

# Washington State Judicial Branch

## 2023-25 Biennial Budget

### Examine Disability Bias

**Agency:** Administrative Office of the Courts

**Decision Package Code/Title:** D4 – Examine Disability Bias

#### Agency Recommendation Summary Text:

The Administrative Office of the Courts, on behalf of the Disability Task Force, requests \$803,200 in one-time funding to conduct a two-year comprehensive needs-analysis to determine the nature and extent of the deficiencies in physical and programmatic access to state court services and programs, and to develop solutions to address disability discrimination. While the Task Force will provide subject matter expertise and support to state courts in addressing improvements to all policies, the ultimate aim of the needs analysis study is to support the establishment of a Disability and Justice Commission. The Commission will provide statewide guidance to the Supreme Court and other Washington courts so that people with disabilities have access to justice that not only meets legal compliance, but also ensures dignity, equity, and full participation in the legal system and the profession through the implementation of consistent best practices and other reforms. (General Fund-State)

#### Fiscal Summary:

	FY 2024	FY 2025	Biennial	FY 2026	FY 2027	Biennial
<b>Staffing</b>						
FTEs	1.00	1.00	1.00	0.00	0.00	0.00
<b>Operating Expenditures</b>						
Fund 001-1	\$294,000	\$509,200	\$803,200	\$0	\$0	\$0
<b>Total Expenditures</b>						
	\$294,000	\$509,200	\$803,200	\$0	\$0	\$0

#### Package Description:

Much of our legal system intrinsically involves Washingtonians with disabilities, albeit not necessarily with ADA protections in mind. The entire adult guardianship statutory structure and all legal proceedings associated with it involve disability. Every hearing about a criminal defendant’s capacity to aid in their own defense involves disability. Every application and appeal of disability-related employment or social security benefits involve disability. Every case enforcing the civil rights covered by the ADA (or Washington Law Against Discrimination) involves disability. All legal advice that lawyers provide around the creation of special needs trusts involves disability. Every fair hearing and case about special education rights involves disability. Every petition for involuntary civil commitment involves disability. Outside these areas inherently related to disability, there are also areas with a heavily disproportionate impact on people with disabilities, including those arising in the context of public benefits, criminal law, juvenile justice, and housing discrimination. In light of this pervasiveness, it quickly becomes apparent how important it is to fund research, a proposed needs-analysis with report and recommendations, and best practices, all with adequate staffing support, to ensure our courts are capable of meeting the access to justice needs of people with disabilities, including those with disabilities working in the legal profession.

A two-year comprehensive study of Washington courts will identify deficiencies in physical and programmatic access that persons with disabilities encounter, in addition to any cultural barriers experienced while engaging with services,

benefits, and professional opportunities within the court system. This study will result in a statewide needs-analysis, report, recommendations for best practices and the establishment of a Disability and Justice Commission. To this end, the Task Force will provide subject matter expertise and support to state courts in addressing improvements to all policies, based on and evidence-based analysis of our state's practices from the perspective of disability justice, utilizing an intersectional, anti-racist, and collective access framework created by Sins Invalid.<sup>1</sup>

Washingtonians with disabilities<sup>2</sup> represent 22 percent of our state's adult population and 21 percent of the state's Bar members.<sup>3</sup> In 2015, the Office of Civil Legal Aid's (OCLA) Civil Legal Needs Study found that courts and programs were not accessible, despite Title II of the ADA and GR 33 requirements.<sup>4</sup> Courts routinely receive requests for accommodations (*e.g.*, auxiliary aids/services, alternative formats, breaks, and communication support) and modifications of procedures and policies (*e.g.*, representation by counsel under GR 33(a)(1)(c), presence of personal care attendants, scheduling, and use of service animals). Yet Washington courts have not adopted a uniform set of best practices for collecting data and fielding GR 33 accommodation requests; creating strategic plans for disability access; achieving court website and record filing access for blind persons; ensuring persons with disabilities are not excluded from jury service; developing trauma-informed practices for identifying and communicating with parties and other court users who may have cognitive and/or developmental disabilities; ensuring that guardianship and other special proceedings are ADA compliant; or setting forth training models to remedy any of these deficiencies. These gaps, among others, resulted in Washington receiving 37.5 out of 100 points for its disability access from the National Center for Access to Justice (2020).<sup>5</sup>

The study and report with recommendations will result principally in a uniform set of best practices for assuring physical and programmatic access to state court services and programs for full ADA and GR 33 compliance, and for implementing solutions to address disability discrimination and marginalization in our justice system. In addition, modular training programs can be developed for use across all state courts. Such an evidence-based best practices approach will improve efficiency by replacing ad hoc and disparate approaches to GR 33 obligations that currently exist from court to court and reduce litigation and the diversion of resources. Finally, we plan to structure a Task Force that is representative of a full spectrum of disabilities and their respective stakeholder communities, and consists of Disability Rights Washington and groups with different legal/professional perspectives.

We propose that the 2-year comprehensive study, the report and recommendation be the foundation for a Disability and Justice Commission, comparable in mission and scope to the Minority and Justice Commission, Gender and Justice Commission, and Interpreter Commission.

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<sup>1</sup> Sins Invalid. Ten Principles of Disability Justice: <https://www.sinsinvalid.org/blog/10-principles-of-disability-justice>. The Disability Index contains 29 benchmarks: <https://ncaj.org/state-rankings/2020/disability-access/about-justice-index>.

<sup>2</sup> The Task Force uses both person-first language ("people with disabilities") and identity-first language ("disabled people") to honor preferences: <https://educationonline.ku.edu/community/person-first-vs-identity-first-language>.

<sup>3</sup> CDC Disability Data (Adults 18+): <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/washington.html>; WSBA Study: <https://www.wsba.org/docs/default-source/about-wsba/diversity/factsheetfordiversity-disabilitiesimpairments.pdf?sfvrsn=b75638f10>; 2019 Washington Division of Vocational Rehabilitation Report: <https://www.dshs.wa.gov/sites/default/files/dvr/2019CSNAFinal.pdf>. See also Attachment A.

<sup>4</sup> Civil Legal Needs Study (2015): [https://ocla.wa.gov/wpcontent/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wpcontent/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf).

<sup>5</sup> National Center for Access to Justice: Disability Access Index (2020): <https://ncaj.org/state-rankings/2020/disability-access/about-justice-index>.

**Fully describe and quantify expected impacts on state residents and specific populations served:**

Disability is the largest minority group in the nation,<sup>6</sup> and all Washingtonians with disabilities will benefit from this proposal, which aims at improving the legal system's responsiveness to the needs of people with disabilities. Like other protected classes, how disabled people themselves identify and how others identify them vary. These differing perspectives on "disability" reflect a subjective construction that only approximates the objective reality people with disabilities experience. Due to the diversity of experiences described under the rubric of "disability", it can be difficult to attribute clean numbers to exactly how many people will ultimately be impacted by improvements to our legal system. But if we look closely at individual aspects of the legal system, and the affected demographic, the scope of the potential impact is dramatic. The Center for Disease Control and Prevention documents that 22 percent of Washingtonians have a disability involving mobility, cognition, independent living, hearing, vision, and self-care.<sup>7</sup> These metrics do not include mental illness, which according to the National Institute of Mental Health, impacts 21 percent of adults in any given year, and notably affects 30.6 percent of young adults from 18-25 each year.<sup>8</sup> Thus legal system reforms that affect this population will have a distinct impact beyond those persons with physical- and sensory-defined disabilities.

**Explain what alternatives were explored by the agency and why they were rejected as solutions:**

There is no current program or service in place to provide such expansive guidance to all entities and individuals working in the justice system who are dealing with disability issues. The AOC has a program manager who is available on request to provide ADA guidance to individual courts, although it is not a primary duty of that position. There is no programmatic structure, knowledge base, or set of best practices to support and empower individual court jurisdictions to address the needs of their county and city residents who seek justice or are in the justice system as witnesses, defendants, and legal professionals.

**What are the consequences of not funding this request?**

Disability affects persons across all racial groups, gender identities, and sexual orientation. The Conference of Chief Justices predicts that state courts are likely to experience an increase in the number of adult court users with disabilities, and both the National Center for State Court's Center for Elders and the Courts and the American Bar Association have recommended that courts plan for accommodations for aging court users living with disabilities. Problem identification, remedial resources preparation, service delivery best practices training, and removal of bias against persons with disabilities is needed to address the impact on our courts. Additionally, communities of color are at risk of a disproportionately severe adverse impact if the statewide court system remains inconsistently compliant with ADA requirements and wanting in the full physical and programmatic access the study would be designed to address. The ability of our courts and legal profession to be fully inclusive of a protected class of citizens continues to be at stake, and there are grave social consequences, fiscal and systemic, when disabled individuals continue to be marginalized by our courts and the justice system.

**Is this an expansion or alteration of a current program or service?**

It is not. As noted above, the type of comprehensive study we envision is unprecedented.

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<sup>6</sup> <https://www.dol.gov/agencies/odep/publications/fact-sheets/diverse-perspectives-people-with-disabilities-fulfilling-your-business-goals>.

<sup>7</sup> CDC Disability Data (Adults 18+): <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/washington.html>; describing the prevalence of the following disabilities, "Mobility: Serious difficulty walking or climbing stairs; Cognition: Serious difficulty concentrating, remembering, or making decisions; Independent living: Serious difficulty doing errands alone, such as visiting a doctor's office; Hearing: Deafness or serious difficulty hearing; Vision: Blind or serious difficulty seeing, even when wearing glasses; Self-care: Difficulty dressing or bathing."

<sup>8</sup> [https://www.nimh.nih.gov/health/statistics/mental-illness#:~:text=Prevalence%20of%20Any%20Mental%20Illness%20\(AMI\),-Figure%201%20shows&text=In%202020%2C%20there%20were%20an,%25\)%20than%20males%20\(15.8%25\)](https://www.nimh.nih.gov/health/statistics/mental-illness#:~:text=Prevalence%20of%20Any%20Mental%20Illness%20(AMI),-Figure%201%20shows&text=In%202020%2C%20there%20were%20an,%25)%20than%20males%20(15.8%25)).

**Decision Package expenditure, FTE and revenue assumptions:**

The Task Force will be comprised of approximately 25 members, from various disability and legal perspectives. All members will serve as volunteers, but the Task Force requires staff assistance and consultant expertise to prioritize its work plan, conduct research, and develop a report and recommendations to advance disability justice in the courts.

**Staffing Assumptions**

Beginning July 1, 2023, AOC requires one-time salary, benefits, and associated standard costs for a Senior Court Program Analyst to provide meeting coordination, outreach, grant writing, implementation, and other tasks related to coordinating the Disability Justice Task Force's study

**Other Non-Standard Costs**

**Contracts (Object C)**

*Research Report Consultants.* The Task Force requests funding for 2 years of staffing and consulting support to conduct a comprehensive study about disability access and bias within the courts. The consultants' work will be guided by the benchmarks of the National Center for Access to Justice Study, qualitative research involving disabled litigants and lawyers, current equity and inclusion standards, and a review of other states' improvements.

- *Research Support (1 Full-Time research coordinator, 2-3 Part-Time research assistants).* To coordinate research and assist with discrete aspects of the report (e.g., outside expert consultants, pilot projects and research development). \$300,000
- *Community Consultant Stipends & Accommodations.* Stipends and accommodations for impacted people contributing to the report (e.g., focus groups, ASL interpreting, interviews, and surveys). \$100,000

**Goods and Services (Object E)**

*Meeting Accommodations/Access.* The Task Force will meet remotely, but it will require funding for disability accommodations and language access (e.g., interpretation and translation). At present, we do not anticipate any travel or equipment budget. \$50,000

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>	
<b>Expenditures by Object</b>							
A Salaries and Wages	101,100	101,100					
B Employee Benefits	32,200	32,200					
C Personal Service Contract	100,000	300,000					
E Goods and Services	18,800	38,800					
G Travel	2,500	2,500					
J Capital Outlays	6,400	1,600					
T Intra-Agency Reimbursements	33,000	33,000					
<b>Total Objects</b>	<b>294,000</b>	<b>509,200</b>					
<b>Staffing</b>	<b>Salary</b>	<b><u>FY 2024</u></b>	<b><u>FY 2025</u></b>	<b><u>FY 2026</u></b>	<b><u>FY 2027</u></b>	<b><u>FY 2028</u></b>	<b><u>FY 2029</u></b>
<b>Job Class</b>							
SENIOR COURT PROGRAM ANALYST	101,100	1.00	1.00				
<b>Total FTEs</b>		<b>1.00</b>	<b>1.00</b>				

**Explanation of standard costs by object:**

Salary estimates are current biennium actual rates at Step L.

Benefits are the agency average of 31.89% of salaries.

Goods and Services are the agency average of \$3,800 per direct program FTE.

Travel is the agency average of \$2,500 per direct program FTE.

One-time IT Equipment is \$4,800 for the first fiscal year per direct program FTE. Ongoing Equipment is the agency average of \$1,600 per direct program FTE.

Agency Indirect is calculated at a rate of 24.73% of direct program salaries and benefits.

**How does the package relate to the Judicial Branch principal policy objectives?**

The Task Force, through the proposed comprehensive study and resultant recommendations for best practices, will work toward advancing core Judicial Branch policy objectives of fair and effective administration of justice, accessibility, and access to necessary representation. The information gained from this study and report to the Supreme Court is intended to redress deficiencies in access to justice programs and services operated by state government entities that are currently interacting with individuals with disabilities. Numerous state executive branch entities have administrative proceedings of a legal nature that are accessed by individuals with disabilities, and state courts must deal with guardianship issues where the participation of an individual with a disability is essential to the delivery of services that protect the most vulnerable in our population. We anticipate that the contemplated report and recommendations would have positive collateral impacts on these entities, too, because of the potential that best practices could be portable.

**Are there impacts to other governmental entities?**

The Task Force Steering Committee has consulted with the Office of Administrative Hearings (OAH) about the proposed comprehensive study and underlying funding request, and the agency generally supports this proposal. OAH recognizes the overlapping interests between OAH and the judiciary in enhancing court access and the potential for shared benefits from the comprehensive study and resulting report and recommendations.

**Stakeholder response:**

The Task Force Steering Committee has secured the support of the following non-government organizations for the proposed comprehensive study and related items under this request:

- Access to Justice Board
- Allies in Advocacy
- American Civil Liberties Union of Washington
- Autistic Self Advocacy Network
- Bazelon Center for Mental Health Law
- Carl Maxey Center
- Central Washington Disability Resources
- Chief Seattle Club
- Coelho Center for Disability Law, Policy, and Innovation at Loyola Law School in Los Angeles, California
- Columbia Legal Services
- Communities of Color Coalition
- Disability Action Center Northwest
- Disability Empowerment Center
- Disability Rights Colorado
- Disability Rights Washington
- Governor's Committee on Disability Issues and Employment
- Greater Spokane Progress
- Health and Justice Recovery Alliance
- INDEX - Inland Northwest Disability Experience
- Justice in Aging
- Latina/o Bar Association of Washington
- Look2Justice
- National Alliance on Mental Illness – Seattle
- National Alliance on Mental Illness – Spokane
- National Alliance on Mental Illness - Thurston-Mason
- National Disability Rights Network
- Northwest Fair Housing Alliance

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- Northwest Health Law Advocates
- Northwest Immigrant Rights Project
- Office of Developmental Disability Ombuds
- Spectrum Institute
- TeamChild
- The Arc of Washington
- University Center for Excellence in Developmental Disabilities
- Washington Attorneys with Disabilities Association
- Washington Civil and Disability Advocate
- Washington State Disability Inclusion Network
- Washington State Developmental Disability Council
- Washington State Independent Living Council

**Are there legal or administrative mandates that require this package to be funded?**

This proposal is essential to the creation of the Disability Justice Task Force by the Washington Supreme Court, for thoroughgoing and consistent ADA, WLAD, GR 33 compliance, and toward RCW 2.56.210's mandate to maintain a Reasonable Accommodations Program.

**Does current law need to be changed to successfully implement this package?**

No.

**Are there impacts to state facilities?**

No, but the contemplated study may identify impacts.

**Are there other supporting materials that strengthen the case for this request?**

See Attachment A.

**Are there information technology impacts?**

No.

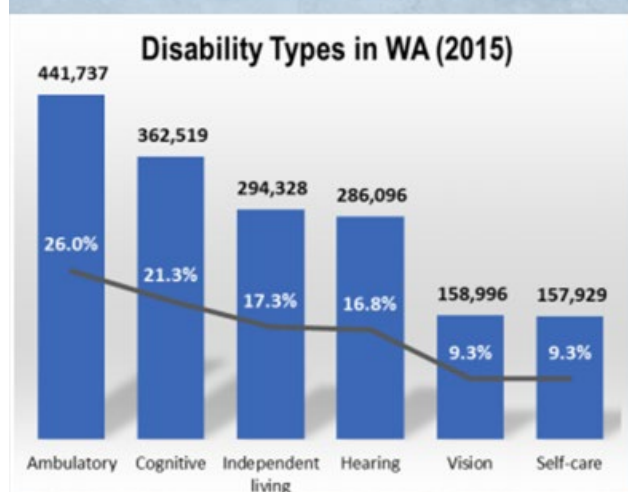
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## Appendix A

### Prevalence of Disability in WA

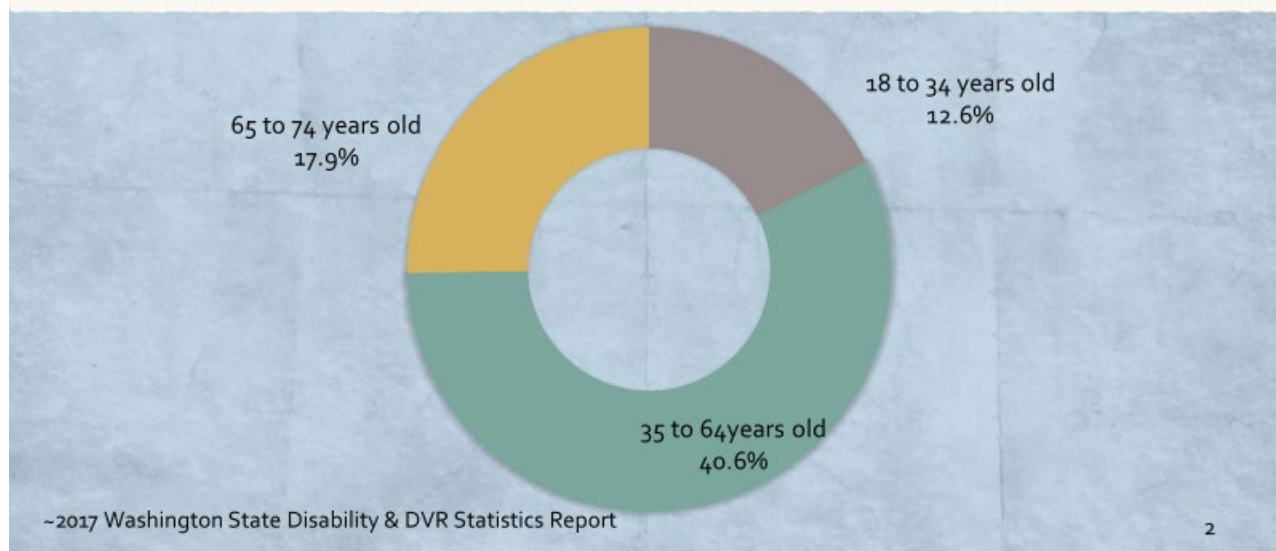


- American Community Survey (ACS) data for 2017 show that 942,318 individuals with disabilities reside in Washington State, a +40,000 increase over the 2015 numbers.
- The rate among disability types has remained unchanged since 2014.
- Adults with disabilities represent over 22% of the State's population.

~DVR 2019 Comprehensive Statewide Needs Assessment Report, [2019 Comprehensive Statewide Needs Assessment \(wa.gov\)](#)

1

### Prevalence of Disability in WA



2





# WSBA Diversity

## Demographic Highlights for WSBA Members with Disabilities/Impairments

In 2012, the Washington State Bar Association conducted a statewide demographic survey of its membership. The goals of this effort were to understand the composition of those in the profession and examine career transitions. At the time of the study, WSBA membership totaled more than 35,000 attorneys. Data was collected and analyzed from active, inactive, and former members (those who ceased membership in the last five years). Seven diversity groups were identified and data was analyzed on group characteristics and job setting experiences. These groups included **persons with disabilities**, racial minorities, older members (40+), sexual minorities, women, primary parents and caregivers to older or disabled adults, and military personnel and veterans.

### Quick Facts

For members with disabilities/impairments

- 15%** Report being a parent or caregiver
- 12%** Are women
- 11%** Report being in the military or a veteran
- 17%** Report being 40 years or older
- 8%** Report being a sexual minority

### Membership

Members with a disability/impairment represent **21%** of the Washington State Bar Association membership\*\*

Members with a disability/impairment report an average age of 53 years.

18% of all WSBA members practice outside of Washington. Of those, **15%** report having a disability/impairment.

### Practice

Average years licensed for members with a disability/impairment is **21** years.

### Employment Settings for Members with a Disability/Impairment

(includes active and inactive members)

Group Law Firm	27.5%
Solo Practice	24%
Govt., Fed./State/Local/Tribal	18.1%
Retired	4.4%
Corporate	3.1%
Business, Outside Law	5%
Unemployed	3.1%
Public Interest/Other	
Nonprofit	3.1%
Education	1.9%
Public Interest, Legal	5.6%
Superior/District courts	1.9%
Mediation	*
Federal Court	*
Appellate Court	1.2%
Local/Municipal Court	*

\* less than 1%

\*\*The membership study used a broader definition than what is commonly utilized to collect Census data.

## Key Findings

- **21%** of WSBA members fall within a protected class because they have a disability/impairment.
- Members with a disability/impairment experienced **social barriers** at a rate higher than all other diversity groups.
- **47%** of active members who report a disability/impairment are solo practitioners.
- Congressional Districts 3 and 6 have the second highest percentage of members reporting a **disability/impairment**.

The profession is changing. The business interests of attorneys, employers, and clients call for more diverse legal representation across the state. WSBA is committed to supporting and advancing diversity and inclusion in the profession. In demonstration of its ongoing commitment, WSBA seeks to:

- Ensure a more diverse Continuing Legal Education faculty that better reflects its membership and the clients they serve.
- Educate members statewide to develop cultural competency skills critical to achieving inclusion for this population.