The parties shall exchange witness and exhibit lists in accordance with the Court's orders, in accordance with the Court's local rules, including the time for filing and exchanging witness and exhibit lists, as provided herein: (insert deadlines).
- 2) Exhibits shall be delivered to each party by (insert deadline), unless they were previously disclosed during discovery.
- 3) A witness list must state whether each witness will testify in-person or remotely, and if remote, must also state by what remote means the witness will testify.
- 4) The trial will proceed remotely and all parties must appear by (insert form of videoconference) through both audio and video, if available. A party, witness, or attorney may appear by telephone only if they do not have the proper equipment or internet speed

to appear on videoconference with audio and video, and the Court has approved their appearance by telephone in advance.

[] The trial will proceed in person, and at least some of the parties and attorneys choose and are permitted by the court to participate remotely. A party or attorney who participates remotely must appear by (insert form of videoconference) through both audio and video, if available. A party, witness, or attorney may appear by telephone only if they do not have the proper equipment or internet speed to appear on videoconference with audio and video, and the Court has approved their appearance by telephone in advance.

- 5) The directions for appearing by videoconference are located at (insert location of instructions for appearing by videoconference, and link).
- 6) All participants are directed to turn off all forms of recording, including video, audio, or any other forms, unless the Court has issued a written order in advance granting permission for recording. The Court makes an official record of its proceedings, either through its FTR system or by certified court reporting.
- 7) Parties: All parties appearing remotely must appear by (insert form of videoconference) through both audio and video, if available. A party, witness, or attorney may appear by telephone only if they do not have the proper equipment or internet speed to appear on videoconference with audio and video, and the Court has approved their appearance by telephone in advance.
- 8) Other hearing attendees: Any person wishing to view the trial may enter the trial through (insert form of videoconference). Any person whose behavior disrupts the trial will be removed.
[] Only the parties in each case, their attorneys, guardian ad litem, child advocates, and witnesses may speak or participate in the trial, unless the Court directs otherwise during the trial. ALL other persons attending the trial shall turn off their video feed and mute their microphone.
- 9) Witnesses: [] Pursuant to ER 615, the Court orders that during a witness's testimony no attorney, party, or witness may communicate with another witness about any previous testimony in the case until that witness's testimony has concluded.
- 10) Until a witness has completed their testimony and been excused by the Court, witnesses shall not speak to or receive input or coaching from any other person during their testimony.
- 11) Witnesses shall not read or use notes, documents, text messages, instant messages or emails during their testimony, unless the document was previously distributed to the parties in discovery or the Court instructs otherwise.
- 12) Any non-party witness who has not yet testified is not permitted to observe or listen to any testimony before they testify.
- 13) After a witness has testified and been excused by the Court, he or she may remain in the remote trial, but shall turn off their video feed and microphone.
- 14) Witnesses such as social workers, service providers and expert witnesses who are relying on their records to form an opinion must have the ability to access their complete file for the case while they are testifying in order to allow counsel to refresh the witness's recollection and for purposes of cross-examination.
- 15) If an attorney and their client needs to briefly communicate in private during the trial, they may do so through the use of the private chat function in the videoconference, through alternate phone numbers, or any other means of private virtual communication.

Private chat will not be seen by the court and will not be recorded. Parties and their counsel should be careful to avoid inadvertent disclosure of communications intended to be privileged.

- 16) If an attorney and their client needs to speak for a longer time, the attorney should request a brief recess and then use alternate phone numbers or another form of private virtual communication such as via a breakout room in the videoconference. The timing of when a brief recess occurs, and for how long, is at the discretion of the Court, but at a minimum will be available if requested before direct and cross-examination of each witness.
- 17) Group chat shall not be used.
 Group chat is discouraged, except for the resolution of technical issues and for communication with the Court Clerk to determine if the parties and attorneys are present and ready to proceed.
 Group chat may be used to share a file with the other hearing participants, with permission of the judicial officer, for refreshing recollection or other similar purpose.
- 18) All participants shall use appropriate etiquette and courtroom decorum as would be expected if attending the trial in person.
- 19) Hearing participants joining the hearing remotely will comply with the following instructions:
- a. Have an appropriate actual or virtual background. Avoid backlighting, such as sitting with your back to a window, and driving while participating by videoconference.
 - b. Inform the Court as soon as possible if you have difficulty hearing, seeing, or participating in the proceedings.
 - c. Try to participate in a place that is quiet and without distractions.
 - d. Consider the use of a headset or earbuds if hearing or background noise are a concern.
 - e. If you are attending only by telephone press *6 to take yourself off of mute, after which, you may use the mute function on your device.
 - f. Please dress and act in a way that is appropriate for court proceedings.
 - g. Try to speak clearly, and at a slightly slower pace than you would normally speak;
 - h. Identify yourself in the videoconference with your actual name; you may also choose to add your role to your name. Witnesses and hearing participants under the age of 18 may use their initials instead of their name.
 - i. Attorneys, parties and witnesses with video capability shall have the video on, unless they have permission of the Court to proceed without video.
- 20) In the event the remote hearing platform becomes unavailable, attempt to log back in, then await for further instruction from the Court as to how the proceeding will be completed.
- 21) (Insert name of party) has identified the following additional risk of error to proceeding at least in part by remote means: (insert identified additional risks). This Court finds that the above orders mitigate these risks. The Court orders the following additional accommodations to mitigate these risks:

It is So Ordered.

Date

Judge/Commissioner

Received by:

Attorney for DCYF

Attorney for Mother

Attorney for Father

Attorney for the Youth

Attorney for Guardian / Custodian

GAL / Child Advocate

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SUPERIOR COURT OF WASHINGTON
_____ COUNTY JUVENILE COURT

In re the Welfare of:

No.

WITNESS LIST

- TO: _____, Attorney for Mother
- TO: _____, Attorney for Father
- TO: _____, Assistant Attorney General
- TO: _____, Attorney for child/youth
- TO: _____, CASA/GAL
- TO: _____, Attorney for CASA/GAL

COMES NOW _____, by and through the undersigned attorney, and offers the following list of witnesses that may be called to testify at the trial.

1. **WITNESS 1**

[INSERT Address/Contact information]

Method of testimony:

- In-person Video Telephonic

This method of testimony is:

- Agreed by all parties Agreed by the following parties: _____
- Not agreed Agreement unknown

[INSERT DESCRIPTION OF TESTIMONY CONTENT HERE IF REQUIRED]

2. **WITNESS 2**

[INSERT Address/Contact information]

Method of testimony:

- In-person Video Telephonic

1 This method of testimony is:

2 Agreed by all parties Agreed by the following parties: _____

3 Not agreed Agreement unknown

4 [INSERT DESCRIPTION OF TESTIMONY CONTENT HERE IF REQUIRED]

5 3. **WITNESS 3**

6 [INSERT Address/Contact information]

7 Method of testimony:

8 In-person Video Telephonic

9 This method of testimony is:

10 Agreed by all parties Agreed by the following parties: _____

11 Not agreed Agreement unknown

12 [INSERT DESCRIPTION OF TESTIMONY CONTENT HERE IF REQUIRED]

13 4. **WITNESS 4**

14 [INSERT Address/Contact information]

15 Method of testimony:

16 In-person Video Telephonic

17 This method of testimony is:

18 Agreed by all parties Agreed by the following parties: _____

19 Not agreed Agreement unknown

20 [INSERT DESCRIPTION OF TESTIMONY CONTENT HERE IF REQUIRED]

21 5. **WITNESS 5**

22 [INSERT Address/Contact information]

23 Method of testimony:

24 In-person Video Telephonic

25 This method of testimony is:

26 Agreed by all parties Agreed by the following parties: _____

Not agreed Agreement unknown

[INSERT DESCRIPTION OF TESTIMONY CONTENT HERE IF REQUIRED]

Respectfully submitted this _____ day of June, 2021.

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, WSBA #49250
Attorney