1. Meeting Minutes

JISC DATA DISSEMINATION COMMITTEE
Friday December 2, 2016 (8:15 a.m. – 9:45 a.m.)
Administrative Office of the Courts
SeaTac Office Building
18000 International Blvd. Suite 1106, Conf Rm #2
SeaTac, WA 98188
Call-in Number: 1-877-820-7831, Passcode 797974

DRAFT - MEETING MINUTES

Members Present
Judge Thomas J. Wynne, Chair
Judge Jeannette Dalton
Judge J. Robert Leach
Judge G. Scott Marinella
Judge David A. Svaren
Ms. Barbara Miner
Ms. Brooke Powell
Ms. Aimee Vance

Guests Present (telephonically)
Dr. Peter Collins – Seattle University
Ms. Prachi Dave – ACLU

Guests Present (in person)
Ms. Denise Whitley – Pierce County Dept. of Assigned Counsel

Staff Present
Stephanie Happold, Data Dissemination Administrator
Kathy Bowman, MSD Administrative Secretary
Michael Keeling, ISD Operations Manager

1. Call to Order, Approval of Minutes

The December 2, 2016, JISC Data Dissemination Committee (DDC) Meeting was called to order by Judge Wynne. Judge Wynne announced that January 8 was his last day with the Snohomish Superior Court. He will then be a judge with Everett Municipal Court for one year.

Ms. Barb Miner moved to approve the Minutes for August 26, 2016, October 6. 2016, and October 28, 2016. Judge Leach seconded. The minutes were unanimously approved as written.

2. ACLU Financial Data Request

Ms. Prachi Dave presented the ACLU's request for names and codes of the Courts of Limited Jurisdiction (CLJ) collection agencies. The original ACLU request was much broader and resulted in DDA Happold, Data Reporting and Data Warehouse Staff meeting with Ms. Dave to discuss what the Administrative Office of the Courts (AOC) could provide. The request was amended to what is now before the DDC. Approval is being sought because the CLJ collection agency names and codes are considered financial information. Judge Wynne asked for a motion to provide the data. Judge Leach so moved and Judge Marinella seconded. The motion passed unanimously.

3. Seattle University Financial Data Request

Dr. Peter Collins from Seattle University presented his request for King County CLJ data that included financial information. AOC Staff have already met with Dr. Collins to discuss what data elements can be provided. Judge Wynne asked the Committee if anyone had concerns about the request. Judge Marinella noted that bonds are low and may not be meaningful information for the foreclosure research Dr. Collins is conducting. Dr. Collins confirmed they did want the bond information, even though they do not know yet how it would contribute to the study. Ms. Miner cautioned that the court records may not be clear; for example, records may not show where the money is coming from for the bond. Dr. Collins replied that the researchers are simply looking for patterns over time. Judge Wynne asked for motion to approve the request with the usual requirements associated with financial requests. Judge Marinella so moved and Judge Leach seconded. The motion passed unanimously.

4. JABS access to all JIS LINK Level 20 and Level 25 users and to non-court probation departments

DDA Happold updated the Committee on the AOC work to transition prosecutors and public defenders to AOC-maintained JABS access. AOC's goal is to move all users in JIS LINK 20 and 25 security levels to AOC-maintained JABS. This includes state agencies and other entities that were granted access to those security levels by the DDC. Currently, only prosecutors and public defenders are authorized to have JABS; therefore, AOC is requesting the DDC broaden the authorization to all users in level 20 and level 25, as well as non-court probation agencies that have JIS LINK level 22 access. These users would be provided the JABS access by AOC after the prosecutors and public defenders. Mr. Keeling stated that there are no technological issues to move these users over. DDA Happold also stated that the rest of level 22 users (law enforcement) will be transitioned over to AOC-maintained JABS once levels 20 and 25 are finished. Judge Wynne asked for a motion to allow all level 20 and 25 users plus non-court probation agencies access to JABS; Judge Dalton so moved and Ms. Miner seconded. The motion was passed unanimously.

5. Removal of address information from JIS LINK Level 20 public defender access once the Data Dissemination Policy is active

DDA Happold presented the public defense community's comments she received regarding the DDC's proposal to remove address information from the JIS LINK level 20 access. Ms. Denise Whitley with the Pierce County Department of Assigned Counsel explained the public defenders' need for this information. One example she provided is that public defenders use JIS LINK for contacting their clients who frequently change their address. The JIS address history allows them to check past addresses for that contact information. She also explained that public defenders must contact clients prior to court and smaller jurisdictions do not have the information available any other way. Judge Wynne agreed the need for address access was established by the comments that were received. One Committee member suggested that the issue may be resolved by courts generating a general order stating specific information cannot be secondarily disseminated. The Members discussed if anything should be done at the Committee level, or if it should be resolved in the individual counties. Judge Leach suggested that the DDC send a letter to court/county clerk associations explaining the DDC concerns about addresses in the case management systems and suggest that there should be a general rule, public order, or state court rule addressing secondary access and dissemination. Ms. Vance suggested changing the confidentiality agreement that prosecutors and public defenders

sign to include instructions about redactions and secondary access. DDA Happold was tasked with changing the confidentiality agreement to include this requirement once the Data Dissemination Policy was passed by the JISC. The DDC decided to withdraw the proposal of removing address information from JIS LINK level 20 access, and the Members thanked Ms. Whitley for addressing the Committee and for others providing comments.

6. Other Business

DDA Happold presented court user questions regarding the draft Data Dissemination Policy (Policy). One in particular was about the disclaimer language in Section VI.B: if it was required for all reports from JIS, what exactly was the definition of a report for this particular section, and if it included summary reports. Members looked to the definition of JIS reports in the first section of the Policy and concluded that the reports listed under JIS reports did fall under Section VI.B, including routine summary reports, DCHs, calendars and dockets. Therefore, the disclaimer was needed for those reports. The Committee discussed possibly modifying the definition of reports. Judge Dalton suggested making the disclaimer a footer on JIS reports, however DDA Happold did not know if AOC had the resources to make that type of JIS legacy change. Ms. Vance suggested attaching the disclaimer automatically with all the documents; for example, disclaimers could be included in the email with the report attached. Judge Dalton would like the disclaimer in the actual report. DDA Happold mentioned that AOC puts the disclaimer either in the report or in the email that goes with it as that satisfied the Policy requirement "the report must be accompanied by a suitable disclaimer…" Judge Leach suggested creating a process for a court clerk to apply for an exemption to the disclaimer for a category of documents. Applications would be sent to DDA Happold who would bring them to the Committee. Associations could apply for an exemption on behalf of all their courts so to avoid overwhelming the AOC and the Committee with numerous, perhaps repetitive, exemptions requests. Judge Leach suggested a letter from DDA Happold to the associations asking for a list of reports that are common to all their members. Judge Wynne asked for new language for Section VI.B. allowing this exemption process that DDA Happold would then circulate amongst the DDC members for approval.

DDA Happold was then instructed to draft language for Section VI.B. based on the Committee's discussions and send it within the next few weeks for the Members to approve. Once it was approved, she will draft a letter for Judge Wynne to send to the associations.

Meeting adjourned 9:05 am.

2. Umatilla County District Attorney Request

Daniel R. Primus
Umatilla County District Attorney

Umatilla County Courthouse
216 SE 4th Street, Pendleton, OR 97801
Ph(541) 278-6270 Fax(541)278-5466

Chief Deputy District Attorney
Jaclyn J. Jenkins

Deputy District Attorneys
Kathryn M. Hansen
Daniel H. Pachico
Monte G. Ludington
Katherine Krauel-Hernberg
Matthew S. Dyal
Jameson R. Hayes
Micah J. Johnstone
Craig W. Russell

Office Manager
Kathleen Davidson
(541) 278-6273

Investigator
Brandi Reddington
(541) 278-6271

Victim Assistance Program
Bonnie Lindsey
Director
(541) 278-6265
(541) 278-6322

Support Enforcement
Kellie Sims Richardson
Director
(541) 278-6280
(541) 278-6281

December 7, 2016

Attn: State of Washington JIS Data Dissemination Committee Members
Ref: Exemption Request for JIS LINK prosecutor access

Dear DDC Members,

My name is Brandi Reddington and I am the sole investigator for Umatilla County District Attorney's Office. One of my duties includes researching a defendant's criminal history for the purpose of prosecution in our county. Effective use of Oregon Felony Sentencing Guidelines relies on our ability to identify defendants' prior criminal convictions. For example, a defendant's prior convictions may enhance a presumptive probationary sentence to a prison sentence. Our prosecutors also use prior criminal history to make plea offers in misdemeanor cases.

Our county borders Washington; therefore, many, if not most of our defendants have Washington State criminal convictions. Currently, in order to provide a thorough criminal history report to our prosecutors, I must contact each and every court listed in a defendant's history because my current access to the Washington Courts website only provides me with the case number, court name and filing date. Necessary information includes whether the case is criminal in nature, case number, court name, disposition, date of disposition and the conviction charge, if applicable. This process can be very time consuming for myself and the Washington court staff who assist me with each request. In addition, our caseload requires me to make these requests sometimes several times a day.

For the reasons listed above, I am submitting an exemption request for JIS LINK prosecutor access. Thank you for your time and consideration in this matter.

Sincerely,

DANIEL R. PRIMUS
District Attorney

Brandi L. Reddington

Brandi Reddington
Investigator

WASHINGTON COURTS

February 24, 2017

TO: JISC Data Dissemination Committee

FROM: Stephanie Happold, AOC Data Dissemination Administrator

RE: Umatilla County District Attorney's Office - Recommendation

The Umatilla County District Attorney's Office (UCDA) is a prosecutor's office based in Oregon that is requesting JIS LINK level 25 access for its investigator, with possible expansion to the whole office. The basis for the request is that many of the defendants UCDA encounters also have Washington state criminal convictions, requiring UCDA to contact each court for case details. The process is time-consuming to both UCDA and court staff.

The AOC recommendation is to provide JIS LINK Level 1 access

This request is before the JISC Data Dissemination Committee (DDC) for approval[1] because UCDA is an out-of-state governmental agency. Though sympathetic to UCDA's situation, the AOC recommends providing JIS LINK level 1 access only. UCDA is not an in-state judicial partner conducting Washington state court business. JIS LINK level 25 access is one of the highest security profiles offered and provides data beyond what out-of-state agencies should be allowed to view as they are not part of the Washington state judicial system. For example, level 25 users can see the existence of sealed juvenile cases, Washington State Department of Licensing information, address history information, and the person record. Also, AOC resources are for providing support to the state courts. To start allowing out-of-state agencies elevated JIS LINK access would require state resources to be used to maintain those accounts, both JABS and JIS LINK, and result in those AOC resources not being readily available for the ongoing needs of in-state courts and judicial partners.

AOC recommends a JIS LINK billed level 1 public account for UCDA, the same as what Multnomah County District Attorney's Office (another Oregon-based office) currently uses. Cases can be searched using the SNCI and CNCI commands, with case information being provided with the docket screen and the SCOMIS commands.

[1] The JIS Committee (JISC) authorized the Data Dissemination Committee (DDC) to act on its behalf in reviewing and acting on requests for JIS access by non-court users. JISC Bylaws, Article 7, Secs. 1 - 2.

3. Public Defender Association Request

Public Defender Association
Equity
Public Health & Safety
Justice System Reform

January 30, 2017

Hon. Thomas J. Wynne
Chair
JISC Data Dissemination Committee
18000 International Blvd. Suite 1106
SeaTac, WA 98188

Dear Hon. Thomas J. Wynne,

I am writing to request JIS LINK level 20 access for the Public Defender Association (PDA), which administers the Law Enforcement Assisted Diversion (LEAD) program for King County.[1] This access will be used by PDA's four attorneys attached to the LEAD program (and our legal assistant) to assist LEAD clients and the other LEAD operational partners, including prosecutors and law enforcement, by coordinating the disposition of open criminal cases, quashing warrants, coordinating the payment of legal financial obligations (LFOs), and re-instating driver's licenses.

LEAD is an inter-agency partnership
LEAD involves a collaboration between the Seattle and King County executive departments, prosecutors, and law enforcement, as well as nonprofit legal organizations, and human service agencies to divert low-level drug and prostitution offenders to behavioral health services and case management instead of prosecution and jail. Specifically, LEAD is governed by a memorandum of understanding between the Seattle Mayor's Office, the King County Executive's Office, the King County Prosecutor's Office, the Seattle City Attorney's Office, the Seattle Police Department (SPD), the King County Sheriff's Office (KCSO), the American Civil Liberties Union of Washington, and the Public Defender Association (see attached).[2] Nearly 99 percent of LEAD funding comes from King County and the City of Seattle. PDA serves as project manager, working for the governing partners who form the Policy Coordinating Group under the MOU as described above to provide overall coordination for the program.

LEAD participants are referred into the program by SPD officers, DOC officers or KCSO deputies prior to booking, or on a social contact basis as a crime reduction/crime prevention measure for people known to officers to engage in drug-related crime. LEAD participants then enter a trauma-informed, intensive case-management program run by an experienced behavioral health services provider (Evergreen Treatment Services' REACH program at present) to address unmet needs, such as homelessness, drug addiction, and mental illness. Each LEAD participant has an assigned a case manager and service plan; currently there are approximately 400 active LEAD participants.

PDA serves as project manager of LEAD. This includes managing the day-to-day collaboration between government, prosecutors, law enforcement, and case managers within the program. It also includes providing and facilitating assistance to LEAD participants' on their open criminal cases, bench warrants, LFOs, and suspended driver's licenses through PDA's four attorneys ("LEAD attorneys") to help LEAD participants progress under their service plans. Prior to enrollment in the LEAD program, LEAD

[1] Despite our name, PDA does not provide public defense services. In 2013, King County brought public defense services in-house, including employees formerly housed at our office under the name The Defender Association (TDA). PDA now houses the project management and justice system reform work formerly done in a project of the former TDA. We design and implement policies and models, such as LEAD, that improve on conventional responses to crime and public order issues.
[2] At the time the MOU was signed PDA was then DBA "The Defender Association/Racial Disparity Project."

participants come into frequent contact with the criminal justice system due to their unmet needs, which gives rise to this array of legal issues. These legal issues frequently span counties, requiring coordination with prosecutors and public defenders outside of King County who are not part of nor familiar with the LEAD program. Coordinating these legal needs is often a necessary prerequisite before case managers can connect LEAD participants with housing, substance use treatment, and mental health treatment. In short, LEAD attorneys' assistance is a core part of LEAD to maximize the opportunity to achieve behavioral change.

JIS LINK level 20 access is necessary to effectively coordinate legal needs

Without JIS LINK level 20 access, LEAD attorneys cannot effectively assist clients in coordinating legal needs. Level 20 privileges would allow access to the DCH screen in JIS LINK, which is essential to LEAD attorneys for several reasons. First, access to the DCH screen would enable LEAD attorneys to determine which of a client's criminal cases are open. This information is necessary so the attorney can coordinate the disposition of all open cases. Clients often have as many as 70 associated cases, making it impractical to determine which cases are open without access to the DCH screen. Second, access to the DCH screen would allow attorneys to determine which cases have associated open warrants. Due to the large number of cases associated with LEAD participants, the DCH screen offers the only practical way to perform a warrant search. Third, access to the DCH screen would allow attorneys to determine which cases have associated LFOs. Most LEAD clients have numerous cases with associated LFOs. These LFOs, often span many years and require significant coordination to create a workable resolution for clients, who are frequently indigent. Addressing LFOs is of paramount importance to clients since LFOs can have serious negative consequences on employment, housing, finances, and credit ratings.[3] Additionally, in order to coordinate the resolution of outstanding LFOs, LEAD attorneys request access to the Case Financial History Summary screen and the Plea/Sentencing screen available under level 20 access. Once the DCH screen is used to identify which cases have associated LFOs, these screens would allow LEAD attorneys to determine whether LFOs are mandatory or discretionary, dictating the resolution options available to LEAD clients. Finally, level 20 access would allow attorneys to access LEAD clients' driver's license and ID numbers. Reinstating driving privileges is an essential step for many LEAD clients, as they seek to return to work. Access to this information would allow LEAD attorneys to assist clients who cannot locate their license or ID numbers, since this information is necessary in order to use the Department of Licensing's "Learn How to Reinstate Your License" tool.

PDA is a public purpose agency and the four factors for additional access outlined in JIS Committee Data Dissemination Policy support granting increased access

The JIS Committee (JISC) authorized the Data Dissemination Committee (DDC) to act on its behalf in reviewing and acting on requests for increased access by non-court users.[4] The JISC Data Dissemination Policy (DD Policy) permits "public purpose agencies" to be granted additional access to JIS records beyond that which is permitted to the public.[5] As defined by the DD Policy[6] a public purpose agency includes "non-profit organizations whose principal function is to provide services to the public."[7] PDA qualifies as a public purpose agency as it is an incorporated non-profit organization in Washington whose principal function is providing services to the public. The LEAD program managed by PDA is open to members of the public and provides a range of support services to participants, including services to address behavioral health issues,

[3] *State v. Blazina*, 182 Wash. 2d 827, 837 (2015).
[4] JISC Bylaws, Article 7, Secs. 1 and 2.
[5] DD Policy, Sec. IX.B.
[6] The definition of "agency" in RCW 42.17.020 was later recodified in RCW 42.17A.005(2).
[7] DD Policy, Sec. IX.A.

case management and legal services. The LEAD program is almost entirely funded by City of Seattle and King County. As mentioned above, nearly 99 percent of projected 2017 LEAD funding ($2,557,500 of $2,592,500) comes from county and city sources. Furthermore, this committee has found that nonprofit organizations offering similar services qualified as public purpose agencies.[8] Once established as a public purpose agency, the DD Policy outlines four criteria which the committee may use in deciding PDA's request:

1. "The extent to which access will result in efficiencies in the operation of a court or courts.
2. The extent to which access will enable the fulfillment of a legislative mandate.
3. The extent to which access will result in efficiencies in other parts of the criminal justice system.
4. The risks created by permitting such access."

Relevant here are factors one, three and four. In relation to the first factor, JIS Level 20 access will increase efficiencies in the operation of courts by aiding LEAD in the disposition of existing legal obligations. Courts have an interest in ensuring that criminal cases are resolved in a timely fashion and level 20 access would allow LEAD attorneys to promote this goal by assisting clients in resolving open criminal cases and addressing outstanding warrants. Without level 20 access, LEAD attorneys' ability to handle cases is hampered and results in delays. When for example a client has as many as 70 associated cases as mentioned above, and we cannot rapidly determine which cases are open or closed, and which cases have LFOs and which do not, our ability to rapidly handle and dispose of cases is delayed. Additionally, courts have an interest in seeing that individuals comply with conditions imposed at sentencing, such as LFOs. Increased JIS access would allow LEAD attorneys to assist clients in ascertaining what LFOs have been imposed and in creating a plan to satisfy those LFOs.

Consistent with the third factor outlined by this committee, increased access will create efficiencies in other parts of the criminal justice system. Specifically, efficiencies will be created in the use of law enforcement, jail, and prosecution resources. Level 20 access will assist clients in addressing open warrants, obviating the need for the use of law enforcement resources to arrest LEAD clients for open warrants. Additionally, quashing warrants before arrest will reduce burdens on local jails, which must house those arrested for warrants. Furthermore, with increased JIS access, LEAD attorneys will be able to ensure that prosecutors, defense attorneys, and judges across the state are informed of an individual's involvement in LEAD, reducing the risk that LEAD participants are subject to court-imposed conditions and receive court resources that are duplicative or counter-productive to the treatment plan developed through LEAD.

On a broader level, enabling LEAD attorneys to handle cases more efficiently via level 20 access will increase the capacity of the program. Under the program's design, the more cases LEAD is able to handle the greater the efficiencies and savings across the criminal justice system of the city and county as demonstrated by University of Washington researchers. A 2015 evaluation by the University of Washington found that after entering LEAD, on average, a client's cost to the criminal justice and legal system decreased $2,100.[9] In comparison, on average, a member of the control group's cost to the criminal justice system

[8] *See* JISC DD Committee Draft Meeting Minutes, Jun. 24 2016 (granting JIS LINK level 20 access to attorney volunteers in the Drive Legal Whatcom Program, a nonprofit organization assisting individuals in reinstating driving privileges). *See* JISC DD Committee Minutes, Jun. 22 2010 (granting JIS Link level 20 access to volunteers in the Clark County Volunteer Lawyers Program).

[9] Collins, Susan, Heather Lonczak and Seema Clifasefi. "LEAD Program Evaluation: Criminal Justice and Legal System Utilization and Associated Costs." Harm Reduction Research and Treatment Lab, University of Washington—Harborview Medical Center (2015).

increased $5,961.[10] LEAD program participants had 1.4 fewer jail bookings per year subsequent to their evaluation entry and participants spent 39 fewer days in jail per year.[11] Additionally, compared to the control group, LEAD participants had 87% lower odds of at least one prison incarceration subsequent to evaluation entry.[12]. Expanded JIS access will allow LEAD attorneys to coordinate LEAD participants legal needs much more efficiently, enabling increased volume and increasing criminal justice system savings.

Finally, in relation to the final factor outlined by this committee, PDA will minimize risks by limiting increased JIS access to a small group of attorneys. At present, PDA employs four attorneys who assist LEAD clients.[13] JIS Level 20 access would be restricted to these four attorneys and used solely in coordinating the legal needs of LEAD clients. Among these attorneys is PDA's Director, Lisa Daugaard, who previously served as the Deputy Director of the King County Department of Public Defense, and has over 15 years of experience supervising public defenders with JIS Level 20 access.

Finally, it is worth noting that expanded JIS access would further the Access to Justice Technology Principles developed by the Access to Justice Board and endorsed by the JISC. LEAD participants, many of whom are homeless and suffer from mental illness and substance use disorder, face significant barriers to accessing justice resources. As such, increased access for LEAD attorneys would "promote the opportunity for equal participation in the justice system for all."[14] For example, due to unmet behavioral health needs, LEAD clients frequently must satisfy numerous LFOs resulting from criminal conviction. Attorneys provided through LEAD likely offer the only opportunity for these clients to create a plan to satisfy these obligations.

Thank you very much for your consideration. Should you have any questions before the Committee's next meeting, please do not hesitate to reach me at andrew.kashyap@defender.org, (206) 818-7849.

Sincerely,

Andrew Kashyap
Senior Attorney
Public Defender Association

Encl.

[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] It is very likely that a fifth attorney will be added in Fall 2017 in conjunction with the addition of a new funding stream.
[14] Access to Justice Board, "Washington State Access to Justice Technology Principles" (2004).

MEMORANDUM OF UNDERSTANDING

Among

SEATTLE OFFICE OF THE MAYOR, SEATTLE CITY ATTORNEY'S OFFICE,
SEATTLE POLICE DEPARTMENT,
KING COUNTY EXECUTIVE, KING COUNTY PROSECUTING ATTORNEY,
KING COUNTY SHERIFF,
THE DEFENDER ASSOCIATION, AND THE ACLU OF WASHINGTON

Regarding

LAW ENFORCEMENT ASSISTED DIVERSION PROGRAM
COORDINATING GROUP: FORMATION, GOVERNANCE, AND RESPONSIBILITIES

WHEREAS, the City of Seattle ("City"), King County ("County"), and residents and business owners in the Belltown community of downtown Seattle ("Belltown") and the Skyway community of unincorporated King County ("Skyway") want to improve public safety and public order in the Belltown and Skyway neighborhoods; and

WHEREAS, the City, County, and Belltown and Skyway community members want to reduce future criminal behavior by low-level drug offenders contacted in Belltown and Skyway; and

WHEREAS, booking, prosecuting, and jailing individuals committing low-level drug offenses in Belltown and Skyway has had limited effectiveness in improving either public safety or public order in the neighborhoods; and

WHEREAS, interventions that connect low-level drug offenders with services may cost less and be more successful at reducing future criminal behavior than processing these individuals through the criminal justice system; and

WHEREAS, private foundations have stepped forward to provide start-up funding for the operation and evaluation of a robust pre-booking diversion demonstration project in the City and County with the understanding that the project presents a unique opportunity to work with local

partners on a new strategy that holds promise for effecting systemic change and a paradigm shift in the public response to individuals' low-level drug involvement;

NOW, THEREFORE, THE PARTIES STATE THEIR INTENT AS FOLLOWS:

A. **Formation, Purposes, and Membership of the Law Enforcement Assisted Diversion ("LEAD") Coordinating Group.** A Coordinating Group is hereby formed for the LEAD pre-booking diversion demonstration project. The purposes of the Coordinating Group are to review and provide feedback on the Referral and Diversion Protocols for LEAD candidates, approve Requests for Proposals ("RFPs") for service providers and program evaluators, select providers and evaluators, review and provide feedback on periodic reports from the Belltown and Skyway Operational Groups[1], make criminal justice and human services system data available for comparison and evaluative purposes, and provide policy guidance and administrative oversight for the LEAD program's operation and evaluation. The Coordinating Group will select a non-government fiscal sponsor to receive and administer the program's funding from private donors.

MOU Signatories' Individual Statements of Intent

The parties signing this Memorandum of Understanding ("MOU") specifically state their respective intents and commitments as follows:

[1] The Belltown and Skyway Operational Groups are populated by representatives of the policing and prosecutorial agencies having jurisdiction over the respective communities, each neighborhood's LEAD Community Advisory Board, and at least one of the organizations providing technical assistance to the LEAD program (The Defender Association or ACLU of Washington). Representatives of the service providers selected for each community will be added after selection. The Operational Groups have primary responsibility for developing and amending the Referral and Diversion Protocols for Belltown and Skyway, for staffing program participants' cases per the Protocols, and for providing periodic reports on resource utilization and participants' progress to the Coordinating Group.

1. **The Mayor's Office** is fully committed to the LEAD model. Over the three decades of the "War on Drugs," it has become apparent that an approach relying solely on using drug laws to jail and prosecute drug-involved individuals has resoundingly negative effects in terms of both justice and public safety, in Seattle and across the country. In 2006, the City initiated a number of pilot programs aimed to address the root causes of drug-related crime: addiction, lack of housing and employment, and lack of access to mental health services to name just a few. LEAD continues this model, and expands it to include partnership with law enforcement and access to a broader array of services. We are hopeful that LEAD may become the cornerstone of Seattle's drug enforcement strategy, and that it might help shift the nationwide paradigm from one that rends communities to one that helps to rebuild them.

   The Mayor's office will commit staff to the LEAD Coordinating Group and will look for opportunities to achieve synergies with employment, housing and other initiatives undertaken by the City of Seattle that may be appropriate fits for some LEAD participants.

2. King County, through its Countywide Strategic Plan, is committed to the goals of supporting safe communities and accessible justice systems for all, and promoting opportunities for all communities and individuals to realize their full potential.

   The King County Executive believes the LEAD pilot project furthers those goals. **The King County Executive's Office** (KCEO) has therefore committed to participate in the LEAD Program on both an evaluation and policy level. To that end, the KCEO will provide the following staffing to the program:

At an evaluation level, the KCEO will assign a senior analyst, knowledgeable in criminal justice programs and program data collection and evaluation, to assist the LEAD project evaluator with the collection of data from King County's information systems.

At a policy level, the King County Executive's Law and Justice Policy Advisor, or other designee as appointed by the King County Executive, shall serve on the LEAD Coordinating Group.

3. **The Seattle City Attorney's Office** is committed to the implementation of the LEAD program model at both the operational and policy levels. While the City Attorney does not prosecute felony drug offenses, our office handles a wide variety of misdemeanor cases that are associated with street-level drug dealing (e.g. car prowls, trespass, theft, assault, harassment, etc.). If the LEAD program is successful at transitioning street-level drug dealers and users away from the drug trade, there will be a significant public safety benefit in the community as the crimes associated with the drug activity are reduced.

   The City Attorney has a precinct liaison attorney who advises the West Precinct Captain on legal issues, policy matters and criminal investigations. This attorney will play an integral role in developing SPD procedures and policies for the LEAD program. He will also monitor and troubleshoot program issues as they arise. The Director of the Government Affairs Section will work on the policy team to ensure that the overall goals of the program are achieved.

Though they will be informed by the LEAD Operational Groups' staffing recommendations regarding individual program participants, the King County prosecutor and the Seattle City Attorney's Office retain ultimate and exclusive authority to make filing decisions in all cases.

4. **The King County Prosecutor's Office** (PAO) has committed to participate in the LEAD Program on both an operational and policy level. The PAO will provide the following staffing to the program when practicable:

   The PAO will have a deputy prosecuting attorney (DPA) knowledgeable in Washington State's drug laws, search and seizure case law, local, state and federal criminal history records, State Department of Corrections records, warrant records, and the ability to make criminal offense filing decisions, committed to participate in the case review process. The PAO will also provide paralegal services in support of the DPA's work. The work of the DPA and Paralegal will provide operational support to the program.

   At a policy level, the Deputy Chief of Staff of the PAO, or other designee as appointed by the elected Prosecuting Attorney, shall serve on the LEAD Coordinating Group. The Deputy Chief or other designee will serve on the Coordinating Group as long as it exists or unless and until the PAO withdraws from the LEAD Program.

   Though they will be informed by the LEAD Operational Groups' staffing recommendations regarding program participants, the King County prosecutor and

the Seattle City Attorney's Office retain ultimate and exclusive authority to make filing decisions in all cases.

5. **The Seattle Police Department** (SPD) has committed to participate in the LEAD Program on both an operational and policy level. The SPD will provide the following staffing to the program:

   The SPD will assign several personnel to this initiative including: several specially trained patrol/anti-crime team (ACT) officers who regularly work the Belltown area, as the initial "beta/fidelity working group" who will receive additional focused training on the LEAD referral process; and an officer who works jointly with the State Department of Corrections Neighborhood Correction Initiative (NCI) and who is knowledgeable in Washington State's drug laws, search and seizure case law, local, state and federal criminal history records, State Department of Corrections records, warrant records, and the ability to make street level decisions on where to direct the low-level drug offenders. The SPD will also provide the part-time services of a West Precinct sergeant and a lieutenant who will ensure that officers working the "street" portion of the initiative remain focused on the components of this initiative while assigned to it.

   At a policy level, an Assistant Chief (Jim Pugel) and a Captain (Steve Brown) shall serve on the LEAD Coordinating Group. These representatives will serve on the Coordinating Group as long as it exists or unless and until SPD withdraws from the LEAD Program.

6. **Sheriff Sue Rahr and the King County Sheriff's Office** are pleased to participate in the Law Enforcement Assisted Diversion Program in partnership with TDA, the King County Prosecutor's Office, the Seattle Police Department and all of those committed to this project. We will support this participation at both the policy and operational levels.

   At the operational level a captain assigned to the West Precinct Command will provide management-level input to structuring the policies and procedures. That captain will also oversee implementation through the first-line supervisors to the patrol deputies and detectives actually making the contacts and referrals.

   At the policy level, the West Precinct Major (or other designee of the Sheriff) will be a member of the LEAD Coordinating Group, offering the perspective and support of the Sheriff and her Executive Leadership Team. It is recognized that the program in the unincorporated areas may differ in some respects from the Seattle city implementation and operation. But we support the same overarching program goals and we desire the same positive outcomes in the lives of those referred to the program and in the communities impacted by public safety issues.

7. **The Defender Association/Racial Disparity Project** will dedicate multiple FTEs to all aspects of LEAD project management, resource development, stakeholder coordination and community outreach. TDA/RDP will serve as liaison between the fiscal sponsor, the program funders, the contract service providers, the Coordinating Group, the community advisory groups and the operational work groups. TDA/RDP, with other partners, will advocate for fidelity to agreed protocols and core principles

of LEAD. TDA/RDP, with other partners, will assist in communicating about the process of creating and operating LEAD with interested policymakers and community leaders in other jurisdictions.

8. **The American Civil Liberties Union (ACLU) of Washington** is committed to replacing reliance on criminal sanctions with approaches that treat drug abuse as a public health concern and at the same time respect civil liberties, reduce incarceration, and promote racial justice. The ACLU of Washington maintains a Drug Policy Project whose professional staff possess significant relevant experience.

   The ACLU of Washington is committed to the success of the LEAD project within its drug policy-related work. Its drug policy staff will assist the LEAD project with advocacy, document drafting, stakeholder consultation, troubleshooting, and technical assistance. The drug policy staff may also seek the assistance of the affiliate's communication department to consult on media relations and the field department for guidance on outreach and coalition building efforts.

LEAD Coordinating Group

The Coordinating Group's membership shall consist of representatives from the following entities and organizations:

1. Seattle Office of the Mayor;
2. King County Executive Office;
3. Seattle City Council;
4. King County Council;
5. Seattle City Attorney's Office;

6. King County Prosecuting Attorney's Office;

7. Seattle Police Department;

8. King County Sheriff's Office;

9. Belltown LEAD Community Advisory Board;

10. Skyway LEAD Community Advisory Board;

11. The Defender Association, through its Racial Disparity Project; and

12. ACLU of Washington, through its Drug Policy Project.

Additional member entities and organizations may be added to the Coordinating Group upon unanimous consent of the existing members.

B. **Governance.** Participation in the LEAD Coordinating Group is voluntary, and any member may withdraw unilaterally at any time for any reason. This MOU does not amend any law or ordinance; nor does it create any binding obligation on the part of any signatory. This MOU simply memorializes the intent of the Coordinating Group's members in participating in this demonstration project and describes the responsibilities they understand to be accepting through their participation.

All decisions of the Coordinating Group will be made by modified consensus. For purposes of this MOU, "modified consensus" means a resolution that is acceptable to all participants even if not ideal to one or more.

Each member organization shall designate one representative for purposes of determining consensus in Coordinating Group decisions, but multiple representatives from each organization may attend meetings and participate in discussions.

C. **Responsibilities.** The role of the Coordinating Group is to make policy-level decisions regarding the LEAD program and to provide periodic administrative oversight of the program. Specific responsibilities include, but are not limited to, the following:

1. Review of LEAD Referral and Diversion Protocols;
2. Selection of a fiscal sponsor to receive and administer private funding granted for LEAD operation and evaluation;
3. Oversight, advisement, and direction of fiscal sponsor pursuant to grant agreements;
4. Collaboration on grant applications for LEAD operation and evaluation;
5. Approval of RFPs for LEAD service provision and evaluation;
6. Review of RFP applications and selection of service providers and evaluators;
7. Making available criminal justice and human services system data for comparison and evaluative purposes;
8. Oversight of LEAD implementation, including regular review of reports from the Belltown and Skyway Operational Groups, contract compliance of service providers and evaluators, and solicitation and review of community feedback; and
9. Modification of service provision, or evaluation criteria and process, as needed.

The Defender Association and ACLU of Washington will provide staffing support through document drafting, stakeholder consultation, troubleshooting, and technical assistance to the Belltown and Skyway Operational Groups, but will have no decision-making authority except as members of the Coordinating Group.

This MOU may be signed in counterparts and shall be effective as of the date it is signed by all parties. No amendment or modification of this MOU will have effect unless it is made in writing and agreed to by all signatories or their successors.

Mike McGinn
Seattle Mayor

Date: 10-14-10

Dow Constantine
King County Executive

Date: 9.16.10

Peter Holmes
Seattle City Attorney

Date: 10-4-2010

Dan Satterberg
King County Prosecutor

Date: 9/23/10

John Diaz
Chief of Police
Seattle Police Department

Date: 9/21/10

Sue Rahr
King County Sheriff

Date: 10/1/10

Floris Mikkelsen
Director, The Defender Association

Date: 9/22/2010

Kathleen Taylor
Executive Director, ACLU of Washington

Date: 10/15/2010

WASHINGTON COURTS

February 24, 2017

TO: JISC Data Dissemination Committee

FROM: Stephanie Happold, AOC Data Dissemination Administrator

RE: Public Defender Association - Recommendation

The Public Defender Association (PDA) is requesting JIS LINK level 20 access for four of its attorneys and a legal assistant associated with the Law Enforcement Assisted Diversion (LEAD) program for King County.

The AOC recommendation is to provide JIS LINK Level 20 access as requested

This request is before the JISC Data Dissemination Committee (DDC) for approval[1] because the PDA is not the usual public defender office requesting access for work associated with clients assigned to it by the courts. However, as stated in PDA's request, the need for the access is established from PDA's work as a project manager for LEAD and by it providing legal assistance to LEAD participants.

AOC recommends approving PDA's request for JIS LINK Level 20. Based on direction from the DDC, AOC can alter the JIS LINK Level 20 subscription agreement to only allow the access for those five individuals and only for work associated with the LEAD program.

[1] The JIS Committee (JISC) authorized the Data Dissemination Committee (DDC) to act on its behalf in reviewing and acting on requests for JIS access by non-court users. JISC Bylaws, Article 7, Secs. 1 - 2.

4. Public Defender Access to ADR in JABS

WASHINGTON COURTS

February 24, 2017

TO: JISC Data Dissemination Committee

FROM: Stephanie Happold, AOC Data Dissemination Administrator

RE: Public Defender access to Abstract Driving Records in JABS

The Administrative Office of the Courts (AOC) receives numerous requests from public defender JIS LINK level 20 users for access to the Department of Licensing (DOL) screen in the Judicial Information System (JIS). The requests were denied in the past by the Data Dissemination Committee (DDC) because RCW 46.52.130 limited access to DOL information and because the access could not be divided amongst the JIS LINK level 20 users that included public defenders and state agencies. However, because of recent amendments to RCW 46.52.130 and the AOC's ability to create different profiles within level 20 in the Judicial Access Browser System (JABS), AOC is requesting that the DDC review this access again.

The AOC recommendation is to provide public defenders access to DOL information in JABS

This recommendation is before the DDC as it is authorized by the Judicial Information System Committee (JISC) to act on its behalf in reviewing and acting on requests for JIS access by non-court users.[1]

The DOL screen in JIS provides information directly from an individual's abstract driving record (ADR) held by the Washington State Department of Licensing. The DDC previously denied requests from public defenders seeking access to the DOL screen because RCW 46.52.130 did not extend such access to an individual's attorney and because the JIS LINK application could not differentiate between level 20 users that included entities other than public defenders. If access was granted, all level 20 users would be able to access the DOL information, not just public defenders.

[1] JISC Bylaws, Article 7, Secs. 1 - 2.

However, two recent events may possibly change the DDC's position on this issue. In 2015, RCW 46.52.130 (2)(a)(ii) [2] and (2)(g) [3] were amended to allow the individual's attorneys access to their client's ADR information. Also, the AOC is beginning to transition JABS access for prosecutors and public defenders from court-maintained accounts to those maintained by AOC. In doing this, the agency established profiles and security levels that mirror JIS LINK levels for those judicial partners. AOC can also create profiles within those levels to provide a group of users access to case data that is not available to all the users in that level. This means that AOC can create a profile in JABS allowing public defenders access to the ADR tab, but shielding that access from the other level 20 users.[4] This would only occur within the JABS application; JIS LINK access would remain as it is presently.

The ADR access in JABS would also include any well identified party's information that is contained in the JIS system, not just their clients' information. However, this access is similar to what the prosecutors currently have in their level 25 security group.

Therefore, the AOC respectfully recommends that the DDC review its past position on public defender access to the ADR information based on the recent changes to RCW 46.52.130 and because AOC can create additional JABS profiles within the level 20 security group to allow such access.

[2] RCW 46.52.130(2) Release of abstract of driving record. An abstract of a person's driving record may be furnished to the following persons or entities:
(a) Named individuals. (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract. (ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in the abstract or that named individual's attorney, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for the production and copying of the abstract for the individual.
[3] RCW 46.52.130(2)(g) Attorneys—City attorneys, county prosecuting attorneys, and named individual's attorney of record. An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys, county prosecuting attorneys, or the named individual's attorney of record. City attorneys, county prosecuting attorneys, or the named individual's attorney of record may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.
[4] JABS has an ADR tab instead of a DOL screen as seen in JIS LINK. Both contain the same information.

5. Legal Voice VAWA Letter

Legal Voice
Women's rights. Nothing less.

907 Pine Street
Suite 500
Seattle, WA 98101

T 206-682-9552
F 206-682-9556

LegalVoice.org

January 25, 2017

Hon. Thomas J. Wynne, Chair
Judicial Information Systems Data Dissemination Committee
Washington State Administrative Office of the Courts
18000 International Blvd. Suite 1106
SeaTac, WA 98188

Dear Judge Wynne and Members of the Committee:

We write to urge this Committee to take immediate action to bring Washington State into compliance with 18 U.S.C. § 2265(d)(3), a provision of the federal Violence Against Women Act (VAWA) that prohibits states from making certain protected information about survivors of domestic violence available on the Internet. This is not the first time we have brought this request to this Committee. This letter explains the history of Section 2265 and our advocacy to this Committee, documents how the current state of online access to Washington court records violates VAWA, and provides our suggestions for bringing our state into compliance with VAWA. Victim safety, and Washington State law and policy that favor protections for survivors of domestic violence, are at stake.

Background

18 U.S.C. § 2265(d)(3) was enacted as part of VAWA's 2005 reauthorization, with the purpose of eliminating one of the many barriers that dissuades domestic violence survivors from seeking the aid of the legal system for protection from domestic violence. Section 2265(d)(3) provides:

(d)Notification and Registration

(3) Limits on internet publication of registration information

A State, Indian tribe, or territory ***shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order.*** A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(Emphasis added.) While this provision leaves to the states the decision whether records relating to protection orders should be considered *public* records, it prohibits states from disseminating *online* any such records that would be "likely to publicly reveal the identity or location of the party protected under such order." *Id.*

Beginning in 2006, Legal Voice (then the Northwest Women's Law Center) and the Washington State Coalition Against Domestic Violence (WSCADV) approached this Committee to share our concerns that Washington State was in violation of Section 2265(d)(3). At the time, Washington State had made court dockets searchable by litigant name online through JIS/SCOMIS, and many Washington State counties were already operating or were beginning to operate their own electronic databases to facilitate easier public access to court records. We articulated to the Committee our concern that, to comply with VAWA, Washington needed to take steps to ensure that information that might reveal the identity or location of a person who filed for a protection order was not publicly available through those publicly accessible databases.

Over the course of subsequent meetings and negotiations, the then-members of this Committee took the position that this section of VAWA applied only to "foreign" protection orders registered in the courts of this state, and that it did not prohibit the state from making identifying information relating to protection orders that originated in Washington publicly available on the Internet. We strongly disagreed with that interpretation, and urged the Committee to comply with VAWA's requirement that all information that could identify a domestic violence victim's name or whereabouts be kept off the Internet. The Committee declined to take such action.

Section 2265(d)(3) Applies to Both Domestic and Foreign Protection Orders

As we previously informed the Committee beginning in 2006, 18 U.S.C. § 2265(d)(3) makes no distinction between "foreign" protection orders registered in Washington courts and "domestic" protection orders issued by Washington courts. To the contrary, by its plain language the statute expressly reaches *both* foreign and domestic protection orders, as it applies to protected information concerning a protection order "in either the issuing or enforcing State."

The legislative history of 18 U.S.C. § 2265(d)(3) adds further credence to the plain language reading of the statute. The internet publication prohibition in VAWA 2005, as originally introduced, was located in a section of the legislation concerning general grant conditions that was wholly unrelated to full faith and credit and would have amended another statute, 42 U.S.C. § 3796gg-1, not 18 U.S.C. § 2265. *See* H.R. 3420, 109th Cong. (2005). The Senate version of VAWA 2005 relocated the publication prohibition, substantively unchanged, to a section concerning full faith and credit. *See* S. Amdt. 2681, 109th Cong. (2005). The legislative record from this action does not contain any statements about the reason for this move. *See* 151 Cong. Rec. H12075-12125 (daily ed. December 17, 2005). This substitute bill passed and became

Public Law 109-162, enacting VAWA 2005. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162 (2005). Though both the House Judiciary Committee Report on the original bill and legislative record vote on the decisive Senate amendment evidence a wealth of concern among lawmakers for victim privacy generally, neither record contains any mention of a specific intent for the publication prohibition to apply exclusively to foreign orders. *See Id.,* H. Rep. No. 109-233 (2005).

If Congress intended the statutory prohibition on internet publication to reach only *foreign* orders that were registered in another state, the original Pub. L. 109-162 VAWA 2005 language would have been completely sufficient. Pub. L. 109-162 prohibited the online publication of "any information regarding the ***registration or filing of*** a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction [...] [emphasis added]". *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162 (2005). It is possible to interpret this "registration or filing of" language, in the context of its location within the full faith and credit section, as specifically and narrowly prohibiting disclosure of information regarding the inclusion of foreign orders in protection order registries. However, in 2006, shortly after the passage of VAWA 2005, Congress passed technical amendments to the law that modified the language in question. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005 Technical Amendments, Pub. L. No. 109-271 (2006). Public Law 109-271 retained reference to "registration," but additionally prohibited internet publication of information regarding "filing of ***a petition for, or issuance of*** [emphasis added]" orders. *Id.*

If 18 U.S.C. § 2265(d)(3) was intended to exclusively reach foreign orders, then the deliberate addition of publication prohibitions for information regarding "petitions for" and "issuance of" orders makes little sense. States do not readily have reason to possess information regarding petitions filed or decisions regarding issuance made in out-of-state courts -- neither of these forms of information are material to the full faith and credit enforcement of foreign orders, only orders themselves are. However, to state the obvious, states and localities *do* possess a great deal of information regarding petitions filed for orders as well as information on issuance of orders *that originate within their own domestic courts*. In order to read the 2006 amendments to have any meaning, they must be understood to clarify the prohibition on publication as applying to foreign *and* domestic orders and the accompanying procedural records. The 2006 Public Law 109-271 technical amendment should be interpreted, within the context of VAWA 2005 broadly, as well as the prior legislative history of 18 U.S.C. § 2265(d)(3), as an attempt to reconcile the intent for a general publication prohibition and original location of the language in a section pertaining to general grant conditions with its later move, text substantively unchanged, into a section pertaining to full faith and credit.

Lest this Committee have any doubt as to the meaning of this provision, the Department of Justice and the federal Office of Violence Against Women share our interpretation. We have attached a letter to us from the Principal Deputy Director of the Department of Justice's Office

of Violence Against Women, confirming that 18 U.S.C. § 2265(d)(3) applies to *all* protection and other domestic violence restraining orders *issued or registered* in Washington State.

Other States Comply with VAWA

Further, several other states provide models for how to comply. Since our discussions with the former members of this Committee, many states have acted to bring their court records dissemination rules in line with VAWA. At least four states – Michigan, Minnesota, Missouri, and Wyoming – have adopted court rules that cite 18 U.S.C. § 2265(d)(3) and prohibit remote access to protected information concerning *all* protection orders. *See* Mich. Court Rule 3.705(C); Minn. Rule of Public Access to Records of the Judicial Branch 8, Subd. 2(d)-(g) & cmt.; Mo. Court Operating Rule 2.04(b)(16); Wy. Rules Governing Redactions from Court Records, Rule 2. New Mexico's Legislature adopted language closely tracking 18 U.S.C. § 2265(d)(3) into a state statute. *See* N.M. Stat. § 40-13-12 ("A state agency, court or political subdivision . . . shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection."). In addition, without citation to VAWA, both California and Pennsylvania have adopted court rules that maintain the public nature of protection order proceedings, while limiting remote access as required by VAWA. California Rule of Court 2.503 provides "[r]ecords in a proceeding under the Family Code, including domestic violence prevention proceedings may be made available electronically only in the courthouse." In Pennsylvania, the judicial system's Electronic Case Record Public Access Policy Section 3.00 provides that victim and witness identifying information, including any party's address, are excluded from public electronic access.

Washington State Fails to Comply with Any Interpretation of Section 2265(d)(3).

Despite VAWA's clear directive, Washington State court records that include the identity and location of people protected by domestic violence protection orders remain accessible online. While this is not true in every county (for example, King County does not publish protection or anti-harassment order records online pursuant to King County Local General Rule 31), because it is true for the statewide Judicial Information System, it is ultimately true for every person protected by a domestic violence protection order in this state.

For example, Legal Voice searched for our own former and current domestic violence victim clients by name this month, using the free Judicial Information System Link, and using Pierce County's Legal Information Network Exchange System (LINX). We found our clients' names and dockets readily on JIS and LINX, including, on JIS, clients whose cases were filed in King County, where such records are not electronically available. Not only does JIS identify them as petitioners in domestic violence protection orders, it identifies the county in which they filed the proceeding. This is true for both protection orders issued here in Washington State and for one of our clients with a foreign protection order. Thus, even under the previous members of this Committee's inaccurate interpretation of VAWA, Washington State is not complying with the law.

Washington State Can and Must Comply with VAWA

The experiences of survivors of domestic violence and the need to protect their safety means we can no longer wait for Washington State to comply with VAWA's directives. Moreover, while the VAWA statute does not clearly prescribe the enforcement actions that the federal government may take against states for violating this particular provision, we urge this Committee not to put Washington State at risk.

We recognize that Washington State has a strong public policy supporting open public access to court and government records. *See, e.g.,* GR 31. But the state also has equally strong public policy in favor of protecting the safety of survivors of domestic violence. *See, e.g., Danny v. Laidlaw*, 165 Wn.2d 200, 221 (2008) ("The legislative, judicial, and executive branches of government have repeatedly declared that it is the public policy of this state to prevent domestic violence by encouraging domestic violence victims to escape violent situations, protect children from abuse, report domestic violence to law enforcement, and assist efforts to hold their abusers accountable."). Both of those important interests may be accommodated by maintaining the public nature of domestic violence protection order proceedings, while ensuring that identifying and location information about victims are unavailable through public electronic systems. This could be accomplished in multiple ways – for example, through keeping all protection order records public at the courthouse but unavailable online, as King County has attempted to do; or by allowing online dissemination but requiring automatic redaction of the information protected by VAWA.

As officers of the court, we have the deepest respect for the Administrative Office of the Courts and all those who serve on its committees. We believe that this issue can and should be resolved quickly, in favor of Washingtonians who have been victimized by domestic violence. Please understand, however, that we are prepared to pursue litigation to enforce federal law if this issue cannot be resolved cooperatively. We therefore ask this Committee to recognize and take immediate action to fulfill Washington State's obligations under federal law.

Sincerely,

Sara L. Ainsworth
Advocacy Director
Legal Voice

Tamaso Johnson
Policy Director
Washington State Coalition
Against Domestic Violence

Jeffrey Ware
Counsel
Fenwick & West

U.S. Department of Justice

Office on Violence Against Women

Washington, DC 20530

January 19, 2017

BY E-MAIL DELIVERY

Sara J. Ainsworth
Advocacy Director
Legal Voice
907 Pine Street, Suite 500
Seattle, WA 98101
sainsworth@LegalVoice.org

Dear Ms. Ainsworth:

This is in response to your inquiry regarding the Office on Violence Against Women's (OVW's) interpretation of the scope of 18 U.S.C. 2265(d)(3), which prohibits States, Indian tribes, and territories from publishing information on the Internet regarding a protection order "if such publication would be likely to publicly reveal the identity or location of the party protected under such order." In particular, you asked for clarification whether section 2265(d)(3) applies only to foreign orders registered in or enforced by another jurisdiction or whether it applies also to protection orders issued by and within the publishing jurisdiction.

OVW's longstanding position is that section 2265(d)(3) prohibits a State, Indian tribe, or territory from making this information publicly available on the Internet regardless whether the underlying protection order is a foreign order from another jurisdiction or a domestic one issued by the publishing jurisdiction. Specifically, the statute provides that the jurisdiction "shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order . . . *in either the issuing or enforcing. . . jurisdiction*[.]" (emphasis added). Thus, the plain language of the provision covers Internet publication in both the issuing and enforcing jurisdiction. Moreover, the provision encompasses information regarding the *filing* of a petition for a protection order, which is not information that a jurisdiction called upon to enforce a foreign order would have.

I recognize that section 2265(d)(3) suffers from some drafting flaws that have led to confusion about its interpretation. Most significantly, the provision is grouped in a subsection with two other paragraphs regarding registration and enforcement of foreign orders and is itself entitled "Limits on Internet publication of registration information." Although this placement and title of the provision might suggest limiting the Internet prohibition to foreign orders, we maintain that jurisdictions are obligated to adhere to the plain language of the provision, which clearing covers issuing jurisdictions. Headings and placement may help interpret the meaning of a statute when its language is ambiguous, but they are of limited utility when the meaning of the provision is clear on its face.

Finally, I note that there are excellent policy reasons that a jurisdiction should avoid publishing on the Internet identifying information about a person protected by a protection order. Absent such a restriction, the Internet can be a powerful tool for identifying, locating, and harassing victims. To avoid having protection order information used to locate and endanger victims, it simply makes sense not to make such information publicly searchable on the Internet.

If Washington State has questions about how to implement the prohibition in section 2265(d)(3), OVW has national technical assistance providers that can provide recommendations about best practices.

I hope this information is helpful. If you have further questions, please contact OVW's senior attorney advisor, Jennifer Kaplan, at jennifer.kaplan@usdoj.gov.

Sincerely,

Bea Hanson
Principal Deputy Director

JIS Data Dissemination Committee

April 28, 2006

MINUTES
JIS Data Dissemination Committee

AOC SeaTac Office

Members Present:
Judge Thomas Wynne, Snohomish County Superior Court, Acting Chair
Pat Crandall, Clerk/Administrator, Division III Court of Appeals
Judge Glenna Hall, King County Superior Court
Judge Kip Stilz, Thurston County District Court
Siri Woods, Chelan County Superior Court Clerk

Guests:
Anne Lee, Team Child
Barb Miner, King County Superior Court
Rowland Thompson, Allied Daily Newspapers

AOC Staff:
Brian Backus
John Bell
Kathy Kuriyama

Judge Wynne opened the meeting and introductions were made.

The minutes from the 3/24/06 meeting were approved.

RECENT FEDERAL LEGISLATION – Violence Against Women Act (VAWA)
Recent federal legislation concerning online access to protection orders was discussed. John Bell indicated he was still researching this matter and would hopefully have a summary by the next meeting. He had recently been informed that compliance may be linked to STOP Grant and other federal funding.

JIS Data Dissemination Committee

June 30, 2006

MINUTES
JIS Data Dissemination Committee

AOC SeaTac Office

Members Present:
Judge Ken Grosse, Chair, Washington State Court of Appeals
Pat Crandall, Clerk/Administrator, Division III Court of Appeals
Judge James Heller, Pierce County District Court
Judge Kip Stilz, Thurston County District Court
Siri Woods, Chelan County Superior Court Clerk – via speakerphone
Judge Thomas Wynne, Snohomish County Superior Court

Guests:
Rena Hollis, Skamania County Superior Court Clerk
Barb Miner, King County Superior Court
Rowland Thompson, Allied Daily Newspapers

AOC Staff:
Brian Backus
John Bell
Jennifer Creighton

Judge Grosse opened the meeting and introductions were made.

The minutes from the 4/28/2006 meeting were approved.

Recent Federal Amendments to the Violence Against Women Act (VAWA)

Recent federal legislation concerning online access to protection orders was discussed. John Bell summarized his memorandum and concluded that the current federal legislation only pertained to foreign protection orders. Judge Stilz stated court records that contained victims' names and addresses are not accessible online via JIS records. Whether this information was available through county websites should be a local decision and not a DD/JIS decision. Everyone agreed that JIS is in compliance with VAWA. Judge Grosse further stated that he believed that the counties are, at least, in compliance with the spirit of the law.

JIS Data Dissemination Committee

October 27, 2006

MINUTES
JIS Data Dissemination Committee

AOC SeaTac Office

Members Present:
Judge Ken Grosse, Chair, Washington State Court of Appeals
Judge Glenna Hall, King County Superior Court
Judge James Heller, Pierce County District Court
Judge Kip Stilz, Thurston County District Court
Siri Woods, Chelan County Superior Court Clerk – via speakerphone
Judge Thomas Wynne, Snohomish County Superior Court

Guests:
Sara Ainsworth, Northwest Women's Law Center
Barb Miner, King County Superior Court
Rowland Thompson, Allied Daily Newspapers
Scott Wetzel, Lexis Nexis

AOC Staff:
Brian Backus
John Bell
Jennifer Creighton

Judge Grosse opened the meeting and introductions were made.

The minutes from the 6/30/2006 meeting were approved.

Recent Federal Amendments to the Violence Against Women Act (VAWA)

Recent federal legislation concerning online access to protection orders was discussed. Justice Bridge asked the DD Committee to look at this issue again and determine if we believed JIS is in compliance. The person database allows remote access to protection orders. It does not allow access to foreign protection orders. Judge Grosse stated that the main concern should be whether there is effective enforcement of the protection orders and whether there is sufficient due process if identifying information is removed from public access.

Sara Ainsworth responded that the federal legislation was not intended to stop public access to protection orders, only internet access. She believes that this legislation applies to all protection orders which is supported by the letter written by Grace Huang of the Washington Coalition Against Domestic Violence.

Siri Woods asked if there were good reasons to have this information publicly available and if not, what it would cost to protect the identification of victims in protection orders. The Committee asked Jennifer Creighton, Information Access manager at AOC, to determine: (1) What can be done; (2) How is it done; (3) What will it cost. Ms. Creighton agreed to report back to the Committee on this information by the next meeting.

Defendant's Addresses

Judge Stilz reported that the focus group of the Data Exchange Committee has expressed the opinion that the case/name search website omit providing addresses. Judge Stilz stated the focus group believed that the addresses were unreliable and out-of-date. Judge Stilz further commented that he did not believe the courts would be in compliance with the federal VAWA law if addresses were made available through the website.

This issue would be discussed further at the next meeting.

JIS Data Dissemination Committee

February 23, 2007

MINUTES
JIS Data Dissemination Committee
AOC SeaTac Office

Members Present:
Judge Kip Stilz, substitute chair, Thurston County District Court
Judge Glenna Hall, King County Superior Court
Judge James Heller, Pierce County District Court
Siri Woods, Chelan County Superior Court Clerk
Judge Thomas Wynne, Snohomish County Superior Court

Guests:
Grace Huang, Washington Coalition Against Domestic Violence
N.F. Jackson, Administrator, Whatcom County Superior Court
Barb Miner, Clerk, King County Superior Court
Mark Weiss, Attorney

AOC Staff:
John Bell

Judge Stilz opened the meeting and introductions were made. Judge Stilz stated the meeting needed to be adjourned early because there was a JIS Executive Committee meeting scheduled for 10 am that some members of the Data Dissemination Committee needed to attend.

The minutes from the 10/27/06 meeting were approved.

The issue regarding recent amendments to the Violence Against Women Act regarding protection orders and the remote accessibility of these orders was briefly discussed. Grace Huang and Mark Weiss indicated they would like to see all victim identification in protection orders removed from internet access. John Bell presented a memorandum regarding his recent discussions with the VAWA Division of DOJ in Washington D.C. regarding this amendment. He stated a DOJ attorney, Jennifer Kaplan, told him that she believed that the legislation applied to all protection orders, but that DOJ would not issue a formal opinion on this issue. She also stated that she did not believe that there was any "enforcement mechanism" and that it would not be tied to grant money. He also distributed a Maryland Attorney General Opinion and a Maryland AOC memorandum that concluded the VAWA legislation only applied to foreign protection orders.

Judge Stilz stated there may be policy reasons to keep victim information in protection orders confidential and asked that Jennifer Creighton address the Committee next meeting on different ways JIS could maintain this information. The issue was tabled until Ms. Creighton could report to the Committee.

JIS Data Dissemination Committee

April 27, 2007

MINUTES
JIS Data Dissemination Committee
AOC SeaTac Office

Members Present:
Judge Ken Grosse, Chair, Washington State Court of Appeals
Judge Glenna Hall, King County Superior Court
Judge James Heller, Pierce County District Court
Judge Kip Stilz, Thurston County District Court
Siri Woods, Chelan County Superior Court Clerk

Guests:
Grace Huang, Washington State Coalition Against Domestic Violence
Don Horowitz, Attorney, ATJ
Molly Lawrence, Attorney, Northwest Women's Law Center
Barb Miner, Clerk, King County Superior Court
Rowland Thompson, Allied Daily Newspapers

AOC Staff:
Tim Bates
John Bell
Jennifer Creighton

Judge Stilz opened the meeting and introductions were made.

The minutes from the 02/23/07 meeting were approved.

VAWA
Jennifer Creighton, AOC Information Access manager, was present to answer and ask questions regarding the implementation of a possible policy regarding Domestic Violence petitions. The question is whether is needed to comply with VAWA law. The Committee agreed that the Supreme Court wants all court records to be available on a one-tiered basis. In order to comply with the most liberal reading of the VAWA law (that it applies to all domestic violence protection orders) and the Supreme Court's mandate that accessed be one-tiered, would required that all DV protection orders be confidential. The question is whether this would promote effective law enforcement. If not, then we would continue to have the law apply only to foreign protection orders. Siri Woods and Barb Miner were asked to look into the feasibility of enforcing confidential (to the public) domestic violence protection orders. The discussion will continue next meeting.

The remaining items were tabled due to time restraints.

JIS Data Dissemination Committee

June 29, 2007

Members Present:

Judge Thomas Wynne, Snohomish County Superior Court, Substitute Chair
Judge Ken Grosse, Washington State Court of Appeals, speakerphone
Judge Glenna Hall, King County Superior Court
Judge Kip Stilz, Thurston County District Court
Siri Woods, Chelan County Superior Court Clerks

Guests:

Cathy Grindle, King County District Court
Molly Lawrence, attorney, Northwest Women's Law Center
Joel McAllister, Finance Manager, King County Superior Court Clerk's Office
Judge Annette Plese, Spokane County District Court
Rowland Thompson, Allied Daily Newspapers

AOC Staff:

Tim Bates
John Bell
Stephen Comfort-Mason
Jennifer Creighton
Butch Stussy

Judge Wynne opened the meeting and introductions were made.

The minutes from the 04/27/07 meeting were approved.

VAWA

Siri Woods stated she and Barb Miner looked at the possibility of having all protection orders confidential. Siri stated if that occurred then law enforcement agencies, employers, schools, etc. may not have access to protection orders and that would defeat the purpose behind the issuance of protection orders. Judge Grosse agreed and asked if the representatives of victims of domestic violence wanted the consequences of sealing this information from the public. Molly Lawrence stated she did not believe that is what the federal law required and she believed that the federal law only required that the protection orders not be placed on the internet. The Committee agreed that is a two tiered system and that the Supreme Court has indicated that it would not endorse a two-tiered system. Judge Stilz indicated he would like to see a flow chart that includes all protection orders covered under VAWA. Judge Wynne stated protection orders are issued in many different types of cases and that would make two-tiered sealing even more difficult. Judge Grosse agreed to meet with Molly Lawrence and discuss the history behind the two-tiered and one-tiered philosophy. Jennifer Creighton will prepare a flow chart and send it to the Committee.

ACTION BY COMMITTEE: Judge Wynne asked if any member of the committee wanted to make a motion to have a two-tiered system for protection orders. Judge Hall made the motion. **The motion failed for lack of a second**.

The Functions and Responsibilities of the Data Dissemination Committee and Data Management Committee

This issue was tabled from the last meeting. Judge Grosse and Stilz wanted to discuss the responsibilities of the two different committees. Tim Bates indicated that his view was that the Data Management Committee focuses the management of data from a technical standpoint. The Data Management Committee determines how data is exchanged and the technical requirements necessary to make those exchanges. It does not make policy decisions. Policy decisions are made by the Data Dissemination Committee and any issues regarding policy are referred to the DD Committee. Tim stated that the VAWA issue had been raised at a Data Management Committee. The issue was not discussed, but referred to this committee. It was pointed out that the chair of Data Management Committee, Rich Johnson, will also be a member of this committee starting next meeting.

JIS Data Dissemination Committee

October 26, 2007

MINUTES
DATA DISSEMINATION COMMITTEE
October 26, 2007, 9:00 a.m. to 10:30 p.m.
SeaTac Facility, SeaTac, WA

Members Present:
Judge C. Kenneth Grosse, Chair (via telephone)
Judge Glenna Hall
Mr. William Homes
Mr. Richard Johnson
Ms. Siri Woods
Judge Thomas Wynne

Guests Present:
Mr. Greg Banks (via telephone), WAPA
Chief Robert Berg, WASPC
Ms. Grace Huang, WSCADV
N. F. Jackson, Whatcom County Clerk
Ms. Molly Lawrence, NWLC
Ms. Barb Miner, King County Clerk
Judge Michael Trickey, King County Superior Court

Members Absent:
Judge James Heller
Judge Clifford L. Stilz

Staff Present:
Mr. John Bell
Ms. Jennifer Creighton
Ms. Denise Dzuck
Mr. Jeff Hall
Ms. Suzanne Hellman
Mr. Gregg Richmond

CALL TO ORDER
Judge Wynne called the meeting to order at 9:00 a.m., and introductions were made.

Motion: A motion was made, seconded, and unanimously carried to approve the June 29, 2007 meeting minutes as written.

PROPOSED AMENDMENTS TO GR 22 – Access to Family Law and Guardianship Court Records
John Bell indicated he received an e-mail from Don Horowitz, the Access to Justice Board's liaison, adding some verbiage to the draft. Mr. Horowitz suggested the following addition in sections (c)(2), (g)(1), and (g)(3).

". . . copies of judicial information system database records submitted to, raised by, or considered by the court for parenting plan approval as set forth in (f) of this rule . . ."

After a lengthy discussion about whether the court would want items in a file not considered, it was the consensus of the Committee to wait until Judge Hall arrived to make a decision on Mr. Horowitz's suggestion.

PROPOSED AMENDMENTS TO GR 31 – Access to Court Records
John Bell stated Judge Stilz asked that some language be put together for foreign protection orders in relation to the federal Violence Against Women Act (VAWA) of 2005. Mr. Bell proposed the following language be added to GR 31, section (d)(1).

"(1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law or any foreign protection order filed under the authority of chapter 26.52 RCW."

Judge Wynne indicated that foreign protection orders are almost always filed under the context of civil proceedings except for one case which was filed under domestic proceedings.

Greg Banks stated the concern from the prosecutors is that the publication of any information has the potential to help a determined stalker find his or her victim. However, the orders need to be available to law enforcement agencies so they can be enforced. In reading the VAWA legislation, it is significant that it makes a distinction between publication of information on the Internet as opposed to restricting access to documents, and the proposed rule talks about court records.

Judge Grosse stated this is because there is a policy against two-tiered access, and that policy will not be altered according to the Chief Justice.

Judge Wynne indicated that since the Supreme Court is not going to allow two-tiered access, the only alternative is to restrict all access whether at the courthouse or over the Internet.

During discussions, Barb Minor clarified that there are two types of case indexes. One is public case types, and the other is for confidential cases (adoption, mental illness, and juvenile dependency). The confidential case index is not available to the public; and for an in-person request for case information from the court, a person must have the case number in order for the court to release any information—name identification is not enough. However, if protection orders are filed as a case type 2 (civil) or 3 (domestic), both parties names would show up in the case index which is available to the public. And, if a case is sealed, the names still show up in the index although no other information is available to the public.

Judge Wynne indicated there are differing opinions about whether the VAWA legislation applies to both foreign and intrastate protection orders. Judge Wynne also mentioned there is a legal question as to whether congress has the authority to impose any requirements on intrastate protection orders. The state constitution also comes into play in terms of what the state constitution allows the courts to do—it's a more complicated issue if someone goes beyond the foreign protection orders.

Molly Lawrence, from the Northwest Women's Law Center (NWLC), stated she and Judge Grosse met last August to discuss options. Judge Grosse agreed that if the NWLC and the Washington State Coalition Against Domestic Violence (WSCADV) could figure out a solution that worked that is not a two-tiered system, they could present it to the Committee for discussion.

Ms. Lawrence indicated over the last few months, meetings have been held with David Martin, Sandra Shanahan of the King County Prosecutor's Office, and Barb Miner. Ms. Lawrence handed out a one page summary of a proposal for discussion (copy attached for reference). Ms. Lawrence indicated the summary starts with an entirely sealed file, and then makes just the protection order itself publicly available with redacted information.

Judge Wynne asked if the case were a dissolution, would the entire dissolution file become sealed? Ms. Lawrence stated the first part of this would be to unembed all the domestic violence protection orders (DVPOs) from the underlying civil cases, so this would not be an issue. This would mean the court would need to have the DVPO case number associated back somehow to the other

related case for purposes of the courts' consideration, but the DVPO would have it's own cause number and would be indexed separately.

Siri Woods indicated this is the same issue courts are dealing with regarding paternity cases. Everything from the order up is public. The problem is that courts have to actually give the order a different case number in order to make it public at that point. It is very confusing for the courts—some courts are doing this and some are not because it is so confusing, and the prosecutors are struggling with this as well. The new order under the new case number is filed as a case type 3 (domestic) which is a lot of work for the clerks.

Ms. Lawrence stated this proposal is about making sure peoples' information about the fact they are domestic violence victims is not made public to anybody; to protect those victims from any number of different people who might wish to harm them or discriminate against them.

After a lengthy discussion about how this would affect or be handled by the case index, Ms. Lawrence stated she appreciated Judge Hall's efforts to connect this issue to the VAWA language and Barb Miner's comments that this proposal is different that what the VAWA legislation is about. Since Judge Grosse had the intrastate order on the agenda, Ms. Lawrence felt this was a good time to bring a proposal to the Committee that dealt with the local orders to begin the dialogue.

Judge Grosse stated that if the Committee is concerned about what the law of the land is or isn't, all the Committee needs to deal with right now is foreign protection orders. To the extent that what was proposed by Ms. Lawrence goes beyond foreign protection orders, it seems that maybe this Committee doesn't provide the best means to deal with this proposal. Judge Grosse indicated his original position was to look at not just foreign protection orders, but all protection orders. If this is necessary to protect the victims of domestic violence, it should be done across the board. The reason the two-tiered system was given up is because it doesn't do anything to protect the victims. If a name is in the public index, it will be made available on the Internet unless victims are protected some other way. In order to protect the victims some other way, a plan needs to be developed to respond to Ms. Lawrence's proposal. Judge Grosse indicated he agreed with Judge Wynne's suggestion that another case type might be the answer. These are issues beyond the scope of judicial rules and should be dealt with by the legislature.

Judge Grosse further indicated that if the legislative determination says the victims of domestic violence deserve these protections, then the question is how can this be accomplished. The way these orders are entered into the JIS system is more a matter of practical necessity for the current systems, and this can be changed. The Committee can then ask someone who builds databases how this could work, and then ask the clerks and other interested parties to find out what it means to them from the standpoint of costs and practicality and if there might be any unforeseen consequences. If the Committee doesn't want to take on this issue and staff it, it should be sent to the legislature.

Judge Wynne indicated the Judicial Information System Committee (JISC) doesn't have the resources to staff something like this right now because of the work being done on the new case management system.

Grace Huang from the WSCADV indicated the federal government is currently in budget negotiations, and the delegation has been very good at bringing money into Washington to deal with issues. If there is a serious interest in doing this, Ms. Huang feels the delegation has the ability to influence this process and could help provide resources for this project.

Greg Banks stated this issue is dealing with some broad social policies, and it is his understanding the Data Dissemination Committee's function is to make sure rules are not set that conflict with state laws or the state Constitution and to see that the public has access to court information. If the Committee is not talking about adopting a rule that complies strictly with the new VAWA amendments, then this is something that should be discussed and decided by the legislature with full public participation. Judge Wynne and Judge Hall concurred with Mr. Banks.

Judge Grosse suggested the Committee, with assistance from the AOC, take a look at Ms. Lawrence's proposal before the next meeting and see what would be involved before taking it to the JISC or the legislature. Before the legislature gets too involved, the Committee needs to let them know what the JIS can do to accommodate any proposal and/or unforeseen consequences.

Judge Wynne asked if there was a motion with respect to foreign protection orders and GR 31 as proposed today. There being no motion, Judge Wynne stated the Committee will continue discussions at another meeting.

PROPOSED AMENDMENTS TO GR 22 – Access to Family Law and Guardianship Court Records

Judge Wynne reviewed Don Horowitz's proposed amendment to GR 22 for Judge Hall, indicating this proposal would require that anything looked at in regards to a parenting plan would need to be placed in the file and would require the information be distributed to everyone even if it's irrelevant.

Judge Hall stated that if information is not considered, there is no need for it to be placed in the file.

Motion: Judge Wynne called for a motion on GR 22 as originally drafted by John Bell. Judge Hall so moved; it was seconded by Siri Woods and unanimously passed. Judge Wynne stated it will now be sent to the JISC for consideration.

There being no further business, the meeting adjourned at 10:25 a.m.

Attachment A

Proposal to Protect Victim's Identifying Information and to Comply with VAWA
October 26, 2007
For Discussion Purposes Only

Based on discussions with law enforcement, DV advocates (both legal and non-legal), and representatives at the King County Prosecutors Office, we have developed the following proposal to protect DV victim's identifying information contained in DVPO pleadings and orders.

(1) All civil DVPO actions would be assigned a separate cause number. They would no longer be embedded in other civil files. A note would be made, however, on the DVPO file that it is linked to another civil action so that the two actions may continue to be considered together as appropriate.

(2) All DVPO actions would be filed under seal. If and when either a temporary or a final DVPO Order is issued, a complete copy of that DVPO would be retained by the Court as part of the sealed file. A redacted version of that DVPO would be made public with the victim's identifying information redacted. Only following issuance of a DVPO would the case be included in the publicly accessible index and it would be listed under the redacted caption.

(3) Criminal justice agencies (e.g., police, prosecutor, etc.) would retain the ability to access the entire DVPO file pursuant to GR 31(f)(3).

3/17/06

TO: Data Dissemination Committee

FROM: John Bell, Legal Analyst

RE: Recent Federal VAWA Legislation and Its effect on Protection Orders

This is an informational memorandum to let the committee know the legislation and issue set forth below have come to our attention and that the National Center and some state courts are working on some answers to questions this legislation has raised. Hopefully, we'll have some answers/recommendations by next meeting.

Issue

In early January, President Bush signed into law the appropriations bill for the Department of Justice. This 200 page bill contained the following amendment to the Violence Against Women Act.

> HR 3402-Violence Against Women and Department of Justice Reauthorization Act of 2005 Section 106 (c)(3) LIMITS ON INTERNET PUBLICATION OF REGISTRATION INFORMATION - A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

This section was originally in the "STOP GRANT" portion of the bill and conditioned STOP GRANT funding on compliance with the law, but for some reason it was moved to the full faith and credit section of the act when the bill reached the Senate. The Senate version was signed by the President. 18 USCS § 2265(d)(3).

This legislation requires the state courts to have a two-tiered access for protection orders. This is contrary to the philosophy behind GR 31 – "if it is public, it is public." Also, implementation could be quite costly and difficult. The level of difficulty and expense depends on the number of protection orders covered by this new law. If it is just out-of-state protection orders, then the

problems are minor. If it applies to all protections orders then we may have problems. Here are some questions that need to be resolved.

Questions

1. Since this new law was inserted into the full faith and credit sections of VAWA does the internet access restriction apply only to out-of-state protection orders or does this law require restricting remote access to all protection orders?

2. Does this new federal rule conflict with GR 31 and state case law, in particular: *Nast v. Michaels*, 107 Wn.2d 300 (1986); *Rufer v. Abbott Labs*, 154 Wn.2d 530 (2005) ("We hold that documents filed with the court will presumptively be open to the public unless compelling reasons for closure exist."); and *Dreiling v. Jain*, 151 Wn.2d 900 (2004). ("The open operation of our courts is of utmost public importance. … Secrecy fosters mistrust. … [O]penness is a vital part of our constitution and our history. The right of the public, including the press, to access trials and court records may be limited only to protect significant interests, and any limitation must be carefully considered and specifically justified.") If there is a conflict, how should this conflict be resolved?

3. Does the act prohibit AOC or a court clerk from selling electronic data in bulk if the data includes information that could reveal the identity or location of the protected party? Does it matter whether the government provider knows the buyer will make the information available on a website?

4. Can a court electronically transfer a protective order by email via request from a member of the public?

June 30, 2006

TO: Data Dissemination Committee

FROM: John Bell, Legal Analyst

RE: Recent Federal VAWA Legislation and Its effect on Protection Orders

In early January, President Bush signed into law the appropriations bill for the Department of Justice. This 200 page bill contained the following amendment to the Violence Against Women Act (VAWA)

> HR 3402-Violence Against Women and Department of Justice Reauthorization Act of 2005 Section 106 (c)(3) LIMITS ON INTERNET PUBLICATION OF REGISTRATION INFORMATION - A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(Emphasis added.)

This section was originally in the "STOP GRANT" portion of the bill and conditioned STOP GRANT funding on compliance with the law, but it was moved to the full faith and credit section of the Act when the bill reached the Senate. The Senate version was signed by the President. 18 USCS § 2265(d)(3). See Appendix A for full version of *Full Faith and Credit Given to Protection Orders* - 18 USCS § 2265.

Though some sources have published commentary (which does not include supporting legal analysis) to the effect that the amendment applies to any protection order published on the Internet, it is my opinion that this legislation only applies to foreign protection orders and not to every protection order filed in state court. (See attachment - Summary of Comments.)

The full faith and credit provision of the Violence Against Women Act says that a valid protection order must be enforced everywhere throughout the country. 18 USCS § 2265(a). Chapter 26.52 RCW, *Foreign Protection Order Full Faith and*

Credit Act, specifically recognizes the validity of foreign protection orders in the state of Washington and VAWA's mandate that every state enforce valid protection orders from other jurisdictions. *See* RCW 26.52.005[1]

A protection order is considered valid when:

(1) The issuing court had jurisdiction over the parties; and
(2) The abuser was given notice and an opportunity to be heard in the issuing court.

18 USCS § 2265(b) and RCW 26.52.020.

A person entitled to protection may file a valid foreign protection order by presenting a certified copy to the court clerk where the person entitled to protection resides or feels enforcement may be necessary. If the person entitled to protection does not have a certified copy the court responsible for maintaining the protection order may electronically transmit the foreign protection order to the court clerk. RCW 26.52.030.

However, it is critical to remember that the victim may be fleeing to Washington to avoid domestic violence. There is no need to notify the abuser of the filing of the foreign protection order since he/she would have to been notified when the order was initially issued. The abuser does not need to be notified of the filing or registering of the foreign protection order as such notification would defeat the one of the purposes of the full faith and credit section of VAWA: The ability of a victim to relocate or flee the abuser without being found.

The new language restricting publication of the victim's identity or location only furthers this intent. That this restriction only applies to foreign protection orders is the only logical conclusion that can be reached. This added language simply restricts the issuing state from publishing any information regarding the relocation of the victim (e.g. information regarding the faxing or transmitting the protection order to another jurisdiction) and restricts the enforcing state from publishing information regarding the filing or registering of the foreign protection order. (The registering should not be an issue for Washington Courts as the foreign protection order forms direct the court clerk not to file the form with the court, but to forward to law enforcement. *See* Foreign Protection Order Form, Appendix B.)

Finally, the above legislation should not be read in isolation. The legislation was inserted into the full faith and credit provision of VAWA. This legislation addresses the enforcement of foreign protection orders. In interpreting legislation, the court will not look merely to a particular clause in which general words may be used, but will take in consideration with it the whole statute and

[1] "The problem of women fleeing across state lines to escape their abusers is epidemic in the United States. … Section 2265 of VAWA … provides for nation-wide enforcement of civil and criminal protection orders in state and tribal courts throughout the country."

the objects and policy of the law. ***Stafford v. Briggs***, 444 U.S. 527; 100 S. Ct. 774; 63 L. Ed. 2d 1 (1980). The logical conclusion is the new amended language addresses foreign protection orders, not all protection orders.

APPENDIX A

UNITED STATES CODE SERVICE

APPROVED 6/23/2006

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 110A. DOMESTIC VIOLENCE AND STALKING

18 USCS § 2265

§ 2265. Full faith and credit given to protection orders

(a) Full faith and credit. Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State, Indian tribe, or territory.

(b) Protection order. A protection order issued by a State, tribal, or territorial court is consistent with this subsection if--
(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or counter petition. A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if--
(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and registration.
(1) Notification. A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.
(2) No prior registration or filing as prerequisite for enforcement. Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.
(3) Limits on internet publication of registration information. A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) Tribal court jurisdiction. For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

6. Other Business

WACDL

Washington Association of Criminal Defense Lawyers

Amy I. Muth
President

Teresa Mathis
Executive Director

February 1, 2017

Stephanie Happold
Data Dissemination Administrator
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170

Dear Ms. Happold:

Thank you for soliciting feedback on the JISC Data Dissemination Policy. We write in response to your request.

The Washington Association of Criminal Defense Lawyers believes that all criminal defense attorneys should have the most comprehensive access to JIS information as authorized by statute and court rule. Giving defense attorneys the most information possible allows them to provide better representation for their clients and improves the functioning of the criminal justice system.

With regard to the proposed Data Dissemination Policy, we offer three thoughts.

First, the ability to quickly obtain case history information through JIS, using screens such as the DCH screen, is critical for attorneys to properly represent their clients. Currently, private attorneys, as Level 1 users, are only able to access SNCI information, and not DCH information. It appears that the proposed modifications to the policy eliminate the definition of "compiled reports," which would open the door to Level 1 access of screens like DCH.

We understand that the policy is intended to increase access to DCH screens through AOC, which would include access to JIS data through JIS LINK, which is how most defense attorney access the information. However, Section III, D., which authorizes court clerks to disseminate data only from their particular court, seems needlessly restrictive. A statewide DCH request would pose no additional burden on administrative staff.

Second, we are concerned that the positive nature of this change will be limited by the outdated nature of the JIS backend. We urge the Committee to prioritize implementation of these changes as soon as possible by making any necessary technical accommodations.

1511 Third Avenue
Ste 503
Seattle, WA 98101
(206) 623-1302
Fax (206) 623-4257
info@wacdl.org
wacdl.org

Finally, we also support streamlining access to all financial data available through JIS. Analysis of the criminal justice system is aided by understanding the numbers and anything the DDC does to facilitate that is worthy of our support.

Thank you for soliciting our input. Please do not hesitate to contact us with questions or concerns.

Sincerely,

Amy I. Muth
President

Aimée Sutton
Member, WACDL Board of Governors

Court user questions regarding the draft Data Dissemination Policy Section VI.B.:

- Is there a way to request a blanket exception for all routine summary reports from JIS/Odyssey? The requirement for a disclaimer is evident for BOXI reports and reports that can be locally created from a reporting engine, e.g. custom report from Odyssey.
- Does this disclaimer only apply to reports that contain a person's name?
  Does the disclaimer apply to identifying specific persons and the completeness and accuracy as it applies to the named person or
  Does the disclaimer apply to identifying specific persons and additionally, the completeness and accuracy as it applies to the data/dollars/numbers appearing on the report?
- Could the disclaimer be included in the policy at Section III.F Access to JIS Records – Routine summary reports. So that the policy is the disclaimer?