Judicial Information System Committee (JISC)

Friday, October 25, 2013 (9:00 a.m. – 3:00 p.m.)
CALL IN NUMBER: ***800-591-2259 PC: 288483***
SeaTac Facility: *18000 INTERNATIONAL BLVD, SUITE 1106, SEATAC, WA 98188*

AGENDA

1.	**Call to Order** **a. Introductions** **b. Approval of Minutes**	Justice Mary Fairhurst	9:00 – 9:10	**Tab 1**
2.	**JIS Budget Update** a. 13-15 Budget Update b. JIS Fund Balance Update	Mr. Ramsey Radwan, MSD Director	9:10 – 9:20	**Tab 2**
3.	**Data Dissemination Committee – GR 15** a. Proposed Amendments to GR 15 **Decision Point:** Recommend Proposed Amendments to Supreme Court Rules Committee	Judge Thomas Wynne	9:20 – 9:50	**Tab 3**
	Break		9:50 – 10:00	
4.	**JIS Priority Project #2 (ITG 2):** **Superior Court Case Management Update** a. JISC Kickoff Presentation from Tyler Technologies, Inc. b. Project Update c. Independent QA Report	Mr. Tom Bartel, VP, Prof Services Ms. Kristen Wheeler, Regional PM Mr. Paul Farrow, Project Mgr Ms. Maribeth Sapinoso, PMP Mr. Allen Mills	10:00 – 12:00 12-00 – 12:10 12:10 – 12:20	**Tab 4**
	Working Lunch		12:20 – 12:40	
5.	**CIO Report** a. ISD Technology Project List b. IT Governance Discussion • How to handle new requests for functionality/changes to systems that will eventually be replaced by Odyssey	Ms. Vonnie Diseth, ISD Director	12:40 – 1:00	**Tab 5**
6.	**CLJ Probation Case Management Inclusion in CLJ Case Management Project –** Informational	Mr. Larry Barker	1:00 – 1:05	
7.	**JIS Data Dissemination Policy Amendment** a. CLJ Data Destruction – Workgroup Draft Preliminary Discussion	Judge Thomas Wynne	1:05 – 1:35	**Tab 6**
8.	**JIS Priority Project Updates** a. #3 (ITG 45) - Appellate Court ECMS b. #1 SCDX - Superior Court Data Exch c. Information Networking Hub (INH) d. #5 (ITG 41) – CLJ Revised Computer	Mr. Martin Kravik Mike Walsh, PMP Mr. Kevin Ammons, PMP Informational Only	1:35 – 2:15	**Tab 7**

	Records Retention and Destruction Process			
9.	**Committee Reports** a. Data Dissemination Committee b. Data Management Steering Committee	Judge Thomas Wynne Mr. Rich Johnson	2:15 – 2:25	
10.	**AOC Re-Organization**	Ms. Callie Dietz	2:25 – 2:35	
11.	**Meeting Wrap-Up**	Justice Mary Fairhurst	2:35 – 2:45	
12.	**Information Materials** a. ISD Monthly Report b. IT Governance Status Report			**Tab 8**

Persons with a disability, who require accommodation, should notify Pam Payne at 360-705-5277 Pam.Payne@courts.wa.gov to request or discuss accommodations. While notice 5 days prior to the event is preferred, every effort will be made to provide accommodations, when requested.

Future Meetings:

2013 Schedule:

December 6, 2013

2014 – Schedule

February 28, 2014

April 25, 2014

June 27, 2014

September 5, 2014

October 24, 2014

December 5, 2014

JUDICIAL INFORMATION SYSTEM COMMITTEE

Sept 06, 2013
9:00 a.m. to 12:30 p.m.
AOC Office, SeaTac, WA

DRAFT - Minutes

Members Present:
Mr. Larry Barker
Chief Robert Berg
Judge Jeanette Dalton (phone)
Ms. Callie Dietz
Justice Mary Fairhurst, Chair
Judge James Heller
Mr. William Holmes
Mr. Rich Johnson
Judge J. Robert Leach
Ms. Marti Maxwell
Mr. Steward Menefee
Ms. Barb Miner
Judge Steven Rosen
Ms. Aimee Vance
Ms. Yolande Williams
Judge Thomas J. Wynne

Members Absent:
Ms. Joan Kleinberg

AOC/Temple Staff Present:
Mr. Kevin Ammons
Ms. Kathy Bradley
Ms. Vicky Cullinane
Ms. Vonnie Diseth
Ms. Stephanie Happold
Mr. Martin Kravik
Ms. Kate Kruller
Mr. Dirk Marler
Ms. Pam Payne
Mr. Ramsey Radwan
Ms. Maribeth Sapinoso
Justice Debra Stephens
Mr. Mike Walsh
Ms. Heather Williams (phone)
Mr. Kumar Yajamanam

Guests Present:
Ms. Lea Ennis
Ms. Vanessa Torres Hernandez (phone)
Ms. Jill Mackie
Mr. Frank Maiocco
Mr. Brian Rowe
Mr. Phil Talmadge
Mr. Roland Thompson
Mr. Cliff Webster
Mr. Kyle Wicherts
Mr. John Woodring
Mr. David Zeeck

Call to Order

Justice Mary Fairhurst called the meeting to order at 9:00 p.m. and introductions were made.

July 19, 2013 Meeting Minutes

Justice Fairhurst asked if there were any additions or corrections to the July 19 meeting minutes, hearing none, Justice Fairhurst deemed them approved.

JIS Budget Update (13-15 Biennium)

Mr. Ramsey Radwan provided the budget update for the 2013-2015 biennium. The green sheet, representing the amount allocated for projects listed, shows only the expenditures for the month of July, due to the new biennium beginning with that month. The allotments have been completed, pending some minor adjustments that will have no immediate impact. Additional funding from vacancy savings will be added if they come available over the next several months. The annual trend in revenue generated from traffic infractions has continued to decline, although July showed a slight increase.

JIS Supplemental Budget Decision Packages

Ms. Vonnie Diseth presented to the committee the proposed 2014 Supplemental Budget requests. Requests include funding for the SC-CMS project, Appellate Court ECMS project, Infrastructure Maintenance costs and IT Security Enhancements.

Motion: Ms. Marti Maxwell

I move that the JISC approve the 2014 Supplemental Decision Packages for the Superior Court Case Management System, Appellate Court Enterprise Content Management System, IT security improvements, and infrastructure maintenance.

Second: Mr. Larry Barker

Voting in Favor: Mr. Larry Barker, Chief Robert Berg, Judge Jeanette Dalton (phone), Ms. Callie Dietz, Judge James Heller, Mr. William Holmes, Judge J. Robert Leach, Ms. Marti Maxwell, Judge Steven Rosen, Judge Thomas J. Wynne, Mr. Stew Menefee, Ms. Barb Miner, Justice Fairhurst, Mr. Rich Johnson, Ms. Aimee Vance, and Ms. Yolande Williams.
Opposed: None
Absent: Judge Jeanette Dalton, Ms. Joan Kleinberg

Draft 2014 Schedule and JISC Meeting Start Time

The draft JISC meeting schedule for 2014 was presented to the committee for approval. The new schedule accommodates the Data Dissemination Committee (DDC) meeting prior to the JISC meetings. The new schedule adopts a new JISC meeting time of 10:00 am to 2:00 pm which allows the DDC to meet from 8:30 am to 10:00 am. Justice Mary Fairhurst confirmed by way of agreement the JISC meeting will meet from 10-2 with the option of a 9:00 start time if decisions needing to be made warrant additional time. Justice Mary Fairhurst asked if this was acceptable to the body. The new start time will begin for the December 6, 2013 meeting.

JISC Bylaw Change for Data Dissemination Committee

Judge Thomas Wynne presented a proposed amendment to the JISC Bylaws for the Data Dissemination Committee (DDC). The amendment would look to add an administrator for the Courts of Limited Jurisdiction (CLJ) to the DDC. The language change would allow for superior court or juvenile court administrators, and a CLJ Court administrator. A recommendation was made by Ms. Aimee Vance for the language to be altered to a member of the District and Municipal Court Management Association (DMCMA). This would allow active members of the association, including court managers in addition to court administrators, to serve on the DDC. Justice Fairhurst clarified that the proposed amendment not only would add a CLJ administrator to the DDC, but would alter the language from “a trial court administrator” to “a superior court or juvenile court administrator, “ and any motion would need to account for this change in language.

Motion: Judge Thomas Wynne

I move to approve an amendment to the JISC Bylaws to indicate that either a superior court or juvenile court administrator can be appointed, as well as a member of the District and Municipal Court Management to the membership of the Data Dissemination Committee.

Second: Judge J. Robert Leach
Voting in Favor: Mr. Larry Barker, Chief Robert Berg, Ms. Callie Dietz, Judge James Heller, Mr. William Holmes, Judge J. Robert Leach, Ms. Marti Maxwell, Judge Steven Rosen, Judge Thomas J. Wynne, Mr. Stew Menefee, Ms. Barb Miner, Justice Fairhurst, Mr. Rich Johnson, Ms. Aimee Vance, and Ms. Yolande Williams.
Opposed: None
Absent: Judge Jeanette Dalton (phone) and Ms. Joan Kleinberg

JIS Data Dissemination Policy Amendment

Judge Wynne presented the JISC with a proposed policy amendment for the DDC. The proposed amendment would relate to the dissemination of information relating to juvenile court records. The Legislature had previously established a joint legislative taskforce on juvenile records and sealing. There was significant interest from the Legislature regarding the status of juvenile records as public records. AOC staff was involved in a wide-ranging discussion on juvenile records. The fiscal impact of the proposed legislation was over $1 million dollars. From a JIS and AOC standpoint, the legislation would impact AOC and ongoing projects in a significant manner. The funding required to enact the proposed legislation would remove funds from the SC-CMS and AC-ECMS projects, and AOC staff would need to be dedicated to enacting the changes and pulled away from other work. The proposed legislation did not pass the Legislature this session, with Representative Ruth Kagi the lead legislator pushing for passage of the juvenile records bill. Ms. Callie Dietz noted the BJA and AOC are not taking a position on the policy, only providing background on the fiscal and personnel impact of the legislation. The estimate for work needed to update the current systems is between 8,000 and 12,000 hours. A meeting with members of the House of Representatives is scheduled to provide an overview of the systems and the degree of difficulty in enacting requirements set forth in the legislation. Ms. Dietz notes the completion of the SC-CMS Odyssey system would provide an easier solution, but the time necessary could be an issue. Judge Wynne noted King County Superior Court has a rule in place that prohibits the electronic dissemination of juvenile or family court records from the Clerk's office. Records would still be available through JIS Link. Bulk distribution of records would be prohibited. Electronic records would still be available, but a limit on the manner of distribution would be imposed. Letters submitted to the JISC have been included in the meeting materials for review.

Ms. Barb Miner discussed the letter the Washington State Association of County Clerks submitted in opposition to the proposed change, and felt the change would be contrary to GR 31. Ms. Miner felt the change would result in more need for people to physically travel to court houses, and the public would think of this change as an attempt to obfuscate the records. The opposition is about the policy of access, and making record access more difficult goes against the intent of GR 31.

Mr. Phil Talmadge, representing the Rental Housing Association of Washington (RHA), noted realtors and landlord groups use the data generated in JIS. Mr. Talmadge reviewed some of the history behind the Juvenile Justice Act of 1979(Act), and the implementation issues of the Act. Questions about juvenile records and their confidentiality has been a legislative issue for quite some time. If the Legislature wants to restrict access to records from AOC, it is a matter for the Legislature, not the DDC. Juvenile records are public records, and should remain so until decreed otherwise. The proposed amendment has implications not only to GR 31, but also implications under Article 1 Section 10. The RHA asks the JISC not to adopt the policy, as it has a substantive effect, and to allow the Legislature to enact any changes of this nature. Judge Steven Rosen

asked if dockets were listed on the public website for juvenile courts, or only case numbers. The response was some information is available, depending on case types and archiving. In follow-up, Judge Rosen asked Mr. Talmadge about his opposition, considering the RHA utilizes JIS Link to access records, and that will not be affected by the proposed policy change. Mr. Talmadge noted they rely on bulk dissemination of records, and that service provides them background information that includes these records amongst other information on potential tenants. Judge Rosen noted this forces those desiring the information to have current and correct information directly from JIS as opposed to sites that may not update frequently, which is a step in the right direction.

Mr. John Woodring, representing the RHA, noted they provide a tenant screening service that depends on information provided from credit bureaus that disseminate information in a large expeditious manner. Mr. Woodring expressed attempts to control the ability to gather information and provide it to their members would be problematic for the RHA. The RHA has a responsibility under the Residential Landlord Tenant Act, and under common law court cases to protect the health, safety, and welfare of their tenants and members.

Mr. Cliff Webster, representing Consumer Data Industry Association, expressed objections to the proposed amendment. If companies are obtaining information in violation of bulk-se contracts, the appropriate remedy should be to enforce the provisions of the contract. Restricting the manner of access to the information proposed is inappropriate and may be unconstitutional due to discrimination against users who get information. The Consumer Data Industry Association believes the Legislature is the proper venue to determine restrictions to records access.

Mr. Roland Thompson of the Allied Daily Newspapers of Washington spoke to opposed the proposed amendment. Mr. Thompson felt the amendment disenfranchises the public, be it realtors, employers, or families. Only those with the financial resources to hire someone to research the needed information will have access to the justice system. In the past, when bulk distribution was instituted, the system was slowed due to crawlers, and if the proposed changes are implemented, the system could crash as a result of similar data searches. There will be more subscribers, but the system will suffer. The policy does not delineate between what is a records request and what is a bulk distribution. There has been no discussion of the rules for requests. The stream of information will be diverted from the public sites to the offices of the court clerks. Those who currently desire the information will still be looking to acquire the records, and will be attempting to get it in some fashion. The contracts in place for bulk distribution affords some sort of legal means to control the companies seeking the records, but there will be zero control if they come to the courts with records requests. A letter was sent to the DDC seeking clarification on how clients can access the records, along with a legal analysis. Judge Wynne noted a request was made of the AOC as to whether the proposal would clog up the JIS Link system and was told this would not be an issue, and there was sufficient capacity to handle the changes.

Ms. Stephanie Happold, the AOC's Data Dissemination Administrator, noted increased JIS Link and JIS-SCOMIS data will not be a challenge from a performance standpoint. Coding for the index would have to be modified, which would probably take less than 100 hours to complete, and coding for the public website would need modifications with a similar time requirement.

Mr. Rich Johnson asked for clarification on the costs related to the proposed amendment. Ms. Miner responded the time estimates provided in the 8,000 to 12,000 hour range related to fiscal notes prepared for legislative proposals over the last several years that had a broader scope than the proposal before the committee that would require less time to implement. Mr. Johnson

followed up inquiring if a cost analysis had been conducted for the proposal from the DDC. Judge Wynne responded it would amount to between 200 and 300 hours.

Judge J. Robert Leach asked about if this would establish a two-tier system for bulk information, those who can afford it will get it and those who cannot afford a bulk transfer through a private crawler will not have access. Mr. Radwan noted the bulk transfer data goes to a reseller company that has a JIS Link contract. Judge Leach clarified, asking if this will prevent a purveyor of bulk information from getting the information by adopting this process, or does this just make it more expensive so that only some people have access to that bulk information. Mr. Thompson felt this was a fair assessment of his stance, and added that if there is incomplete or inaccurate information in the system, and other sources are available to complete the information, then there will be people stuck with incomplete information due to lack of resources and finances. Judge Leach asked if the proposed amendment may result in an increase in the dissemination of incomplete information, to which Mr. Thompson expressed doubt as to the final outcome. Under the current system, there are controls on what bulk information is available for dissemination, but if this stops, there may not be the same levels of control of information gathering. Judge Rosen was unsure if he could answer the concerns completely. He noted access would still be available through commercial companies for clientele needing specific information, and these companies would likely utilize JIS Link in addition to other information gathering systems to acquire a profile. Judge Rosen also noted juvenile records are the most likely to change over time. Ms. Miner sought to clarify that online records accuracy and completeness could be overstated in the current discussion. The value of the index is that it lists each case and the offenders who have a case, and while some do not have a document listing, it is not incomplete. With or without crawlers, it will cost you more to come in to a courthouse, both in terms of time and money.

Ms. Vanessa Hernandez of the American Civil Liberties Union (ACLU) of Washington expressed concern with relying on the index as a record for case activity, as it is not updated as frequently and includes cases that were dropped, associated with a different individual, or proceed to trial.

Mr. William Holmes noted his experience working with the juvenile justice system, and his view that the record use has less to do with the existence of the record, rather the interpretation and misapplication of the information that other people have. The ability to control this aspect of the records, and this allows for making those records more comprehensive and individual, which is a positive thing. Mr. Holmes expressed his support for moving forward in restricting juvenile records.

Judge Wynne referenced the materials submitted made reference to GR-15, which will not be affected in any way by the proposed amendment before the committee.

Mr. Brian Rowe, with Access to Justice, noted there is a challenge for end users to access information and get a complete file of information that is used by third parties. It is not like going to the court system where you can get access to all of the information about your own record and easily get it updated. There is a strong concern for keeping accurate files and providing individuals direct access to those files so they can be updated.

Motion: Judge Wynne

I move to adopt the Data Dissemination Committee's proposed amendment to the Data Dissemination Policy limiting dissemination of juvenile offender court records.

Second: Ms. Marti Maxwell

Voting in Favor: Mr. Larry Barker, Chief Robert Berg, Judge Jeanette Dalton (phone), Ms. Callie Dietz, Judge James Heller, Mr. William Holmes, Judge J. Robert Leach, Ms. Marti Maxwell, Judge Steven Rosen, Judge Thomas J. Wynne
Opposed: Mr. Stew Menefee and Ms. Barb Miner
Abstain: Justice Fairhurst, Mr. Rich Johnson, Ms. Aimee Vance, and Ms. Yolande Williams
Absent: Joan Kleinberg

JIS Priority Project #3 (ITG 45) Appellate Court ECMS

Mr. Martin Kravik presented a status update on the AC-ECMS project. He reported that contract negotiations with ImageSoft Inc. had been ongoing from May through August 2013. On August 20, 2013, the Project Executive Steering Committee met and approved a review draft of the contract and the recommendation that was carried forward to the JISC. During discussion, Yolande Williams asked if the JISC-approved budget amount is enough to cover implementation. Mr. Kravik replied that with sales tax on contracted services and anticipated training costs the amount was just enough. Significant next steps include contract execution, project kickoff, development of the project implementation schedule, and the initiation of analysis and design by the vendor.

Motion: Stew Menefee

I move to adopt the Appellate Court ECMS Project Executive Steering Committee recommendation to execute a contract with ImageSoft Inc. to acquire and implement an Appellate Court Enterprise Content Management System.

Second: Chief Robert Berg
Voting in Favor: Mr. Larry Barker, Chief Robert Berg, Judge Jeanette Dalton (phone), Ms. Callie Dietz, Judge James Heller, Mr. William Holmes, Judge J. Robert Leach, Ms. Marti Maxwell, Judge Steven Rosen, Judge Thomas J. Wynne, Mr. Stew Menefee, Ms. Barb Miner, Justice Fairhurst, Mr. Rich Johnson, Ms. Aimee Vance, and Ms. Yolande Williams
Opposed: None
Absent: Joan Kleinberg

ITG #2 - SC-CMS Update

Ms. Maribeth Sapinoso provided an update to the committee on the SC-CMS project. She began by welcoming and recognizing Mr. Mike Walsh PMP, as the new Deputy Project Manager. Ms. Sapinoso shared the contract was signed on July 25, 2013.

Work began with a joint meeting with Tyler Technologies' Technical staff and AOC Technical Teams from SC-CMS, INH, and COTS Prep. AOC provided an overview of our architecture, infrastructure and our recommendation for the integration. Tyler Technologies presented an overview of their infrastructure, methodologies and approach.

The Project Steering Committee has finalized the revised charter that was originally created for the RFP Development and Acquisition Phase. The new charter will take the project from the Planning and Implementation stages to project completion. Ms. Vonnie Diseth will present the revised charter, which by legislative proviso requires JISC approval.

The SC-CMS project team has been working with Tyler to coordinate activities for the upcoming Project Kick-Off meetings.

Ms. Sapinoso recognized the Court User Workgroup (CUWG) for the work in preparing for project implementation. The CUWG has been working diligently on Business Process Flows. There are approximately 120 current flows of which 50 have been validated and approved by the CUWG. They are currently reviewing 30. Tyler has reported they have enough information from the completed flows thus far to conduct the Business Fit Analysis.

One of the major activities completed was requesting Counties' interest to participate as Pilot candidates. We received a total of 10 responses, a very exciting 25% of total counties in the state. Each candidate was asked to complete a Readiness Checklist that will be scored and ranked. This information will be provided to the Steering Committee to aid in the selection of the Pilot Sites. The Steering Committee will meet Tuesday, September 10 to complete the selection. The Readiness Checklist focused on three main categories; resource availability for communications and training, for data and reporting and from the technical side. Each candidate was contacted to ask about their IT governance process, how quickly decisions can be made, and process and ability to handle policy changes. This information will also be provided to the steering committee to help finalize a decision on who the pilot site(s) will be.

Ms. Sapinoso shared the High Level Implementation Schedule that is now in line with Tyler's phased project plan.

Ms. Sapinoso answered the question to what does it mean to be a pilot court vs an early adopter:

> *Pilot Courts* – are sites that will establish the state wide configuration for the "Pilot Release".
> *Early Adopters* – are sites that will test the roll out of the implementation. This will fine tune the implementation process through the early adopters

Ms. Vonnie Diseth presented the committee with Project Steering Committee's recommended revised charter. She pointed out the highlights of difference from the original charter for the RFP. This charter is focused on the remainder of the whole implementation through the five years of the project. The members remain the same, with the exception of Kevin Stock coming back on committee. On the previous charter Ms. Callie Dietz and Ms. Diseth were limited voting members that has changed for them to have full voting rights.

Motion: Mr. Rich Johnson

I move that the JISC approve the revised SC-CMS Project Steering Committee Charter, v1.0, dated August 20, 2013.

Second: Judge Thomas J. Wynne
Voting in Favor: Mr. Larry Barker, Chief Robert Berg, Judge Jeanette Dalton (phone), Ms. Callie Dietz, Judge James Heller, Mr. William Holmes, Judge J. Robert Leach, Ms. Marti Maxwell, Judge Steven Rosen, Judge Thomas J. Wynne, Mr. Stew Menefee, Ms. Barb Miner, Justice Fairhurst, Mr. Rich Johnson, Ms. Aimee Vance, and Ms. Yolande Williams
Opposed: None
Abstain: Ms. Marti Maxwell
Absent: Joan Kleinberg

Mr. Frank Maiocco addressed the issue for establishing criteria for local court implementation costs. After the previous JISC meeting, the SC-CMS Steering Committee spent time discussing the issue and shared the concerns of the JISC about not agreeing to a "blank check". On the other side of the issue, it is difficult to get a thorough understanding of the true costs of local court implementation. A single-page draft was included in the meeting materials that details criteria for consideration and approval. These criteria were established over a year and half ago for the feasibility study. The JISC had previously conceptually approved the notion of providing funding for local court implementation costs, and there was a very rough estimate on the costs. The draft document provides an update on those costs, and includes items that may once have been deemed out-of-scope that are now relevant, and financials would be one of the significant items here. The Steering Committee feels clerks will now be spending more time involved in the planning and implementation of the financial portion of the new system. There may be some local decisions regarding document management and the desire to maintain legacy systems or adopt Tyler Technologies' solution. The difficulty in trying to come up with a thorough cost analysis has included trying to address all the potential decisions courts may wrestle with, and the needs for some courts to bring in a project manager to assist in implementation. Justice Fairhurst noted this item was included as a discussion point to provide feedback for the Steering Committee, and no final decision is intended at this meeting.

Mr. Radwan wished to clarify the point that the draft presents costs/functional categories, not criteria by which the categories and costs would flow through. A lot of work remains on the percentage of funding provided by the JISC or through other funding. The current budget allocation for local court implementation costs are $1.9 million and that is over a 6-year period, which will likely be an inadequate fund as time progresses. Mr. Radwan warned the JISC that they need to be careful as to what is agreed to regarding the criteria of the costs or functional categories. Is it 100% funding for everything or some sort of different filter the costs would have to proceed through? This is a caution from a dollars standpoint (JIS Fund Balance), not necessarily a policy standpoint.

Ms. Miner noted the language is specific to divide areas into specific categories, and that expenses would probably be in paying a pro tem to do court work while a judge, administrator, or clerk is completing work on the implementation of the new system.

Justice Fairhurst asked if the JISC should be anticipating the need for a supplemental budget request to assist with the local court implementation costs, and that those present should be thinking on this issue and the manner in which to present such a request to the Legislature. Mr. Radwan noted work is always being done to ensure positive relations with the Legislature, and if the costs allocated in the current budget are to low when the implementation begins, a supplemental request will be made after being brought back to the JISC.

Ms. Miner sought clarification about whether the criteria was relevant to the motion that was passed at the previous JISC meeting on July 19? Mr. Radwan felt that this would not represent 100% of the items on a list for costs, and would be leery of approving these categories in the event something missed needs to be added. There should be a list of possible costs that could be covered by the JIS, and then the criteria that need to be applied would be rated accordingly. Ms. Miner stated this was not clear to the Steering Committee, and represented a significant change from previous assumptions. Mr. Radwan felt the criteria would be used to get to a certain percentage dollar amount, and Ms. Miner felt the criteria would be categories, and the disconnect could be due to the description given compared to the work the Steering Committee has been performing.

Judge Leach asked if the thought was, if an expense meets certain criteria, then the JISC has approved 100% funding up to a cap. Ms. Miner responded that this is part of what needs to be determined and made clear. The question remains on what percentage of funding will be approved, and what dollar amount constitutes the cap, neither of which have been voted on by the JISC. Ms. Miner noted the Steering Committee might be working under different assumptions, and the category discussion would cover what was voted on during the July 19 meeting, with the JISC covering local expenses if they fall under certain criteria.

Mr. Johnson agreed with Mr. Radwan's refinement of criteria versus categories, and noted categories may not be the same as criteria. The difficulty in developing the proposed categories is to be respected, but the level of detail is lacking and some may be budget busters if interpreted in a broad sense. While the local courts could view the lack of funding as a potential deal breaker, and that is what prompted the vote previously to provide said funding, the potential costs could be a deal breaker the in the other direction.

Judge Wynne noted this would be brought back to the JISC at some point in the future, and would like a more in-depth discussion to occur before that point which should include Mr. Radwan's views.

Ms. Yolande Williams asked about documents regarding the clarification of local court implementation costs, and Mr. Maiocco responded that not all the documentation was recorded, but a summary could be generated that reflects the development of the proposed costs. Ms. Miner noted there are several categories included that could change from large values to nothing, depending on what Tyler Technologies brings to the table, and why estimates are not set in stone.

Ms. Diseth noted that the decision before the JISC is for the entire project and is based on information that is not yet available. We should focus first on what it is going to take to get the two pilot courts implemented and King County. Whether this requires some sort of cap or not is undetermined. However, it will provide needed information about how the configuration and implementation will play out and what activities and work is needed at the local level. Once that has been done, then, broad-based decisions can be answered for the statewide roll-out to all the counties.

Mr. Johnson presented an example of criteria that may qualify for local court implementation costs, and an example that may not, depending on the existing systems of the courts and the desire to keep or discard previous systems. If the functionality of a desired side-system is inherent in the new Odyssey system, the costs to keep the side-system and integrate with Odyssey should not be covered by the local court implementation costs and the JISC. Ms. Miner felt this would be extremely problematic, as many offices already have significant document management systems and the offices would likely not want the system included in Odyssey. The policy decisions associated with document management for each court would be significant, and having to pay their own costs would be a major point of contention.

Justice Fairhurst expressed concern that having most courts keeping their individual systems would be counterproductive to bringing in the new statewide system in the first place. There is a core case management system that needs to be the focus.

Ms. Diseth asked about having Tyler Technologies provide a presentation at the next JISC meeting as part of their kick-off. This would allow better information access and the chance to

ask questions. Justice Fairhurst was interested, as were others, and a vote was conducted to determine the level of interest. It was agreed to ask Tyler Technologies to do a "Kick-off" presentation for the JISC in October.

Ms. Marti Maxwell described her experience with side-systems. Some definition of what would qualify as a side-system may be needed prior to a decision being made. Ms. Miner noted there are a lot of side-systems, especially in King County, and Tyler Technologies does not necessarily have an equivalent system built that would be comparable. Justice Fairhurst noted that King County needs to be set aside in their own scope, as the number of systems and their needs is different than the needs of many smaller counties. The focus should be on the pilot courts.

Justice Fairhurst requested the Steering Committee work on refinements of the criteria/categories, coming back next month to clarify the anticipated needs for the local courts.

ITG #121 Superior Court Data Exchange Update

Mr. Mike Walsh presented the update on the Superior Court Data Exchange (SCDX) Project. Mr. Walsh informed the JISC that Pierce County is continuing their efforts to implement the six data exchanges they have committed to completing. AOC deployed a small modification to SCOMIS which corrected a dual docket entry issue that had arisen. Mr. Walsh also reported that Pierce County was working to correct two issues they had encountered during their testing. If Pierce County is able to resolve the issues quickly, Mr. Walsh reported that the exchanges may start being used by Pierce County during the month of September. Mr. Walsh also reported that King County had begun some efforts to utilize three services, but no target date has been set by King County to complete development and testing.

ITG #41 Remove CLJ Archiving and Purge Certain Records

Ms. Kate Kruller, ITG 41 Project Manager, updated the JISC on project activity. A great deal of progress occurred since the last report, along with some schedule adjustments as well.

Key Milestone Achieved - In early June, ITG 41 Project completed the bulk restoration of Courts of Limited Jurisdiction (CLJ) court cases from archive tapes to the active tables. This was a vital aspect of the first stage of the ITG 41 Project. This achievement means that local courts now have access to all cases without making an archive retrieval request.

Every effort was made to minimize impacts to the production system during regular business hours. This included processing cases between 5 p.m. and 8 a.m. – along with working on weekends. The Project Team restored seven (7) million active cases from 1,080 archive tape volumes in just **100** days.

Current Project Status - The ITG 41 Project is now in the Development phase. There are <u>two iterations of development</u>: (1) Re code JIS to apply current destruction rules, plus eTicket and VRV compliance rules (the Project Team calls these 'Current and Preliminary Rules") and (2) Apply any new record retention and destruction rules per the outcome of JISC policy determinations (the Project Team calls these "New Rules").

Iteration 1 Development is still underway. Progress to date is that the code has been submitted for Code Review. Then there will be an intensive Unit Testing and Quality Assurance Testing.

Project Team planning sessions are underway to size up how this Iteration 1 code set will be applied in Production environment – placed out into the daily business activity area of the local courts. January, 2014 is targeted for this step. This means the ITG 41 Project is taking more time than originally scheduled to complete this work. Primarily, some resource availability issues and a real interest in providing an optimal code set when we deploy, are driving the schedule downstream somewhat.

Iteration 2 Development will begin when the policy is set on new record retention and destruction rules per the outcome of JISC determinations. The ITG 41 Project continues to assist, by providing project information as needed, to aid the JISC, JISC Work Group or DDC in any policy draft update determinations or efforts to refine the proposed changes.

INH Data Exchange Initiative

Mr. Dan Belles, Project Manager, provided a status update on the Information Networking Hub (INH) Project. Mr. Belles began by stating the INH project continued to make good progress building and testing INH services in the last month. Mr. Belles stated that the project was finishing work on the final set of data exchanges for Release 1 that would support the SC CMS pilot court. Mr. Belles stated that the project team had also been working on a presentation to Tyler to explain the INH strategy and get their feedback. Mr. Belles said the presentation went well, and that Tyler understood the reasoning for the current INH strategy and did not have any major concerns. Mr. Belles said that Tyler did have some questions and ideas about how the strategy could be implemented, but those questions would be resolved during the "integration fit analysis" starting late in October and November. Mr. Belles stated that work on the Enterprise Data Repository (EDR) had slowed quite bit as the team was involved in preparing for the presentation to Tyler, but that work was expected to resume in September.

Mr. Belles then provided an overview of the project schedule including the individual timelines for the INH Middleware and EDR subprojects and the data quality automation effort. Mr. Belles stated that a new timeline was added to show the integration work with Tyler that was starting in September of 2013 and running through November 2014.

Mr. Belles then reviewed current project risks, issues and mitigation strategies. Mr. Belles stated that there were no new risks other than those expected with the integration with Odyssey. Mr. Belles stated that integration risks included the unknown interactions with the systems using the data exchanges, not having processes in place to make technical decisions quickly and not having the right resources to make the changes needed in a timely manner. Mr. Belles concluded his presentation by covering the next steps in the project, which he said would focus on completing work on the middleware services and the EDR.

Committee Reports

Data Dissemination Committee:

Judge Thomas Wynne reported the Data Dissemination Committee is working on GR 15, and an update on this work will take a significant amount of time at the next JISC meeting.

Data Management Steering Committee:

Mr. Rich Johnson stated work is being done with AOC staff to look at the existing charter and determine what if any changes in the charter need to be made as things move forward.

Adjournment

The meeting was adjourned by Justice Fairhurst at 12:10 p.m.

Next Meeting

The next meeting will be October 25, 2013, at the AOC SeaTac Facility; from 9:00 a.m. to 3:00 p.m.

Action Items

	Action Item – From October 7th 2011 Meeting	Owner	Status
1	Confer with the BJA on JISC bylaw amendment regarding JISC communication with the legislature.	Justice Fairhurst	

BUDGET

DOCUMENTS

WILL BE

UPDATED ON

FRIDAY ~ 10/18

Judicial Information System Committee Meeting October 25, 2013

DECISION POINT – Proposed Amendments to GR 15

MOTION:

I move to approve the Data Dissemination Committee's proposed GR 15 draft and to recommend adoption of the proposed GR 15 amendments by the Washington State Supreme Court on an expedited basis.

I. BACKGROUND

The Data Dissemination Committee (DDC) was established by Article 7 of the JISC Bylaws. The DDC acts on behalf of the JISC to address issues regarding JIS access and dissemination of JIS data. The DDC also recommends to the JISC changes to the JIS policy and to statutes or court rules governing access to court records.

The DDC drafted amendments to GR 15 because the rule currently does not give trial courts the necessary guidance in considering a Motion to Seal or Redact court courts, and must be considered together with the case law to meet Washington Constitution, Article I. Section 10 standards. A thorough explanation of the legal basis for the proposed amendments to GR 15 is in the October 8 Memorandum from Judge Thomas J. Wynne, DDC Chair, contained in these materials.

II. DISCUSSION

The intial draft was prepared by Judges Leach and Wynne. Notice was provided and a public hearing was held by the Data Dissemination Committee in April 12, 2013 in Everett. A transcript of oral comments and interchange with the DD Committee was prepared.

Throughout the process, DDC has considered public comments as drafting of the GR 15 amendments continued with full participation from all DDC members. The public comments received by the DDC are also contained in these materials.

III. DATA DISSEMINATION COMMITTEE RECOMMENDATION

The Data Dissemination Committee requests that the Judicial Information System Committee recommend adoption of the proposed GR 15 amendments by the Washington State Supreme Court, on an expedited basis.

GENERAL RULE 15 As Of **10082013**

Draft Amendment

DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) "Destroy". ~~To destroy~~ means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) "Dismissal" means dismissal of an adult criminal charge or juvenile offense by a court for any reason, other than a dismissal pursuant to RCW 9.95.240, ~~or~~ RCW 10.05.120, RCW 3.50.320, or RCW 3.66.067.

(5) ~~(4)~~ ~~Seal. To s~~"Seal" means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(6) ~~(5)~~ ~~Redact. To r~~"Redact" means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(7) ~~(6)~~ "Restricted Personal Identifiers" are defined in GR 22(b)(6).

(8) ~~(7)~~ "Strike" applies to ~~. A~~a motion or order to strike and ~~is~~ not a motion or order to seal or destroy.

(9) ~~Vacate. To v~~"Vacate" means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal

case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).

(2) ~~After~~ At the hearing, the court ~~may order the court files an and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety~~ concerns ~~that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:~~ shall consider and apply the applicable factors and enter specific written findings on the record to justify any sealing or redaction.

(A) For any court record that has become part of the court's decision-making process, the court must consider and apply the following factors:

(i) Has the proponent of sealing or redaction established a compelling interest that gives rise to sealing or redaction, and if it is based upon an interest or right other than an accused's right to a fair trial, a serious and imminent threat to that interest or right; and

(ii) Has anyone present at the hearing objected to the relief requested; and

(iii) What is the least restrictive means available for curtailing open public access to the record; and

(iv) Whether the competing privacy interest of the proponent seeking sealing or redaction outweighs the public's interest in the open administration of justice; and

(v) Will the sealing or redaction be no broader in its application or duration than necessary to serve its purpose.

COMMENT

GR 15(c)(2)(A) does not address whether the applicable factors identified in Section (c)(2)(A)(i)-(v) must be considered by the court before sealing Juvenile Offender records pursuant to RCW 13.50.050. This section does apply to Juvenile Offender records sealed under the authority of GR 15, only. The applicable factors the court shall consider in a Motion to Seal or Redact incorporates Seattle Times v. Ishikawa, 97 Wn.2d 30 (1982), State v. Sublett, 176 Wn.2d 58, at FN 8 (2012), and other current Washington caselaw.

(B) For any court record that was not a part of the court's decision-making process, the court must consider and apply the following:

(i) Has the proponent of the sealing or redaction established good cause; and

(ii) Has any nonparty with an interest in nondisclosure been provided notice and an opportunity to be heard.

COMMENT

Bennett et al v. Smith Bunday Berman Britton, PS, 176 Wn.2d. 303 (2013), held that documents obtained through discovery that are filed with a court in support of a motion that is never decided are not part of the administration of justice and therefore may be sealed under a good cause standard.

(3) Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records.

(4) Sufficient privacy or safety concerns that may be weighed on a case-by-case basis against the public interest in the open administration of justice include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A criminal conviction or an adjudication or deferred disposition for a juvenile offense has been vacated; or

(D) A criminal charge or juvenile offense has been dismissed, and:

(i) The charge has not been dismissed due to an acquittal by reason of insanity or incompetency to stand trial; or

(ii) A guilty finding does not exist on another count arising from the same incident or within the same cause of action; or

(iii) Restitution has not been ordered paid on the charge in another cause number as part of a plea agreement.

or

(E) A defendant or juvenile respondent has been acquitted, other than an acquittal by reason of insanity or due to incompetency to stand trial; or

(F) A pardon has been granted to a defendant or juvenile respondent; or

(G) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(H) The sealing or redaction is of a court record of a preliminary appearance, pursuant to CrR 3.2.1, CrRLJ 3.2.1, or JUCR 7.3 or a probable cause hearing, where charges were not filed; or

(I) The redaction includes only restricted personal identifiers contained in the court record; or

(J) Another identified compelling circumstance exists that requires the sealing or redaction.

COMMENT

Additional privacy or safety concerns that may be weighed against the public interest are included based upon the deliberations at the Joint Legislative Court Records Privacy Workgroup in 2012. In Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993), the court held that the presumptive right of public access to the courts ***is not absolute and may be outweighed by some competing interest as determined by the trial court on a case-by-case basis, according to the Ishikawa guidelines.***

(5) Every order sealing or redacting material in the court file, except for sealed juvenile offenses, shall specify a time period, after which, the order shall expire. The duration specified in an Order Sealing or Redacting shall be no longer than necessary to serve its purpose. The proponent of sealing or redaction has the burden of coming back before the court and justifying any continued sealing or redaction beyond the initial specified time period. Any request for public access to a sealed or redacted court record received by the custodian of the record after the expiration of the Order to Seal or Redact shall be granted as if the record were not sealed, without further notice. Thereafter, the record will remain unsealed. The Court, in its discretion, may order a court record sealed indefinitely if the court finds that the circumstances and reasons for the sealing will not change over time.

COMMENT

Requiring a time period, after which the order sealing or redacting expires, implements the Ishikawa factor that the order must be no broader in its duration than necessary to serve its purpose. The critical distinction between the adult criminal system and the juvenile offender system lies in the 1977 Juvenile Justice Act's policy of responding to the needs of juvenile offenders. Such a policy has been found to be ***rehabilitative*** *in nature, whereas the criminal system is punitive. State v. Rice, 98 Wn.2d 384 (1982); State v. Schaaf, 109 Wn.2d 1,4(1987); Monroe v. Soliz, 132 Wn.2d 414, 420 (1997); State v. Bennett, 92 Wn. App. 637 (1998). Legacy JIS systems do not have the functionality to automatically unseal or unredact a court record upon the expiration of an Order to Seal or Redact.*

(6) The name of a party to a case may not be redacted, or otherwise changed or hidden, from an index maintained by the Judicial Information System or by a court. The existence of a court file containing a redacted court record is available for viewing by the public on court indices, unless protected by statute.

COMMENT

Existence of a case can no longer be determined for the purpose of public access and viewing, if the case cannot be found by an index search. Redacting the name of a party in the index would prevent the public from moving for access to a redacted record under section (f). The policy set forth in this section is consistent with existing policy when the entire file is ordered sealed, as reflected in section (c) (9).

(7)~~(3)A~~ No court record shall ~~not~~ be sealed under this ~~section~~ rule when redaction will adequately ~~resolve~~ protect the ~~Issues before~~ interests of the ~~court pursuant to subsection (2) above~~ proponent.

(8) Motions to Seal/Redact when Submitted Contemporaneously with Document Proposed to be Sealed or Redacted – Not to be Filed.

(A) The document sought to be sealed or redacted shall not be filed prior to a court decision on the motion. The moving party shall provide the following documents directly to the court that is hearing the motion to seal or redact:

(i) The original unredacted document(s) the party seeks to file under seal shall be delivered in a sealed envelope for in-camera review.

(ii) A proposed redacted copy of the subject document(s), if applicable.

(iii) A proposed order granting the motion to seal or redact, with specific proposed written findings and conclusions that establish the basis for the sealing and redacting and are consistent with the five factors set forth in subsection (2)(a).

(B) If the court denies, in whole or in part, the motion to seal, the court will return the original unredacted document(s) and the proposed redacted document(s) to the submitting party and will file the order denying the motion. At this point, the proponent may choose to file or not to file the original unredacted document.

(C) If the court grants the motion to seal, the court shall file the sealed document(s) contemporaneously with a separate order and findings and conclusions granting the motion. If the court grants the motion by allowing redaction, the judge shall write the words "SEALED PER COURT ORDER DATED [insert date]" in the caption of the unredacted document before filing.

COMMENT

The rule incorporates the procedure established by State v. McEnroe, 174 Wn.2d 795 (2012).

(9)~~(4)~~Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. Except for sealed juvenile offenses, the existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, the charge has been dismissed, the defendant has been acquitted, the governor has granted a pardon, or the order is to seal a court record of a preliminary appearance or probable cause hearing; then section (d)shall apply. Except for sealed juvenile offenses, the order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(10)~~(5)~~Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records; and

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Except for sealed juvenile offenses, both shall be accessible to the public; and

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(11)~~(6)~~Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party and shall be a complete copy of the original

filed document, as redacted. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions, Dismissals and Acquittals, Pardons and Preliminary Appearance Records.

(1) In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "vacated."

(2) In cases where a defendant has been acquitted, a charge has been dismissed, a pardon has been granted, or the subject of a motion to seal or redact is a court record of a preliminary appearance, pursuant to CrR 3.2.1 or CrRLJ 3.2.1, or a probable cause hearing, where charges were not filed, and an order to seal entered, the information in the public indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "non conviction."

(e) Procedures for Sealed Juvenile Offender Adjudications, Deferred Dispositions, and Diversion Referral Cases. In cases where an adjudication for a juvenile offense, a juvenile diversion referral, or a juvenile deferred disposition has been sealed pursuant to the provisions of RCW 13.50.050 (11) and (12), the existence of the sealed juvenile offender case shall not be accessible to the public.

COMMENT

GR 15(e) does not address whether the applicable factors identified in Section (c)(2)(A)(i)-(v) must be considered by the court before sealing Juvenile Offender records pursuant to RCW 13.50.050.

RCW 13.50.050 (11) addresses sealing of juvenile offender court records in cases referred for diversion.

RCW 13.40.127 prescribes the eligibility requirements and procedure for entry of a deferred disposition in juvenile offender cases, and the process for subsequent dismissal and vacation of juvenile offender cases in which a deferred disposition was completed. Records sealing provisions for deferred dispositions are contained in RCW 13.50.050. RCW 13.40.127(10)(a)(ii) provides for administrative sealing of deferred disposition in certain circumstances. RCW 13.50.050(14)(a) states that:

> *"Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual."*

This remedial statutory provision is a clear expression of legislative intent that the existence of juvenile offender records that are ordered sealed by the court not be made available to the public. Records sealed pursuant to RCW 13.40.127 have the same legal status as records sealed under RCW 13.50.050. RCW 13.40.127(10)(c). The statutory language of 13.50.050(14)(a), included above, differs from statutory provisions governing vacation of adult criminal convictions, reflecting the difference in legislative intent found in RCW 9.94A.640, RCW 9.95.240, and RCW 9.96.060.

(f)~~(e)~~ Grounds and Procedure for Requesting the Unsealing of Sealed Court Records or the Unredaction of Redacted Court Records.

(1) Order Required. Sealed or redacted court records may be examined by the public only after the court records have been ordered unsealed or unredacted pursuant to this section ~~or~~, after entry of a court order allowing access to a sealed court record or redacted portion of a court record, or after an order to seal or redact the record has expired. Compelling circumstances for unsealing or unredaction exist when the proponent of the continued sealing or redaction fails to overcome the presumption of openness under the factors in section (c)(2). The court shall enter specific written findings on the record supporting its decision.

(2) Criminal Cases. A sealed or redacted portion of a court record in a criminal case shall be ordered unsealed or unredacted only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(C) If the time period specified in the Order to Seal or Redact has expired, the sealed or redacted court records shall be unsealed or unredacted without further order of the court in accordance with this rule.

(3) Civil Cases. A sealed or redacted portion of a court record in a civil case shall be ordered unsealed or unredacted only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing or redaction no longer exist, or pursuant to ~~RCW~~ chapter 4.24 RCW or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of

AMENDED VERSION 101813

(f) ~~(e)~~ Grounds and Procedure for Requesting the Unsealing of Sealed Court Records or the Unredaction of Redacted Court Records.

(1) Order Required.

(A) Sealed or redacted court records may be examined by the public only after the court records have been ordered unsealed or unredacted pursuant to this section ~~or~~, after entry of a court order allowing access to a sealed court record or redacted portion of a court record, or after an order to seal or redact the record has expired. Compelling circumstances for unsealing or unredaction exist when the proponent of the continued sealing or redaction fails to overcome the presumption of openness under the factors in section (c)(2). The court shall enter specific written findings on the record supporting its decision.

(B) If the time period specified in the Order to Seal or Redact has expired, the sealed or redacted court records shall be unsealed or unredacted without further order of the court in accordance with this rule.

(2) Criminal Cases. A sealed or redacted portion of a court record in a criminal case shall be ordered unsealed or unredacted only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(3) Civil Cases. A sealed or redacted portion of a court record in a civil case shall be ordered unsealed or unredacted only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing or redaction no longer exist, or pursuant to ~~RCW~~ chapter 4.24 RCW or CR 26(j). If the person seeking access cannot locate a party

to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

COMMENT

In State v. Richardson, 177 Wn.2d 351(2013), there was a motion in the trial court to unseal a 1993 criminal conviction, which had been sealed in 2002, under an earlier version of GR 15. The State Supreme Court remanded to the trial court for further proceedings, because there was no record of considering the Ishikawa factors. The Supreme Court held that "compelling circumstances" for unsealing exist under GR 15 (e) when the proponent of sealing fails to overcome the presumption of openness under the five factor Ishikawa analysis. In either case, the trial court must apply the factors.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16). Unredaction of the redacted portion of a juvenile court record shall be ordered only upon the same basis set forth in section (2), above.

this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

COMMENT

In State v. Richardson, 177 Wn.2d 351(2013), there was a motion in the trial court to unseal a 1993 criminal conviction, which had been sealed in 2002, under an earlier version of GR 15. The State Supreme Court remanded to the trial court for further proceedings, because there was no record of considering the Ishikawa factors. The Supreme Court held that "compelling circumstances" for unsealing exist under GR 15 (e) when the proponent of sealing fails to overcome the presumption of openness under the five-factor Ishikawa analysis. In either case, the trial court must apply the factors.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16). Unredaction of the redacted portion of a juvenile court record shall be ordered only upon the same basis set forth in section (2), above.

(g)~~(f)~~Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

(h)~~(g)~~Use of Sealed Records on Appeal. A court record, or any portion of it, sealed in the trial court, shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court, subject to further order of the appellate court.

(i)~~(h)~~ Destruction of Court Records.

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall:

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry; and

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) Destroying Records.

(A) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(B)~~(i)~~Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if ~~all parties so stipulate in writing and~~ the court so orders. Reasonable notice of a Motion to Return or Destroy Exhibits must be given to all parties in the case.

COMMENT

Section (i)(5)(B), as amended, is intended to implement RCW 36.23.070.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by statute.

Superior Court of the State of Washington for Snohomish County

THOMAS J. WYNNE
JUDGE

SNOHOMISH COUNTY COURTHOUSE
3000 ROCKEFELLER AVE., M/S #502
EVERETT, WASHINGTON 98201-4060

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October 8, 2013

MEMORANDUM TO: Judicial Information System Committee (JISC)

RE: Proposed amendments to GR 15

LEGAL BASIS

JISCR 11 provides that modifications, deletions, and additions from the established rules related to privacy and confidentiality of court records must be reviewed by JISC and approved by the Supreme Court. Article 7, Section 2. of the JISC bylaws provides the Data Dissemination Committee the power and responsibility to recommend to the JIS Committee changes to statutes and court rules regarding access to court records. GR 22, GR 30, GR 31, and GR amendments to GR 15 were all adopted by the Washington Supreme Court after a recommendation from JISC. The Supreme Court last amended GR 15 in 2006, upon the recommendations of JISC.

In considering a Motion to Seal or Redact court records, GR 15, alone, does not currently give trial courts the necessary guidance and must be considered together with the case law to meet Washington Constitution, Article I. Section 10 standards. Dreiling v. Jain, 151 Wash. 2d 900, at 912 (2004), State v. Waldon, 148 Wash. App. 952, 202 P.3d 352 (2009). Given the substantial body of case law which must now be considered by trial courts and litigants, in addition to the specific provisions of GR 15, this is an appropriate point in time to propose comprehensive amendments to GR15 to close the gap between the case law and the provisions of the court rule, and resolve other issues not specifically addressed by the current rule.

GOALS

The primary goals of the amendments proposed by the Data Dissemination Committee are:

1) Embedding current significant case law on sealing and redacting court records within the provisions of GR 15 (We did not include the Court of Appeals decision in Hundthofte v. Encarnacion, 169 Wash. App. 498 (2012) as it is pending review in the Supreme Court); and

2) Rendering provisions of GR 15 dealing with juvenile offender records consistent with practices which have in effect at AOC for at least the last 9-10 years, due to statutory language in Title 13.50 RCW; and

3) Providing a basis for sealing non-conviction adult and juvenile court records , subject to application of the Ishikawa factors, in the same manner currently existing for sealing vacated convictions; and

4) Clearly providing that the name of a party may not be redacted, consistent with the principal that, except for juvenile offender cases, the existence of a sealed or redacted case will always be available to the public; and

5) Effectuating the 5th Ishikawa factor by providing that Orders to Seal or Redact shall contain an expiration date, except for sealed Juvenile records

6) Improving and clarifying the language of GR 15, where indicated; and

7) The addition of comments to clarify the intent of certain sections and the case law establishing the basis of particular provisions.

The proposed amendments are agnostic as to whether the Ishikawa factors apply to juvenile offender records sealed under the provisions of RCW 13.50.050, as there is no caselaw to guide us. The proposed amendments should result in no change to the way juvenile records are sealed or the availability of sealed juvenile records for public inspection (none).

CASELAW

The following specific case law is embedded within the proposed GR 15 amendments:

Seattle Times v. Ishikawa, 97 Wn. 2d 30 (_1982), and the subsequent line of cases, including **State v. Sublett**, 176 Wash. 2d 58, at Fn 8 and **State v. Coleman**, 151 Wash. App 614, at Fn. 13. The five factors are set forth in Section (c) (2) (A).

Allied Daily Newspapers v. Eikenberry, 121 Wn. 2d 205 (1993) is included within Section (c) (4) containing the case by case basis language.

Bennett et al v. Smith Bunday Berman Britton, PS, 176 Wn. 2d 303 (2013) good cause standard provisions for discovery material are set out in Section (c) (2) (B).

State v. McEnroe, 174 Wn.2d 795 (2012) provisions for sealing/redacting when a document is submitted contemporaneously with the Motion to Seal are in Section (c) (8). This is the procedure already used in King County

State v. Richardson, 177 Wn.2d 351 (2013) factors to be considered in unsealing or unredaction are contained in Section (f).

PROCESS and RECOMMENDATION

The initial draft of proposed amendments to GR 15 was prepared by Judges Leach and Wynne. Notice was provided to stakeholders and a public hearing was held by the Data Dissemination Committee on April 12, 2013 in Everett. Written and oral comments were received and a transcript of oral comments and interchange with the DD Committee was prepared. The DD Committee has continued to consider public comments and to continue drafting of GR 15 amendments to date with full participation from all DD Committee members in that process. A current draft of proposed GR 15 amendments was again circulated to stakeholders for comment, in September. Numerous written comments were received and considered by the Data Dissemination Committee.

A request for GR 15 amendments from the Attorney General's Office Medicaid Fraud unit was not acted upon by the Data Dissemination Committee due to serious concerns whether the statutory authorization (Chapter 74.66 RCW) meets the standards of Article 1, Sec. 10 Wash. Const.

The Data Dissemination Committee requests that JISC recommend adoption of the proposed GR 15 amendments by the Washington State Supreme Court, on an expedited basis.

Thomas J. Wynne
Superior Court Judge
Chair
Data Dissemination Committee

JULY 2013
STAKEHOLDER COMMENTS
FOR GR 15 DRAFT

From:	Travis Stearns
To:	Happold, Stephanie
Cc:	Christie Hedman
Subject:	WDA Comments to New JIS Policy and Proposed Changes to GR 15
Date:	Tuesday, July 16, 2013 11:26:38 AM
Attachments:	WDA Comments to GR 15 Proposed Amendments.pdf

Stephanie, I understand that you are the right person to send our comments to. Please let me know if I am wrong.

I have attached a letter stating our position. We are in accord with the Juvenile Law Section of the WSBA, supporting the new policy statement and asking that GR 15 include language that "the sealing of juvenile offenses shall be governed by RCW 13.50.050."

Thank you for your attention on this matter.

t.

Travis Stearns
Deputy Director
Washington Defender Association
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Washington Defender Association
110 Prefontaine Place South, Suite 610
Seattle, Washington 98104

Christie Hedman, Executive Director
Michael Kawamura, President

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Fax: (206) 623-5420

July 15, 2013

RE: Proposed Amendments to GR 15 and Policy to Limit Bulk Distribution of JIS Juvenile Records

Dear Members of the JIS-Data Dissemination Committee:

Please accept these comments on behalf of the Washington Defender Association, which is in accord with the comments submitted by the WSBA Juvenile Law Section. WDA supports the new JIS Policy (VI.), which limits the bulk distribution of juvenile records. WDA asks that the changes to GR 15 not be adopted. Instead, WDA would agree with the WSBA Juvenile Law Section that a provision stating that "The sealing of juvenile offense records shall be governed by RCW 13.50.050" should instead be added to GR 15.

New JIS Policy (VI.) Limitation on Dissemination of Juvenile Offender Court Records

WDA supports the JIS's new proposed policy to limit the bulk distribution of juvenile records. While not a perfect solution, it provides a fix to the timeliness of the records that are distributed by private consumer reporting agencies and supports the removal of juvenile's names and offense information from public websites.

Proposed Changes to GR 15

WDA believes that there the legislature created a clear process for sealing juvenile court records and that the procedures for sealing under GR 15 should reflect this. Like the WSBA Juvenile Law Section, WDA proposes that GR 15 include a provision that states *"The sealing of juvenile offense records shall be governed by RCW 13.50.050*."

WDA agrees that the proposed amendments to GR 15 make the process for sealing juvenile records almost identical to the process for sealing adult records and would ask that these amendments not be considered. In addition to the clear process already established by the legislature under RCW 13.50.050, WDA would ask you to consider the fact that the courts and our legislature have recognized that youth are different and that rules need to be crafted with those differences in mind.

WDA believes that the proposed amendments go beyond those found in RCW 13.50.050 or any court decision. They create an additional and unnecessary barrier for youth who have been rehabilitated and are seeking to move past their criminal history. Instead of recognizing as

the U.S. Supreme Court has done in every major juvenile decision since 2005 that there are fundamental differences between youth and adults, these amendments would treat youth seeking to seal their records in much the same way that adults are now treated.

WDA would ask you to support the new JIS Policy but to reject the proposed changes to GR 15. Instead, we would ask you to adopt the language proposed by the WBSA Juvenile Law Section and include the provision that "The sealing of juvenile records shall be governed by RCW 13.50.050."

Sincerely,

Travis Stearns, Deputy Director

SARAH DUNNE
LEGAL DIRECTOR

LA ROND BAKER
NANCY TALNER
STAFF ATTORNEYS

MARGARET CHEN
FLOYD AND DELORES JONES FAMILY FELLOW

VANESSA TORRES HERNANDEZ
EQUAL JUSTICE WORKS FELLOW

July 17, 2013

Data Dissemination Committee
c/o The Honorable Thomas J. Wynne
Snohomish County Superior Court
3000 Rockefeller Ave
M/S 502
Everett, WA 98201

Re: Comments to Proposed General Rule 15 and Data Dissemination Policy

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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Members of the Data Dissemination Committee,

The ACLU of Washington (ACLU) thanks the committee for the opportunity to comment upon the proposed changes to General Rule 15, governing access to and sealing of court records. The ACLU is a nonprofit nonpartisan group of over 20,000 members dedicated to advancing civil rights and civil liberties. The ACLU is strongly committed to the open administration of justice and the public's ability to oversee the courts. It is also seeks to protect individual privacy, particularly in the digital age. In light of these values, we offer the following comments.

I. GR 15 should be amended to protect individual privacy in non-conviction records.

As stated in our letter dated April 11, 2013, the ACLU supports proposed GR 15(c)(4)(D) and GR 15(d)(2), which would protect the privacy rights of individuals with non-conviction records. The rules would permit sealing of non-conviction records in individual cases based upon the *Ishikawa* factors, and would protect against the unjustified loss of employment, housing, or other opportunities based upon a non-conviction record. These rules strike the balance between protecting individual privacy and preserving the public's right to the open administration of justice and should be adopted.

II. GR 15 should permit redaction of names from the court indices

We respectfully suggest that the Committee reconsider GR 15(c)(6) which states that "the name of a party to a case may not be redacted, or otherwise changed or hidden, from an index maintained by the Judicial Information System or by a court." This language appears to preclude any change, for any reason, to the original party names. But there are many legitimate reasons for changing a party name. For example, one ACLU client had a case filed against her, when her niece was the actual perpetrator. Once the deception was discovered, the case name was changed to reflect the actual

defendant. The words "otherwise changed" would prevent such necessary changes and should be deleted.

Further, redacting a name after full consideration of the *Ishikawa* factors may be necessary to protect individual interests and consistent with the public's right to the open administration of justice. Indeed, redaction of a minor party's name to protect individual privacy is a common practice in both the appellate and federal courts. *See* RAP 3.4; Fed. R. Civ. Pro. 5.2(a)(3). Cases may still be located by case number, by initials, or by the name of the other party. A case with a redacted party name is no more hidden than a case filed under the name "John Doe".

We continue to believe that the Committee should wait for the Supreme Court's guidance in *Hundtofte v. Encarnacion*, No. 88036-1. As the committee knows, the Supreme Court heard oral argument in *Encarnacion* on June 13th. One of the primary issues before the court is whether redaction of a party name actually amounts to destruction or hiding of a court record, and whether such redaction is permitted by the constitution. We recommend that the committee delete GR 15(c)(6) and revisit the issue after *Encarnacion* is decided.

III. .Juvenile records should be removed from the statewide index and juvenile sealing should be permitted according to statute.

The ACLU also supports the proposed change to the data dissemination policy that would exclude juvenile records from bulk distributions and the Washington Courts website. These changes will ensure that publicly-available juvenile records are complete, up-to-date and accurate. It will prevent people from misusing the Washington Courts website to conduct background checks including juvenile records, even though the website is not a complete record of the case. The change could deter background check companies from relying on outdated bulk distribution records and reporting juvenile cases that have been sealed. Because the records will be fully available in JIS-Link and at the courthouse, the public's right of access will be protected.

We echo the Washington State Bar Association Juvenile Law Section's comments about the extension of *Ishikawa* to juvenile records. No appellate court has held that the juvenile sealing statute must be read in conjunction with *Ishikawa* before sealing juvenile records. We encourage the committee to remove all references to juvenile records in the proposed GR 15, and clarify that juvenile sealing motions must be brought in accordance with RCW 13.50.050.[1]

<u>Conclusion</u>

[1] Alternatively, the Committee should wait for the Court of Appeal's guidance in *State v. S.J.C.* No. 691564, which squarely presents the question of whether motions to seal juvenile records must satisfy both the statutory requirements and the *Ishikawa* analysis.

We thank the Committee for the opportunity to comment. Please do not hesitate to contact me if you have any questions.

Sincerely,

Vanessa Torres Hernandez
vhernandez@aclu-wa.org.
ACLU-WA Second Chances Project

TeamChild Advocacy for Youth

July 16, 2013

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

RE: Comments on the Proposed Amendments to GR 15 and Policy to Limit Bulk Distribution of JIS juvenile records

Dear Members of the JIS-Data Dissemination Committee:

The WSBA Juvenile Law Section includes attorneys throughout Washington State who specialize in juvenile law, including juvenile defense attorneys, juvenile prosecutors, dependency attorneys, assistant attorneys general, civil legal aid attorneys and private practitioners. In addition, the section includes judges and non-attorney professionals who are concerned about how children and youth interact with the legal system. On behalf of the section, the Executive Committee submits the following comments regarding the new policy on dissemination of juvenile offender court records and proposed changes to GR 15.

New JIS Policy (VI.) Limitation on Dissemination of Juvenile Offender Court Records

The section supports the JIS's new proposed policy to limit the bulk distribution of juvenile records. This is a good step toward protecting juvenile records that have already been sealed from continued dissemination. While it is not a perfect solution to the problem of juvenile records being available without restriction forever, regardless of sealing, it seems to provide some fix to the timeliness of the records that are distributed by private consumer reporting agencies. In addition, the section supports the removal of juvenile's names and offense information from the public website.

Proposed Changes to GR 15

The section's primary concern is that **the proposed amendments to GR 15 make the process for sealing juvenile records almost identical to the process for sealing adult records** despite a clear process already established by the legislature under RCW 13.50.050.

Juveniles are different from adults. Since 2005, the U.S. Supreme Court has held on 4 different occasions that juveniles are constitutionally different than adults. *See Roper v. Simmons,* 543 U.S. 551 (2005);

Graham v. Florida, 560 U.S. __ (2010); *J.D.B. v. North Carolina,* 564 U.S. __ (2011); *Miller v. Alabama,* 567 U.S. __ (2012). Justice Kagan summarized the differences in the *Miller* case:

> Our decisions rested not only on common sense—on what "any parent knows"—but on science and social science as well. *Id.,* at 569, 125 S.Ct. 1183. In *Roper,* we cited studies showing that " '[o]nly a relatively small proportion of adolescents' " who engage in illegal activity " 'develop entrenched patterns of problem behavior.' " *Id.,* at 570, 125 S.Ct. 1183 (quoting Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003)). And in *Graham*, we noted that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds"—for example, in "parts of the brain involved in behavior control." 560 U.S., at ——, 130 S.Ct., at 2026.[5] We reasoned that those findings— of transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's "moral culpability" and enhanced the prospect that, as the years go by and neurological development occurs, his " 'deficiencies will be reformed.' " *Id.,* at ——, 130 S.Ct., at 2027 (quoting *Roper,* 543 U.S., at 570, 125 S.Ct. 1183).

The Washington State legislature has also acknowledged the differences between juveniles and adults, specifically in the area of the maintenance and availability of juvenile records. The legislature has specified how juvenile records should be maintained in order to effectuate the intent of Washington's juvenile justice, child welfare and status offender systems, which are responsible for protecting children, treating youth who offend and holding youth accountable. Juvenile dependency court records are confidential and not available to the public. RCW 13.50.100. Since 1977, however, juvenile offender court records are public unless and until they are sealed by court order pursuant to RCW 13.50.050. This statute allows individuals who have satisfied their restitution obligations and have remained offense free for a certain period of time (5 years for Class A felonies and 2 years for Class B and C felonies and misdemeanors) to request the court to seal their juvenile records.[1] Once sealed,

> the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

RCW 13.50.050(14). In other words, juveniles who get into trouble and are brought before the juvenile court have the opportunity, by demonstrating that they have paid their financial obligations and stayed out of trouble, to have a clean slate. Given what we know about adolescent development it makes sense that youth should be allowed to move past their childhood mistakes and should be given the supports they need to obtain education, employment, and stability. By establishing a clear sealing process for

[1] Some of the most serious juvenile sex offenses cannot be sealed; others require that the additional requirement of obtaining relief from registration be obtained prior to eligibility for sealing.

juvenile records, the legislature has recognized that a criminal history record that continues forever runs counter to the rehabilitative goals of the juvenile justice system.

Unfortunately, many youth with juvenile records are still unable to take advantage of this process because they lack the resources to hire counsel to assist them in drafting and filing a legal motion, setting a hearing, serving parties and obtaining a signed court order. In addition, the internet age has brought with it challenges to the sealing process since court records that exist in the digital world are often difficult to erase. Hence, there have been continuing efforts in the legislature to reduce barriers for young people with juvenile records. *See, e.g.* HB 1651 *An Act Relating to Access to Juvenile Records.*[2]

The proposed amendments to GR 15 treat juvenile records similar to adult records and impose requirements on sealing juvenile records that go beyond those found in RCW 13.50.050 or any appellate decision. These requirements create confusion as well as additional barriers for youth who are given notice of their sealing rights at the time of disposition pursuant to RCW 13.50.050(20). The requirement goes in the opposite direction of where the legislature and courts have been heading in acknowledging the differences between adolescents and adults, particularly as to their culpability and capacity to change. It appears that the proponents of the changes to GR 15 assume that the requirements set forth in *Seattle Times v. Ishikawa, 97 Wn.2d 30 (1982)* are applicable to the sealing of juvenile court records pursuant to RCW 13.50.050. The *Ishikawa* case involved a newspaper's challenge to the trial court's sealing of the record of a pre-trial motion to dismiss in an adult murder case. No appellate court has found that an individual moving to seal her juvenile record after satisfying the requirements of RCW 13.50.050 must also satisfy the "*Ishikawa*" factors. The proposed Court Rule goes beyond and, in our view, contrary to the current law on sealing juvenile records.

The clarity of GR 15 is useful for adults moving to seal their criminal history – because there is no statute that sets forth the requirements for sealing adult criminal history and appellate courts have interpreted *Ishikawa* to apply to adult criminal history records. For juvenile offense history, however, the legislature has created a framework that balances the privacy rights of children against the public's interest in open administration of justice and the rehabilitation of juvenile offenders. RCW 13.50.050 sets forth explicit requirements for both adjudication (conviction) and non-adjudication (non-conviction) information. It addresses diversions, deferred dispositions, the social file and other agency records. It specifies notice requirements and what the effect of the sealing order has on the juvenile's offense information held by various agencies. Sealing orders pursuant to RCW 13.50.050 serve to seal not only court records, but records held by juvenile court probation departments, police departments, the Washington State Patrol and the Juvenile Rehabilitation Administration.

The simple solution is to exclude language that brings juvenile offender records from GR 15 and simply include a provision that states:

"The sealing of juvenile offense records shall be governed by RCW 13.50.050."

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[2] SHB 1651 was introduced in the 2013 session and proposed making a majority of juvenile offender records confidential. The bill passed out of the House unanimously and was significantly amended and passed out of the Senate before dying in the Rules Committee.

Thank you for your attention to these important matters.

Sincerely,

Paul Alig
WSBA Juvenile Law Section
Co-Chair

Cc: Chori Folkman, WSBA JLS Co-Chair
Juvenile Law Section Executive Committee

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July 17, 2013

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

Attn: Ms. Stephanie Happold
Data Dissemination Administrator
Stephanie.Happold@courts.wa.gov

Dear Committee Members:

I am writing on behalf of Allied Daily Newspapers of Washington ("ADN"), the Washington Newspaper Publishers Association ("WNPA") and the Washington Coalition for Open Government ("WCOG") to address the proposed changes to GR 15 under consideration by the Data Dissemination Committee.

ADN is a Washington not-for-profit association that represents 24 daily newspapers serving Washington and the Washington bureaus of the Associated Press. WNPA represents 105 community newspapers throughout the state. WCOG is a nonpartisan organization that represents a cross-section of the Washington public, press, and government and that is dedicated to defending the public's right to know in matters of public interest. Together, these organizations and their members play a crucial role in assuring the public remains informed about the operations of the judicial branch, and in giving practical effect to the state's constitutional requirement that "[j]ustice in all cases shall be administered openly[.]" CONST. Art. 1 sec. 10.

ADN, WNPA and WCOG oppose the proposed changes to GR 15, because they would undermine this constitutional commitment to open justice and would lead to sealing, without justification, of a substantial volume of court records that have long been accessible to the press and public.

Court records in Washington are presumptively open, and any party that wants to file a record under seal, or keep a record sealed, must give a compelling reason and explain why that reason outweighs the public's interest in open access. The mandate established in *Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982) has been reaffirmed countless times and currently is administered through GR 15. The current rule works, and is well understood by litigants, judges, clerks and

court administrators. No persuasive reason has been offered for the proposed radical overhaul of GR 15, or for permitting greater secrecy in court records.

The specific concerns of ADN, WNPA and WCOG fall into two categories:

1. The GR 15 revisions seek to codify an unduly restrictive interpretation of a very recent state supreme court decision, *Bennett v. Smith Bunday Berman Britton, PS*, 176 Wn.2d. 303 (2013).

Section (c)(2) of the proposed GR 15 revision incorporates dicta from the lead opinion in *Bennett*, which was signed by only four of the nine justices. New GR 15(c)(2)(B) would bifurcate the sealing standard, permitting any record to be sealed on a lesser showing of "good cause" (rather than the constitutionally mandated "compelling interest" showing) if the record is not "part of the court's decision-making process." The four justices in *Bennett* did not define what it means for records to become "part" of the judicial "decision-making process." In light of the constitutional presumption favoring disclosure, and the clear weight of authority mandating openness of court files, *Bennett* can and should be read narrowly, and limited to the specific (and rather unusual) facts presented in that case.

Bennett is a new decision without progeny; its significance is debatable, and its meaning should be left to further interpretation by judges deciding future cases. The rush to codify the most access-restrictive reading of the lead opinion would cut that process short. The proposed rule is also unnecessary, as it adds no clarity to the key phrase "part of the court's decision-making process." Thus, like the lead *Bennett* opinion itself, the proposed new rule rests on vague criteria. As Justice Madsen noted in *Bennett*, "without a legal and factual basis for an analysis of what should happen should the need arise, trial courts and litigants in future cases must make guesses about the meaning, force, and value of the court's dicta. The prudent course for the lead opinion is to avoid discussing how the *Ishikawa* factors might apply in circumstances not before the court." 176 Wn.2d at 318.

Additionally, proposed new GR 15(c)(2)(B)(ii) incorporates dicta from *Bennett* – wholly unnecessary for the disposition of that case – suggesting it would be good practice for courts to provide notice to nonparties "with an interest in nondisclosure." The lead opinion in *Bennett* based this suggestion on the Public Record Act's third-party notice provision (RCW 42.56.540), but it failed to note that the PRA procedure is *optional*. Requiring third-party notice in court sealing matters could result in unnecessary costs and unwarranted delay, particularly in cases where there are large numbers of potentially interested third-parties; where it is facially apparent that no colorable basis exists to seal the records; or where one of the parties already is advocating for sealing. Moreover, if third-party notice is to be required in sealing and unsealing matters, no possible justification exists for limiting it to parties "with an interest in nondisclosure." Logic, fairness and the constitutional presumption of access suggest that if a third-party notification

provision is to be added to GR 15, courts must be required to provide equal notice to any party with an interest in *disclosure* of the record at issue.

2. The revisions dramatically expand the grounds for sealing records in criminal cases.

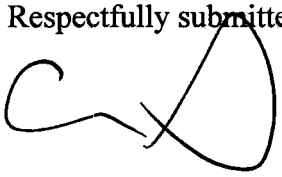
Currently, GR 15(c)(4) contains a narrow list of specific privacy concerns that may be considered sufficiently compelling to warrant weighing against the public interest in access when a motion to seal is proposed. In the criminal context, the only such "*per se*" privacy interest identified in current GR 15 is a conviction that has been vacated. The proposed changes seek to add a number of new, previously unrecognized criminal privacy interests. Under new GR 15(c)(4), a sufficient privacy interest would exist to justify sealing with respect to most acquittals; most cases where charges are dismissed; any case where the governor has issued a pardon; and any preliminary appearance where charges have not yet been filed.

These revisions have no support in any case law. The sole authority cited for this portion of the GR 15 revision is "the Joint Legislative Court Records Privacy Workgroup in 2012" – a body with no legislative or judicial mandate that has offered no justification for its radically expansive conception of the privacy rights of criminal defendants. More important, the proposed changes to GR 15(c)(4) would deprive the public of its ability to evaluate and hold its criminal justice system accountable. The additional non-conviction circumstances are wholly unlike vacated convictions. A defendant whose conviction is vacated has satisfied the strict criteria, determined by the Legislature, for treating a conviction as if it has never happened. In contrast, an acquittal "does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *U.S. v. Watts*, 519 U.S. 148, 155 (1997). The proposed revisions would prevent the public from learning, for example, about repeat offenders who manage to evade charges or conviction. Prosecutors and judges would not be held to account. Voters would be unable to evaluate the governor's exercise of the power to pardon.

The proposed changes, in sum, would invite routine sealing requests in criminal cases and would impair the ability of the press and public to understand and scrutinize the criminal justice system.

ADN, WNPA and WCOG urge the committee to table this far-reaching and unnecessary reformation of GR 15. Representatives of the organizations will be present at the Committee's next meeting and would be happy to further address their objections to this proposal.

Respectfully submitted,



Eric M. Stahl
Counsel for Allied Daily Newspapers of Washington,
Washington Newspaper Publishers Association and
Washington Coalition for Open Government

cc: Rowland Thompson
Bill Will
Toby Nixon
Sarah K. Duran

SCHOOL OF LAW
UNIVERSITY of WASHINGTON
Clinical Law Program

July 16, 2013

JIS Data Dissemination Committee
c/o Stephanie Happold
Data Dissemination Administrator
Administrative Office of the Courts

RE: Comments on the Proposed Policy to Limit Bulk Distribution of JIS juvenile records and Amendments to GR 15

Dear Members of the JIS-Data Dissemination Committee:

Thank you for the opportunity to comment on the proposed amendments to JIS policy and GR 15. As one of the co-founders of the King County Juvenile Records Sealing Clinic, author of *Beyond Juvenile Court: Long Term Impact of a Juvenile Record*, and a member of the 2011 Joint Legislative Task Force on Juvenile Records, I have spent many years dedicated to assisting young people overcome the barriers created by having a juvenile record in Washington State. I appreciate the work your committee has done and is doing to move toward assuring accuracy and fairness in the dissemination of these records by the Judicial Information System.

Proposed JIS Policy: **(New) VI. LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS**

The proposed amendment to JIS policy (1) limiting the bulk distribution of juvenile records to private data aggregating companies and (2) removing juvenile cause numbers from the statewide index on the Washington State Courts website is a step in the right direction. Thank you for addressing some of the concerns raised during your last meeting – specifically in the second section concerning the public website. Although young people from Washington will continue to be at a great disadvantage compared to youth from the 42 states that do not disseminate juvenile criminal history information to private companies, the policy may ensure that consumer reporting agencies sell only up to date juvenile criminal history information by utilizing a JIS-link account. This should prevent these companies from distributing juvenile record information that may have been sealed during the time period between quarterly updates. I say "may" and "should" because questions remain about how this will work, specifically:

1. What happens to the juvenile criminal history data that has already been distributed through the bulk distribution contracts before this policy goes into effect? Will the new contracts result in or require removing the previously transferred juvenile criminal history from their databases? If it does not, what happens to juvenile records that have been transferred pursuant to the old

contracts but are sealed after this policy goes into effect? Will the companies be distributing sealed juvenile records?

2. Similarly, the same companies who subscribe to bulk data distribution also have JIS-Link accounts. Assuming this policy goes into effect and they have to use the JIS- Link accounts to access juvenile information, is there anything that keeps these companies from storing the information and continuing to distribute it forever regardless of a subsequent sealing order?
3. How will the large data aggregators respond to this new policy? Will they run a separate JIS-Link search for each background check they provide to their customers if they wish to obtain the juvenile record information? Will that resolve the issue of sealed records if they store the records and distribute them?

It would be helpful to have some of these questions answered before adopting the policy. The subjects of the juvenile records, particularly those who are able obtain sealing orders, should be able to know what risks remain for dissemination. I understand that all questions probably can't be answered for all of the companies who use this data. Nevertheless, because these records have the potential to destroy livelihoods, the issues presented deserve a careful look.

Proposed Amendments to GR 15

The proposed amendments provide needed clarity regarding sealing adult criminal history records. However, as I have consistently asserted before this committee – **juvenile criminal history records should be treated differently from adult criminal history records.** While the proposed amendments do make some provision for differences between juvenile and adult records, for example not including the juvenile's name in the court indices after a sealing order is entered, the proposed rule would treat juvenile records identical to adult records by requiring proponents of sealing to satisfy the *Ishikawa* factors. This is unnecessary and not required by law. To date, appellate courts in Washington have not addressed whether the *Ishikawa* factors must be considered when individuals move to seal juvenile records pursuant to RCW 13.50.050.

RCW 13.50.050 Provides Clear Guidance for Sealing Juvenile Records

The legislature set out clearly in RCW 13.50.050 the method for sealing juvenile records; consistent with the Juvenile Justice Act and as an integral part of the system that Washington has established to provide both accountability and rehabilitation for juveniles who are accused of crimes. The language of RCW 13.50.050 broadly covers both conviction and non-conviction data (or more precisely adjudication and non-adjudication data):

> (11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

The statute goes on to specify eligibility, notice and other requirements juveniles must meet to obtain a sealing order from the juvenile court. The statute provides for the sealing not only of the official juvenile court file, but also all records held by police, probation and other agencies pertaining to the juvenile offense.[1] The intent of the legislature is clear: juveniles should be allowed a clean slate once they meet the statutorily set forth criteria. The legislature balanced the interest of the public, victims and juveniles in creating this scheme and this committee should not recommend imposing additional requirements upon juveniles which are not required by law and which are counter to the rehabilitative purposes of the Juvenile Justice Act.

I will not repeat here the many ways in which adolescents and adults are different and why our response to their misbehavior should be different. The U.S. Supreme Court has set forth the constitutional differences between children and adults in *Roper v. Simmons,* 543 U.S. 551 (2005); *Graham v. Florida,* 560 U.S. __ (2010); *J.D.B. v. North Carolina,* 564 U.S. __ (2011) and, most recently *Miller v. Alabama,* 567 U.S. __ (2012). The Washington State Supreme Court has yet to consider whether juveniles should suffer from the stigma of a publically disseminated juvenile record in the same manner as adults – but when and if it does consider this issue, it will have the benefit of the large body of social and neurological science available to it, as did the U.S. Supreme Court in its most recent decisions.

A simple solution: refer to RCW 13.50.050 in the body of GR 15 as the sole mechanism for sealing juvenile records and remove language including juvenile adjudication records from the sections that govern sealing adult criminal history records. This suggestion has been proposed by the WSBA Juvenile Law Section and agreed to by the Washington Defender Association. It makes sense.

[1] In practice, juvenile courts issue one sealing order sealing both the court record and the juvenile social file and other records. The proposed amendments to GR 15 would complicate matters by creating a higher standard that could end up being applied to non-court records eligible for sealing under RCW 13.50.050.

Washington is already an outlier in its broad dissemination of juvenile court records – one of only 8 states that release these records without restriction. The sealing process is not perfect nor is it easily accessible to the thousands of young people who are adjudicated in juvenile courts throughout the state. But for now, it offers the only hope for young people with juvenile records who seek employment, housing and an education. We should do everything possible to reduce barriers to this sealing process – not make it more difficult.

Thank you, again, for your work as committee members to create clear and sensible rules in this increasingly complicated age of digital records. Please feel free to contact me if I can provide any additional information to assist you in your work.

Sincerely,

Kimberly Ambrose
Senior Lecturer

GRAHAM & DUNN PC

JUDITH A. ENDEJAN
(206) 340-9694
jendejan@grahamdunn.com

July 17, 2013

Data Dissemination Committee
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170

Attn: Ms. Stephanie Happold
Data Dissemination Administrator
Stephanie.Happold@courts.wa.gov

Dear Committee Members:

I am writing on behalf of Allied Daily Newspapers of Washington ("ADN"), the Washington Newspaper Publishers Association ("WNPA") and the Washington Coalition for Open Government ("WCOG") to address the proposed changes to GR 15 under consideration by the Data Dissemination Committee.

ADN is a Washington not-for-profit association that represents 24 daily newspapers serving Washington and the Washington bureaus of the Associated Press. WNPA represents 105 community newspapers throughout the state. WCOG is a nonpartisan organization that represents a cross-section of the Washington public, press and government and that is dedicated to defending the public's right to know in matters of public interest. Together, these organizations and their members play a crucial role in assuring the public remains informed about the operations of the judicial branch, and in giving practical effect to the state's constitution requirement that "[j]ustice in all cases shall be administered openly[.]" CONST. Art. 1 sec. 10.

ADN, WNPA and WCOG oppose the proposed changes to CR 15, because they would undermine this constitutional commitment to open justice and would lead to denying, without justification, of a substantial volume of court records that have long been accessible to the press and public.

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We have attached a white paper that analyzes the legal and constitutional infirmities with the proposed changes.

Sincerely,

GRAHAM & DUNN PC

Judith A. Endejan
JAE/ema

cc: Rowland Thompson
Bill Will
Toby Nixon
Vanessa Wheeler

THE LEGAL AND CONSTITUTIONAL INFIRMITIES WITH THE PROPOSED Information System Dissemination Policy Amendment

GRAHAM& DUNN
2801 Alaskan Way – Suite 300
Seattle, Washington 98121-1128

Judith A. Endejan
Vanessa Wheeler
July 17, 2013

I. BACKGROUND

A new Judicial Information System Data Dissemination Policy Amendment has been proposed that would limit the disclosure of juvenile court records. The policy seeks to obscure the existence of juvenile court records by deleting them from the statewide index of court records. The exclusion of juvenile court records from court case indexes would obscure the existence of these juvenile court records, rendering it almost impossible for the public or the press to find and access them. Even if a member of the public or press was somehow able to discover independently the existence of a particular juvenile court record, the only way to attain any such record would be to subscribe to JIS Link and pay a fee. It is unclear, however, the process by which a juvenile court records request would have to be made under this system and what resources would be available to aid requesters seeking such records. Additionally, the subscription fee for the JIS service is fairly expensive, particularly for individuals, single legal practitioners, or small law firms.

This memorandum explains why this new policy amendment could violate the right of the public and the press to the open administration of justice under the Washington Constitution. As set forth below, the proposed policy amendment would violate the constitutional rights of the public and the press and offer little protection to the reputations of the juveniles meant to be the policy's beneficiaries. Consequently, the policy amendment should not be adopted, and the current system for disclosing juvenile court records should remain in place.

II. REASONS TO REJECT POLICY AMENDMENT

A. A records policy that restricts access to juvenile court records violates the constitutional right of the public and the press to the openness of judicial proceedings and records.

Under the constitution of the State of Washington, the public is guaranteed the open administration of justice. *See* Wash.Const.Art. 1, § 10. The open administration of justice assures the public and the press a constitutional right to access court records and proceedings in civil and criminal cases. *See Hundtofte v. Encarnacion*, 169 Wn.App. 498, 280 P.2d 513, 518 (2012) (*rev. granted* 176 Wn..2d 1019); *State v. DeLauro*, 163 Wn..App. 290, 258 P.3d 696, 699 (2011). Openness in judicial proceedings and documents is necessary in order to maintain public faith in the "fairness and honesty" of the court. *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258, 1261 (1993). Any limitation on the openness of judicial proceedings or records requires careful consideration and justification. *See Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861, 864 (2004).

Washington courts have made it clear that any limitation on the public and press's right to access court records is an infringement on that right. By this amendment, the proposed limitation on the visibility and dissemination of juvenile court records is in clear violation of the right to open judicial administration. The present policy allows free, meaningful public access to the statewide court case index, which currently includes juvenile records in the court files. The proposed policy amendment, in completely removing reference to juvenile court cases in the statewide case index, would substantially impair the ability of the public and the press to even identify what juvenile court records might exist. Although the new policy amendment will still allow access to juvenile court records, such access would no doubt require court or administrative intervention in order to determine if a juvenile record exists in the first place. Once a juvenile court record had been identified and requested, access would only be available through a service that requires the payment of a significant fee. Under these circumstances the removal of juvenile records from the court case indexes available to the public, and the

imposition of a fee in order to access juvenile court records once their existence is known, is a limitation on the openness of judicial records, in violation of the constitutional rights of the public and press to open access.

B. The privacy interests of juveniles as a class do not outweigh the constitutional right of the public and the press to access court records and proceedings nor the mandate to assess court record restrictions on a case-by-case basis.

The constitutional right to open administration is not absolute, but courts must begin with the presumption of openness. *See State v. McEnroe*, 174 Wn.2d 795, 279 P.3d 861, 863 (2012). In order to restrict access to court records or proceedings, a court must conduct a case-specific assessment as to whether there exists a fundamental interest significant enough to override the public's constitutional right to the open administration of justice. *See Hundtofte*, 280 P.2d 513 at 519. In the course of this analysis, the court must follow five steps: 1) the proponent of restriction must make a showing of need for such restriction; 2) individuals present when the motion for the restriction is made must be given an opportunity to object; 3) a determination must be made as to whether the suggested method of restriction would be both the least restrictive means possible and effective in protecting the threatened interests; 4) the court must weigh the conflicting interests of the defendant and the public and press and consider any possible alternatives; and 5) the order to restrict court records or proceedings must be no broader than necessary. *See Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716, 720-21(. 1982). A statute that restricts the disclosure of information about juveniles involved in court proceedings violates the constitutional right of the public and the press to open judicial administration if it does not provide for individualized assessment of whether restrictions are necessary in each case. *Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205, 848 P.2d 1258, 1260 (. 1993) (striking down a statute that prohibited disclosure of the names and

other information about child sexual assault victims, despite the compelling interests of protecting "child victims from further trauma and harm" and ensuring their privacy).

In order for a restriction on the dissemination of juvenile court records and the omission of reference to those records in the court case index to be considered constitutional, the privacy interests of the *individual* juveniles involved would need to outweigh the right of the public and press to openly access court records. Additionally, the compelling nature of those interests would need to be subjected to the individualized analytic process established in *Seattle Times Co. v. Ishikawa*. The privacy interest of juveniles as a class is unlikely to be able to overcome either the right of the public and the press or the *Ishikawa* guidelines after the ruling in *Allied Daily Newspapers of Washington v. Eikenberry*.

First, though the privacy rights of the class of juveniles may be significant, they cannot rationally be greater than those of child victims of sexual assault.[1] Yet, in *Eikenberry* the court did not find a sufficient compelling interest to uphold a statute restricting the disclosure of their information where privacy interests as well as the health and well-being of the children victimized were implicated. In contrast the proposed policy amendment is premised upon protecting the reputational interests of juveniles. Clearly if the interests of those child victims failed as a valid justification for a broad statute prohibiting disclosure of child victims' information without individualized consideration, the interests of the juvenile defendants must fail in the instant situation as well. Though the privacy, reputational interests of a particular juvenile may be compelling enough to overcome the constitutional right of the public and the press to the open administration of justice, that determination must be made on a case-by-case basis according to the *Ishikawa* guidelines in order to be constitutional. This individualized

[1] In fact, the Governor of Washington vetoed a section of the statute at issue in *Allied Daily* that would have extended the same privacy-driven restrictions to juvenile offender proceedings s as it did to child victims.

process, which takes into account the specific needs of each child in the particular circumstance of his or her case, is considered appropriate to protect the very compelling interests of child victims of sexual assault and should adequately protect the privacy interests of juveniles.

Second, even if one initially ignored the mandate for individualized analysis, the proposed policy itself would fail under the *Ishikawa* guidelines, specifically the third guideline, as it is not the least restrictive effective means to protect the interests in question. For one, the means chosen is not the most effective method of protecting the reputations of the juveniles involved. Unlike the system used for limiting access to information about child victims, which completely restricts access to court records involving individual children for whom that is deemed necessary, the proposed policy amendment would still allow access to all juvenile records to those who know what records they are looking for and who are willing to pay. Furthermore, the method chosen is not the least restrictive on the constitutional rights of the press and public either, as it creates a broad limitation on discovery of and access to all juvenile court records, regardless of whether such limitation is necessary in individual cases. The new policy amendment would not only make it more difficult to access juvenile court records, by imposing a significant subscription fee to obtain them, but more importantly it would shield those records by obscurity. The public and the press simply would have no starting place to search for juvenile court records, which would no longer be referenced in any statewide case index. Unlike with most other court records, the existence of juvenile court records would be erased from the public view, accessible only through specific requests by those to whom their existence is already known.

A far more effective, and less restrictive, measure for protecting the privacy of juvenile offenders who need such protection would be to use the process currently available under GR 15, that of closing and sealing court procedures and records on a showing of necessity. In that way,

those individual juveniles who have privacy concerns may have their privacy completely protected, rather than available for a fee, and the public and press will still have reasonable and free access to the court records to which they are constitutionally entitled. Courts know how to handle access to their records, free of legislative constraints, because they are not subject to the state Public Records Act, RCW ch. 42.56. *City of Federal Way v. Koenig,* 167 Wn. 2d 341, 271 P. 3d 1172. Such a substantial change to the management and accessibility of court records should not be initiated in a data dissemination policy. The openness of the judicial process is far too fundamental to the integrity of the court system to implement a change to public access to court records through such an inappropriate forum.

Finally, such a substantial a change, that affects such a meaningful right of the public and the press, should only be approved and instituted by a General Rule.

From: Toby Nixon
To: Happold, Stephanie
Cc: anewspaper@aol.com; "Bill Will"; president@washingtoncog.org
Subject: Comments on proposed changes to Data Dissemination Policy
Date: Wednesday, July 17, 2013 6:03:58 PM

July 17, 2013

Data Dissemination Subcommittee
c/o Stephanie Happold
Administrative Office of the Courts
P.O. Box 41170
Olympia, WA 98504-1170

Dear Committee Members:

On behalf of Washington Coalition for Open Government (WCOG), Allied Daily Newspapers of Washington (ADN), and Washington Newspaper Publishers Association (WNPA), thank you for the opportunity to comment on the proposed new Section VI. LIMITATION ON DISSEMINATION OF JUVENILE OFFENDER COURT RECORDS in the JUDICIAL INFORMATION SYSTEM DATA DISSEMINATION POLICY.

As you are already well aware from our numerous discussions with you over the last two-and-a-half decades, we have numerous concerns with the concept and execution of a two-tiered access policy to court records of any kind. It is an issue that we thought had been put to bed so many times over the years that it was finally truly asleep.

The last major public hearing on this issue was in November 1999 when Justice Talmadge was chair of JISC and Judge Gross was chair of the data dissemination subcommittee. JISC rejected two-tiered access then, and has continued to reject requests for two-tiered access by the proponents of this closure on a cycle of about every twenty-four months since then. At no time in any of those discussions has this subcommittee entertained the notion that is proposed here, and this subcommittee and the larger JISC have repeatedly soundly rejected this idea as being antithetical to Washington's adherence to the constitutional principle of open courts and open court records.

The impetus for this proposal appears to be the introduction of bills into the Washington State Legislature during the past few sessions to close access to juvenile court records almost in their entirety. None of these bills have been successful in being enacted into law, and in our view would suffer from a number of constitutional and separation of power problems in their implementation. The fact that these bills have repeatedly failed is an indication that the policy espoused is not supported.

Another impetus cited in the proposed GR 15 rule change also being cited by this subcommittee in their authorities for the change is outgoing Senator Debbie Regala's 2012 one-legislator task force referred to as the "Joint Legislative Court Records Privacy Workgroup". Nothing of substance resulted from that series of meetings in the legislative arena, and it is odd to see it being used as a driver for this current effort in the judicial branch since only one member of the judiciary participated in those meetings: Judge Wynne, chair of this sub-committee. We thank Judge Wynne for allowing us to participate in the public hearing held on this policy change and GR 15 proposal in Everett two months ago and for his continued dialogue with us on these proposals; we could ask for nothing more from him as a sub-committee chair than for full hearing of our concerns. We are distressed by his initiative here.

In separate correspondence to you, our legal counsel has more fully laid out the legal arguments against the proposed changes. We would now like to comment on the very practical aspects that may be associated with implementing the proposed changes. Here are questions that come to mind:

1. If there is no *statewide* online index of these case files, will there be *local* indexes of these case files through which a requestor could determine the existence of the case the requestor might seek?

2. If there is no electronic or online index of cases available to the public, would requestors need to query the clerks and administrators of local jurisdictions for the information sought? or would they query AOC staff for those searches? Is there any liability associated with an insufficient search?

3. What would constitute a "bulk distribution" from the JIS? Would that be more than a single case or cases about an individual? Or would it be all of the cases filed in a jurisdiction or entered into JIS in a day or an hour?

4. If neither an online index or bulk distribution is available, would individual case records still be available online, if the case number is known? If so, has JIS considered the impact on servers of renewed "screen scrapping" of the data from individual case records, since this was the reason the bulk distribution system was created in the first place?

5. If no online access is available at either the state or local level, how will court staff deal with requests for case records, since there will likely be a significant increase in verbal or written requests once the index is not viewable without staff involvement? Will requestors be sent to local jurisdictions, or will AOC staff resources be committed to aid requestors who email or call for information on juvenile criminal cases that they cannot view or request electronically?

6. Will responses to staff-filled requests be emailed or mailed? How will the costs associated with these filling these requests be accounted for?

7. Will any AOC funds be directed to local courts to help defray the costs associated with dealing with emailed, telephoned and in-person requests? Have local courts been prepared to begin handling the volume of requests that may devolve back onto them as a result of this proposed change, and the staff and other costs? How will court clerks seek offsetting funds from AOC for the costs that this change will engender?

8. Will attorneys have access to the index? Will their offices? Will law enforcement? Will other federal, state and local government agencies? Will non-governmental agencies tasked with dealing with families, foster children, youth services, or other social services? Will the clinics who work with persons seeking to seal their juvenile records? Will schools? Will the military? Eliminating general access to a statewide online index will likely reveal many other frequent users of these records, who are legally required to have access to the records for mandatory background checks, legal research, and other purposes.

It is important that the subcommittee consider these and other very practical impacts of the proposed changes, and the significant impact on both state and local court budgets and workload, in addition to the legal arguments we have raised separately.

Thank you for your consideration of these comments.

Respectfully Submitted,

WASHINGTON COALITION FOR OPEN GOVERNMENT
Toby Nixon, President

ALLIED DAILY NEWSPAPERS OF WASHINGTON
Rowland Thompson, Executive Director

WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION
Bill Will, Executive Director

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July 24, 2013

Judge Thomas J. Wynne
Chair, Data Dissemination Committee
Judicial Information System
Snohomish County Superior Courthouse
3000 Rockefeller Avenue
Dept. 9, Floor 5
Everett, WA 98201

Re: Proposed Amendments to GR 15, 31

Dear Judge Wynne:

I am writing to you on behalf of the Rental Housing Association ("RHA") to express its concerns regarding the proposed amendments to GR 15, 31.

As you know, JIS's Data Dissemination Committee is considering extensive amendments to GR 15, the courts' rule addressing the sealing and redaction of court records, and GR 31, relating to access to court records.

RHA shares the Committee's belief that it is entirely appropriate for the Committee to establish appropriate *procedural* standards by which the public seeks to seal, redact, unseal, or access public records, with a major caveat to be expressed below. However, on the public policy as to which court records may be accessed, *substantive* access policy, RHA strongly believes that this is a matter for legislative policymaking where the broader opportunities for public participation can come into play.

The starting place for any discussion of access to court records should be the policy of *transparency*. The people themselves articulated this policy when they enacted Initiative 276:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is

> good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.

It is no different for court records, as GR 31(a) itself has acknowledged, particularly where article I, § 10 of our Constitution is also implicated.

As noted above, RHA supports clear procedural rules in GR 15 and 31. However, the proposed comments to GR 15 make reference to specific court decisions and statutes. Plainly, court decisions and statutes may change. It may not be wise to tie the procedural rules for access, sealing, redacting, and unsealing records to specific decisions or statutes, except as may be absolutely necessary.

More critically, from RHA's perspective, is any effort by amendments to GR 15 and 31 to enact substantive changes on access to court records. This Committee should know that *numerous* bills were offered in the 2013 legislative session purporting to restrict access to court records, records that have been used to make employment and housing decisions. *See* attached. RHA is concerned that the proponents of these bills, having failed to enact them in the Legislature, are turning to this Committee as an alternate forum in which to secure relief that they could not obtain in the Legislature.[1]

RHA *opposes* any changes in GR 15 or 31 that affect substantive policy on access to court records. The policy of access announced in GR 31(a) should remain intact and this Committee should not be a forum for enacting substantive changes that detract from a policy of public access to court records. The Legislature, with its broader opportunities for public participation, is the more appropriate forum for such efforts.

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[1] For example, in California, legislation was enacted limiting access to unlawful detainer information. The California Supreme Court invalidated such legislation. *U.D. Registry, Inc. v. State*, 40 Cal. Rptr.2d 228 (Cal. App. 1995), *review denied* (Aug. 17, 1995), *cert. denied, sub. nom. Cisneros v. U.D. Registry, Inc.*, 516 U.S. 1074 (1996) (statute prohibiting consumer credit report from containing unlawful detainer information violated First Amendment).

I will be participating in the Committee's July 29 teleconference. If I can provide additional information to you and the Committee on RHA's behalf, please do not hesitate to let me know.

Very truly yours,

Philip Talmadge

Philip A. Talmadge

cc: Bill Hinkle

SEPTEMBER - OCTOBER 2013
STAKEHOLDER COMMENTS
FOR GR 15 DRAFT

From:	Blackman, Charlie
To:	Pam Loginsky (Pamloginsky@waprosecutors.org)
Cc:	Happold, Stephanie
Subject:	FW: FW: GR 15 proposdd draft
Date:	Wednesday, September 18, 2013 4:10:55 PM
Attachments:	2013 09 13 GR 15 draft amendment DDC.docx

I don't understand the interplay between GR15(c)(2)(A), which properly lists the five Ishikawa factors that must be considered, and GR15(c)(4)(C), which says (as did the old rule) that the fact a criminal conviction has been vacated can weigh against the public's right to know. Does the latter trump the former? While I don't think this was the intent of the drafters, as written it seems to. Perhaps I'm missing something.

Charlie Blackman, Dep. Pros. Atty., Snohomish County

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Medicaid Fraud Control Unit
PO Box 40114 • Olympia WA 98504-0114 • (360) 586-8888

October 3, 2013

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

Dear Ms. Happold:

Thank you for giving the Attorney General's Office, Medicaid Fraud Control Unit an opportunity to comment on the proposed GR 15 amendments. There is a new statute, the Washington Medicaid False Claims Act (FCA) that was effective on June 7, 2012, that impacts some of the provisions of GR 15 that may also need amendments. I have attached a track changes copy of the draft GR 15 amendments that contains some language for the Data Dissemination committee and others to consider.

I am also attaching a copy of a brief summary document and power point document that provides some back ground information about significant procedural aspects of the FCA. I have also provided these documents to the Washington Association of County Officials (Clerks), and to the Superior Court Judges Association (SCJA) through Whatcom County Superior Court judge, Judge Snyder.

Please do not hesitate to contact me if you have any questions. I can be reached at carrieb@atg.wa.gov or 360-586-8895.

Best regards,

Carrie L. Bashaw

CARRIE L. BASHAW
Senior Counsel
WA Medicaid Fraud Control Unit

CB:kjs
Enclosures

GENERAL RULE 15 As Of 09132013

Draft Amendment

DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

(b) Definitions.

(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).

(2) "Court record" is defined in GR 31(c)(4).

(3) "Destroy". ~~To destroy~~ means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.

(4) "Dismissal" means dismissal of an adult criminal charge or juvenile offense by a court for any reason, other than a dismissal pursuant to RCW 9.95.240, ~~or~~ RCW 10.05.120, RCW 3.50.320, or RCW 3.66.067.

(5) ~~(4) Seal. To s~~"Seal" means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

(6) ~~(5) Redact. To r~~"Redact" means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(7) ~~(6)~~ "Restricted Personal Identifiers" are defined in GR 22(b)(6).

(8) ~~(7)~~ "Strike" applies to ~~. A~~a motion or order to strike and ~~is~~ not a motion or order to seal or destroy.

(9) ~~Vacate. To v~~"Vacate" means to nullify or cancel.

(c) Sealing or Redacting Court Records.

(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Except for cases under RCW 74.66, ~~R~~reasonable notice of a hearing to seal must be given to

Comment [cb1]: Pursuant to RCW 74.66.050(2), a defendant is not to be notified of a filed complaint until the court lifts the seal or issues some other court order causing the defendant to be notified.

all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to RCW 74.66, CrR 3.1(f) or CrRLJ 3.1(f).

(2) ~~After~~ At the hearing, the court ~~may order the court files an and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety~~ concerns ~~that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:~~ shall consider the applicable factors and enter specific findings on the record to justify any sealing or redaction.

(A) For any court record that has become part of the court's decision-making process, the court must consider the following factors:

(i) Has the proponent of sealing or redaction established a compelling interest that gives rise to sealing or redaction, and if it is based upon an interest or right other than an accused's right to a fair trial, a serious and imminent threat to that interest or right; and

(ii) Has anyone present at the hearing objected to the relief requested; and

(iii) What is the least restrictive means available for curtailing open public access to the record; and

(iv) Whether the competing privacy interest of the proponent seeking sealing or redaction outweighs the public's interest in the open administration of justice; and

(v) Will the sealing or redaction be no broader in its application or duration than necessary to serve its purpose.

COMMENT

GR 15(c)(2)(A) does not address Juvenile Offender records sealed pursuant to RCW 13.50.050. This section does apply to Juvenile Offender records sealed under the authority of GR 15, only. The applicable factors the court shall consider in a Motion to Seal or Redact incorporate current Washington caselaw.

Comment [cb2]: Alternative language if above not adequate or appropriate.

(B) For any court record that was not a part of the court's decision-making process, the court must consider the following:

(i) Has the proponent of the sealing or redaction established good cause; and

(ii) Has any nonparty with an interest in nondisclosure been provided notice and an opportunity to be heard.

COMMENT

In Bennett et al v. Smith Bunday Berman Britton, PS, 176 Wn.2d. 303 (2013), the State Supreme Court held that documents obtained through discovery that are filed with a court in support of a motion that is never decided are not part of the administration of justice and therefore may be sealed under a good cause standard.

(3) Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records.

(4) Sufficient privacy or safety concerns that may be weighed on a case by case basis against the public interest in the open administration of justice include findings that:

(A) The sealing or redaction is permitted by statute; or

(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or

(C) A criminal conviction or an adjudication or deferred disposition for a juvenile offense has been vacated; or

(D) A criminal charge or juvenile offense has been dismissed, and:

(i) The charge has not been dismissed due to an acquittal by reason of insanity or incompetency to stand trial; or

(ii) A guilty finding does not exist on another count arising from the same incident or within the same cause of action; or

(iii) Restitution has not been ordered paid on the charge in another cause number as part of a plea agreement.

or

(E) A defendant or juvenile respondent has been acquitted, other than an acquittal by reason of insanity or due to incompetency to stand trial; or

(F) A pardon has been granted to a defendant or juvenile respondent; or

(G) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or

(H) The sealing or redaction is of a court record of a preliminary appearance, pursuant to CrR 3.2.1, CrRLJ 3.2.1, or JUCR 7.3 or a probable cause hearing, where charges were not filed; or

(I) A Medicaid false claims act case filed under RCW 74.66 has been declined by the State of Washington, and dismissed by the court, and the seal never lifted.

(I) The redaction includes only restricted personal identifiers contained in the court record; or

(J) Another identified compelling circumstance exists that requires the sealing or redaction.

COMMENT

Additional privacy or safety concerns that may be weighed against the public interest are included based upon the deliberations at the Joint Legislative Court Records Privacy Workgroup in 2012.

In Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205 (1993), the court held that the presumptive right of public access to the courts ***is not absolute and may be outweighed by some competing interest as determined by the trial court on a case by case by basis, according to the Ishikawa guidelines.***

(5) Every order sealing or redacting material in the court file, except for sealed juvenile offenses, shall specify a time period, after which, the order shall expire. The proponent of sealing or redaction has the burden of coming back before the court and justifying any continued sealing or redaction beyond the initial specified time period. Any request for public access to a sealed or redacted court record received by the custodian of the record after the expiration of the Order to Seal or Redact shall be granted as if the record were not sealed, without further notice. Thereafter, the record will remain unsealed. The Court, in its discretion, may order a court record sealed indefinitely if the court finds that the circumstances and reasons for the sealing will not change over time.

COMMENT

Requiring a time period, after which the order sealing or redacting expires, implements the Ishikawa factor that the order must be no broader in its duration than necessary to serve its purpose. The critical distinction between the adult criminal system and the juvenile offender system lies in the 1977 Juvenile Justice Act's policy of responding to the needs of juvenile offenders. Such a policy has been found to be ***rehabilitative*** *in nature, whereas the criminal system is punitive. State v. Rice, 98 Wn.2d 384 (1982); State v. Schaaf, 109 Wn.2d 1,4; Monroe v. Soliz, 132 Wn.2d 414, 420 (1997); State v. Bennett, 92 Wn. App. 637 (1998). Legacy JIS systems do not have the functionality to automatically unseal or unredact a court record upon the expiration of an Order to Seal or Redact.*

(6) The name of a party to a case may not be redacted, or otherwise changed or hidden, from an index maintained by the Judicial Information System or by a court. The existence of a court file containing a redacted court record is available for viewing by the public on court indices, unless protected by statute.

Comment [cb3]: RCW 74.66.050(2) does not allow for the identification of the parties in court indices because it is filed in camera. Also, until a matter under the FCA is *final and the seal lifted*, the information furnished pursuant to the Act is exempt from the Washington Public Records Act (PRA), chap. 42.56 RCW. RCW 74.66.030.

COMMENT

Existence of a case can no longer be determined for the purpose of public access and viewing, if the case cannot be found by an index search. Redacting the name of a party in the index would prevent the public from moving for access to a redacted record under section (f). The policy set forth in this section is consistent with existing policy when the entire file is ordered sealed, as reflected in section (c) (9).

(7) ~~(3)~~ No court record shall be sealed under this rule when redaction will adequately protect the interests of the proponent.

(8) Motions to Seal/Redact when Submitted Contemporaneously with Document Proposed to be Sealed or Redacted – Not to be Filed.

(A) The document sought to be sealed or redacted shall not be filed prior to a court decision on the motion. The moving party shall provide the following documents directly to the court that is hearing the motion to seal or redact:

(i) The original unredacted document(s) the party seeks to file under seal shall be delivered in a sealed envelope for in camera review.

(ii) A proposed redacted copy of the subject document(s), if applicable.

(iii) A proposed order granting the motion to seal or redact, with specific proposed written findings and conclusions that establish the basis for the sealing and redacting and are consistent with the five factors set forth in subsection (2)(a).

(B) If the court denies, in whole or in part, the motion to seal, the court will return the original unredacted document(s) and the proposed redacted document(s) to the submitting party and will file the order denying the motion. At this point, the proponent may choose to file or not to file the original unredacted document.

(C) If the court grants the motion to seal, the court shall file the sealed document(s) contemporaneously with a separate order and findings and conclusions

granting the motion. If the court grants the motion by allowing redaction, the judge shall write the words "SEALED PER COURT ORDER DATED [insert date]" in the caption of the unredacted document before filing.

(D) If filing under seal is authorized by statute, rule, or order (including an order requiring or permitting a seal and obtained pursuant to this rule, a party seeking to file under seal any paper or other matter in any civil case shall file and serve a motion, the title of which includes the words "Motion to Seal Pursuant to [Statute, Rule, or Order]" and which includes (i) a citation to the statute, rule, or order authorizing the seal; (ii) an identification and description of each item submitted for sealing; (iii) a statement of the proposed duration of the seal; and (iv) a statement establishing that the items submitted for sealing are within the identified statute, rule, or order the movant cites as authorizing the seal. The movant shall submit to the Clerk along with a motion under this section each item proposed for sealing. Every order sealing any item pursuant to this section shall state the particular reason the seal is required and shall identify the statute, rule, or order authorizing the seal.

Comment [cb4]: Not sure if this is the correct spot for this proposed amendment, but some district courts have adopted this language which might be useful for Washington. See M.D. Florida Local Rule 1.09(b).

COMMENT

The rule incorporates the procedure established by State v. McEnroe, 174 Wn.2d 795 (2012).

(9)~~(4)~~ Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. Except for sealed juvenile offenses and cases filed under RCW 74.66, the existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, the charge has been dismissed, the defendant has been acquitted, the governor has granted a pardon, or the order is to seal a court record of a preliminary appearance or probable cause hearing; then section (d)shall apply. Except for sealed juvenile offenses, the order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(10)~~(5)~~ Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records; and

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Except for sealed juvenile offenses and cases under RCW 74.66, both shall be accessible to the public; and

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(11)~~(6)~~Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions, Dismissals and Acquittals, Pardons and Preliminary Appearance Records.

(1) In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "vacated."

(2) In cases where a defendant has been acquitted, a charge has been dismissed, a pardon has been granted, or the subject of a motion to seal or redact is a court record of a preliminary appearance, pursuant to CrR 3.2.1 or CrRJ 3.2.1, or a probable cause hearing, where charges were not filed, and an order to seal entered, the information in the public indices shall be limited to the case number, case type ~~with the notification "DV" if the case involved domestic violence~~, the ~~adult's~~ defendant's ~~or juvenile's~~ name, and the notation "non conviction."

(e) Procedures for Sealed Juvenile Offender Adjudications, Deferred Dispositions, and Diversion Referral Cases. In cases where an adjudication for a juvenile offense, a juvenile diversion referral, or a juvenile deferred disposition has been sealed pursuant to the provisions of RCW 13.50.050 (11) and (12), the existence of the sealed juvenile offender case shall not be accessible to the public.

Comment [cb5]: Until a matter under RCW 74.66 is final and the seal lifted, the information furnished pursuant to the Act is exempt from the Washington Public Records Act (PRA), chap. 42.56 RCW. RCW 74.66.030.

(f) **Procedures for Sealed Medicaid False Claims Act Cases Filed Under RCW 74.66.050(2).**

(1) In Medicaid false claims act cases where the State of Washington declined to intervene, the court and the State of Washington provided written consent to dismiss the case and the case was subsequently dismissed, and where the court does not order the case unsealed and available for public viewing, the information in the public court indices shall be limited to the case number, case type and the notation "dismissed."

COMMENT

GR 15(e) does not address whether the applicable factors identified in Section (c)(2)(A)(i)-(v) must be considered by the court before sealing Juvenile Offender records pursuant to RCW 13.50.505.

RCW 13.50.050 (11) addresses sealing of juvenile offender court records in cases referred for diversion.

RCW 13.40.127 prescribes the eligibility requirements and procedure for entry of a deferred disposition in juvenile offender cases, and the process for subsequent dismissal and vacation of juvenile offender cases in which a deferred disposition was completed. Records sealing provisions for deferred dispositions are contained in RCW 13.50.050. RCW 13.40.127(10)(a)(ii) provides for administrative sealing of deferred disposition in certain circumstances. RCW 13.50.050(14)(a) states that:

> *"Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual."*

This remedial statutory provision is a clear expression of legislative intent that the existence of juvenile offender records that are ordered sealed by the court not be made available to the public. Records sealed pursuant to RCW 13.40.127 have the same legal status as records sealed under RCW 13.50.050. RCW 13.40.127(10)(c). The statutory language of 13.50.050(14)(a), included above, differs from statutory provisions governing vacation of adult criminal convictions, reflecting the difference in legislative intent found in RCW 9.94A.640, RCW 9.95.240, and RCW 9.96.060.

~~(e)~~**(f) Grounds and Procedure for Requesting the Unsealing of Sealed Court Records or the Unredaction of Redacted Court Records.**

(1) Order Required. Sealed or redacted court records may be examined by the public only after the court records have been ordered unsealed or unredacted pursuant to this section ~~or~~, after entry of a court order allowing access to a sealed court record or redacted portion of a court record, or after an order to seal or redact the record has expired. Compelling circumstances for unsealing or unredaction exist when the proponent of the continued sealing or redaction fails to overcome the presumption of openness under the factors in section (c)(2). The court shall enter specific findings on the record supporting its decision.

(2) Criminal Cases. A sealed or redacted portion of a court record in a criminal case shall be ordered unsealed or unredacted only upon proof of compelling circumstances, unless otherwise provided by statute, and only upon motion

Comment [cb6]: Until a matter under RCW 74.66 is final and the seal lifted, the information furnished pursuant to the Act is exempt from the Washington Public Records Act (PRA), chap. 42.56 RCW. RCW 74.66.030.

Thus, suggested language that covers FCA cases where the seal is never lifted and the case never litigated.

and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(C) If the time period specified in the Order to Seal or Redact has expired, the sealed or redacted court records shall be unsealed or unredacted without further order of the court in accordance with this rule.

(2) Civil Cases. A sealed or redacted portion of a court record in a civil case shall be ordered unsealed or unredacted only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing or redaction no longer exist, or pursuant to ~~RCW~~ chapter 4.24 RCW or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

COMMENT

In State v. Richardson, 177 Wn.2d 351(2013), there was a motion in the trial court to unseal a 1993 criminal conviction, which had been sealed in 2002, under an earlier version of GR 15. The State Supreme Court remanded to the trial court for further proceedings, because there was no record of considering the Ishikawa factors. The Supreme Court held that "compelling circumstances" for unsealing exist under GR 15 (e) when the proponent of sealing fails to overcome the presumption of openness under the five factor Ishikawa analysis. In either case, the trial court must apply the factors.

(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a

crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16). Unredaction of the redacted portion of a juvenile court record shall be ordered only upon the same basis set forth in section (2), above.

~~(f)~~**(g) Maintenance of Sealed Court Records.** Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

~~(g)~~**(h) Use of Sealed Records on Appeal.** A court record, or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court, subject to further order of the appellate court.

~~(h)~~**(i) Destruction of Court Records.**

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall:

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record

destroyed, and enter "Order Destroyed" for the docket entry; and

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) Destroying Records.

(A) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

~~(i)~~(B)Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if ~~all parties so stipulate in writing and~~ the court so orders.

(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by statute.

BRIEF SUMMARY OF THE WASHINGTON (WA) MEDICAID FALSE CLAIMS ACT (FCA), chap. 74.66 RCW FOR SUPERIOR COURT PERSONNEL

This document, prepared October 1, 2013, is a brief procedural overview of the WA Medicaid False Claims Act. It does not constitute legal analysis, advice or official policy of the Washington Attorney General's Office (AGO). If you have questions, you may contact Senior Counsel, Carrie Bashaw at carrieb@atg.wa.gov or at 360-586-8895.

A. Background

In addition to other enumerated impermissible actions, the WA FCA provides liability for treble damages and a penalty from $5,500 to $11,000 per claim for anyone who knowingly submits or causes the submission of a false or fraudulent Medicaid claims to the State of Washington. RCW 74.66.020(1)(a-g).

The statute was effective on June 7, 2012 (Washington Session Laws, Laws of 2012, ch. 241, (Engrossed Substitute S.B. 5978)), and includes a provision called a *qui tam* action (from a Latin phrase meaning "he who brings a case on behalf of our lord the King[Queen], as well as for himself [herself]").[1] RCW 74.66.010(13). This provision allows a private person, known as a "relator," to bring a lawsuit on behalf of the government, where the private person has information that the named defendant has knowingly submitted or caused the submission of false or fraudulent Medicaid claims to the government. RCW 74.66.010(14); 74.66.050(1). For the most part, the WA FCA mirrors the federal false claims act. 31 U.S.C.A. § 3729-3733.

How do you pronounce *qui tam*? There is no consistency regarding the pronunciation of *qui tam*.

- The simplest is "key tam" (like a door "key" and rhymes with "ham").
- Black's Law Dictionary suggests "kweye tam" (rhymes with "eye").
- Some say "kweye tom" (like the common name "tom," but often said with an upper crust accent).
- And some say "kwee tam/tom" (sounds just like it looks, but *not* "kway").

B. Procedural Matters

1. A complaint filed under the FCA must be filed in camera, under seal, and must be served on the State of Washington through the Attorney General's Office, but not on the defendant.[2] RCW 74.66.050(2); 31 U.S.C.A. § 3730(b). This means that all

[1] While the FCA also authorizes the AGO to file civil FCA complaints without a relator, the focus of this summary is on the relator/qui tam aspects of the FCA. RCW 74.66.040; RCW 74.66.060(5).

[2] Lori Landis, Chief Deputy Clerk, the U. S. District Court, WD of WA indicates that the court does not put FCA cases on PACER. Attempts to locate a case will get a "no record found" response. This is also

records relating to the case must be kept on a secret docket by the Court Clerk.

2. Until a matter is final and the seal lifted, the information furnished pursuant to the Act is exempt from the Washington Public Records Act (PRA), chap. 42.56 RCW. RCW 74.66.030. This would apply to both the court and the AGO.

3. Copies of the complaint are given *only* to the WA AGO, and to the assigned judge of the Superior Court; it is not to be served on the defendant until the court so orders. RCW 74.66.050(2).[3]

4. With some exceptions, relator's counsel and the courts should follow the Washington superior court civil rules and General Rule 15(c). Exceptions include:

    - Because the defendant is not to be served with the complaint while it is being investigated, any motion to seal and required hearing under GR 15(c)(1) *cannot* include the defendant. RCW 74.66.050(2).

    - If a case is declined by the AGO and subsequently dismissed by the court pursuant to RCW 74.66.050(2) and the seal *is not lifted*, there is no provision in the statute permitting the dismissed case to be made available for public viewing as currently required under GR 15(c)(4). *See* RCW 74.66.030.

    - Because the case is not available for public viewing pre-intervention by the AGO, the court order and written order sealing the case *cannot* be filed and made available to the public as currently required under GR 15(c)(4) and GR 15(5)(C).

5. The following information should be included on the first caption page of a complaint:

FILED <u>IN CAMERA</u>	**or**	**FILED UNDER SEAL**
AND UNDER SEAL		**Pursuant to RCW 74.66.050(2)**

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true of other District Courts around the country. Ms. Landis authorized the AGO to provide her contact information, you can reach her at 206-370-8483 if you have any questions.

[3] In the Western District Court of Washington, they assign a cause number, and pre-assign all FCA cases to a judge. (Lori Landis, Chief Deputy Clerk).

6. Relator's counsel will often include a first cover caption that identifies the government, but not the relator or the defendant:

State of Washington,	**State of Washington,**
ex rel.	***ex rel.***
Plaintiffs	**Plaintiffs**
[UNDER SEAL]	
Relator	**v.**
v.	
[UNDER SEAL]	**[UNDER SEAL]**
Defendant	**Defendant**

Then, a second caption page identifying all the parties is provided.

- Thus, when received, the State of Washington (and any other governmental entity listed), should be identified in the court's sealed record as the primary party plaintiff to the case because it is being brought in the "name of the government." RCW 74.66.050(1).

7. Upon filing the complaint, it remains under seal for at least sixty days, during which time the AGO must determine whether or not it will intervene in the action. RCW 74.66.050(2); 31 U.S.C.A. § 3730(b)(2). For good cause shown, the AGO may move for an extension of time in which to determine whether it will intervene. RCW 74.66.050(3); 31 U.S.C.A. § 3730(b)(3).

    a. At the federal level, these motions typically request an extension of the seal for six months at a time. The AGO is not aware of actual statistics reporting on the length of time the average qui tam case remains under seal. Based on experience at the federal level, most intervened or settled cases are under seal for 2-3 years (with, of course, periodic reports to the supervising judge concerning the progress of the case, and the justification of the need for additional time). We are aware of cases still under seal going back to 2005.

    b. The complaint remains under seal until the AGO has determined whether or not it will intervene. RCW 74.66.050(3); 31 U.S.C.A. § 3730(b)(3). Once an intervention decision or unsealing of the complaint is made, the plaintiff may serve the complaint on the defendant. RCW 74.66.050(2); 31 U.S.C.A. § 3730(b)(2).

8. No other person may intervene or bring a similar action except the AGO. RCW 74.66.050(5); 31 U.S.C.A. § 3730(b)(5).

9. A complaint can be filed in any county in which the defendant(s) can be "found, resides, transact business, or in which any act proscribed by RCW 74.66.020 occurred." RCW 74.66.110(1).

10. In addition to the complaint filed with the superior court, the relator must serve upon the AGO a written "disclosure" of substantially all the evidence in the possession of the relator about the allegations set forth in the complaint. This disclosure is not filed in any court, and is not available to the named defendant. The statement and all evidence must be provided in *electronic format*. RCW 74.66.050(2).

11. The Attorney General must investigate the allegations. RCW 74.66.040. The investigation may involve state agencies (typically the Washington State Health Care Authority and Department of Social and Health Services). In some investigations where the federal government may also be a victim, Assistant United States Attorneys' will participate in the investigation and work closely with the AGO.

12. The investigation will often involve specific investigative techniques, including Civil Investigative Demands (CID) for documents or electronic records, witness interviews, compelled oral testimony from one or more individuals or organizations, and consultations with experts. RCW 74.66.120. If there is a parallel criminal investigation, search warrants and other criminal investigation tools may be used to obtain evidence.

    - Any records, testimony or other information obtained by the AGO pursuant to a CID are entirely exempt from the PRA. RCW 74.66.120(31).

13. At the conclusion of the investigation, the AGO will choose one of three options:

    a. Intervene in one or more counts of the pending qui tam action. RCW 74.66.100(3). This intervention expresses the Government's intention to take over the lawsuit and act as the primary plaintiff in prosecuting any counts identified by the AGO. *Id.*[4]

    b. Decline to intervene in one or all counts of the pending qui tam action. If the State of Washington declines to intervene, the relator and his or her attorney may prosecute the action on behalf of the State, but at that point, the State is not a direct party to the proceedings apart from its right to any recovery. RCW 74.66.060(3). Nevertheless, the relator may be required to keep the

[4] At the federal level, it is reported that fewer than 25% of filed qui tam actions result in an intervention on any count by the Department of Justice.

AGO informed about the case and provide copies of pleadings and other material. RCW 74.66.060(3).

- The AGO may intervene at a later date upon a showing of good cause. RCW 74.66.060(3).

c. Move to dismiss the relator's complaint, either because there is no case, or the case conflicts with significant statutory or policy interests of the State of Washington. RCW 74.66.060(2)(a).

- Dismissal of a qui tam action may only occur if the court and the AGO give written consent that explains the reason for the consenting to dismissal. RCW 74.66.050(1).

14. In practice, two other events may occur:

a. Settle the pending qui tam action with the defendant prior to the intervention decision, regardless of relator objections. RCW 74.66.060(2)(b). This usually, but not always, results in a simultaneous intervention and settlement with the State of Washington (at the federal level, this is included in the 25% intervention rate).

b. Advise the relator that the AGO intends to decline intervention and encourage the relator to voluntarily dismiss the action. At the federal level, this usually, but not always, results in dismissal of the qui tam action.

15. Upon intervention under RCW 74.66.060(1), the AGO has primary responsibility for prosecuting the action, and along with the complaint would likely file:

a. notice of intervention;

b. motion to unseal the qui tam complaint and court file.

16. The defendant is not required to respond to any complaint filed under RCW 74.66 until 20 days after the complaint is unsealed and served on the defendant. RCW 74.66.050(3).

17. The decision by the AGO to intervene in a case does not necessarily mean that it will endorse, adopt or agree with every factual allegation or legal conclusion in the relator's complaint.

18. The AGO also has the ability to assert claims arising under other statutes (such as the state criminal Medicaid False Statement under RCW 74.09.230, Anti-Kickback

Act under RCW 74.09.240), actions under RCW 74.09.210, Breach of Contract, or the common law, which the relators do not have the legal right to assert in their complaint, since only the False Claims Act has a qui tam provision. RCW 74.66.060(5).

19. Possible court filings during the course of the investigation include:

    a. Petitions for a court order compelling attendance or compliance under a CID.
        - May be filed in any county where the person needing to respond resides, is found, or transact business. RCW 74.66.120(25)

    b. Petition to modify or set aside a CID.
        - May be filed in any county where the person needing to respond resides, is found, or transacts business. RCW 74.66.120(26).

20. The Washington Superior Court civil rules apply to pre-intervention investigative demand disputes. RCW 74.66.120(30).

21. Washington's FCA does not have a statute of limitations. RCW 74.66.100(2).

22. Whistleblowers may experience retaliation including losing employment and being excluded in their profession. Whistleblower relief is available. RCW 74.66.090.

Chapter 74.66 RCW
MEDICAID FRAUD FALSE CLAIMS ACT

RCW Sections

Notes:

Reviser's note -- Sunset Act application: The medicaid fraud false claims act is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.419. RCW 74.66.005 through 74.66.130 are scheduled for future repeal under RCW 43.131.420.

74.66.005
Short title.

This chapter may be known and cited as the medicaid fraud false claims act.

[2012 c 241 § 214.]

Notes:

Sunset Act application: See note following chapter digest. **Intent -- Finding -- 2012 c 241:** See note following RCW 74.66.010.

74.66.010
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1)(a) "Claim" means any request or demand made for a medicaid payment under chapter 74.09 RCW, whether under a contract or otherwise, for money or property and whether or not a government entity has title to the money or property, that:

(i) Is presented to an officer, employee, or agent of a government entity; or

(ii) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the government entity's behalf or to advance a government entity program or interest, and the government entity:

(A) Provides or has provided any portion of the money or property requested or demanded; or

(B) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(b) A "claim" does not include requests or demands for money or property that the government entity has paid to an individual as compensation for employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(2) "Custodian" means the custodian, or any deputy custodian, designated by the attorney general.

(3) "Documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations, and any product of discovery.

(4) "False claims act investigation" means any inquiry conducted by any false claims act investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter.

(5) "False claims act investigator" means any attorney or investigator employed by the state attorney general who is charged with the duty of enforcing or carrying into effect any provision of this chapter, or any officer or employee of the state of Washington acting under the direction and supervision of the attorney or investigator in connection with an investigation pursuant to this chapter.

(6) "Government entity" means all Washington state agencies that administer

medicaid funded programs under this title.

(7)(a) "Knowing" and "knowingly" mean that a person, with respect to information:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information.

(b) "Knowing" and "knowingly" do not require proof of specific intent to defraud.

(8) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(9) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or rule, or from the retention of any overpayment.

(10) "Official use" means any use that is consistent with the law, and the rules and policies of the attorney general, including use in connection with: Internal attorney general memoranda and reports; communications between the attorney general and a federal, state, or local government agency, or a contractor of a federal, state, or local government agency, undertaken in furtherance of an investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with attorney general investigators, auditors, consultants and experts, the counsel of other parties, and arbitrators or mediators, concerning an investigation, case, or proceeding.

(11) "Person" means any natural person, partnership, corporation, association, or other legal entity, including any local or political subdivision of a state.

(12) "Product of discovery" includes:

(a) The original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(b) Any digest, analysis, selection, compilation, or derivation of any item listed in (a) of this subsection; and

(c) Any index or other manner of access to any item listed in (a) of this subsection.

(13) "Qui tam action" is an action brought by a person under RCW 74.66.050.

(14) "Qui tam relator" or "relator" is a person who brings an action under RCW 74.66.050.

[2012 c 241 § 201.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: "The legislature intends to enact a state false claims act in order to provide this state with another tool to combat medicaid fraud. The legislature finds that between 1996 and 2009 state-initiated false claims acts resulted in over five billion dollars in total recoveries to those states. The highest recoveries in those cases were from claims relating to billing fraud, off-label marketing, and withholding safety information; these cases were primarily related to the pharmaceuticals industry and hospital networks, hospitals, and medical centers. By chapter 241, Laws of 2012, the legislature does not intend to target a certain industry, profession, or retailer of medical equipment, or to place an undue burden on health care professionals. Chapter 241, Laws of 2012 is not intended to harass health care professionals, nor is intended to be used as a tool to target actions that are related to incidental errors or clerical errors, which should not be considered fraud. The intent is to use the false claims act to root out significant areas of fraud that result in higher health care costs to this state and to use the false claims act to recover state money that could and should be used to support the medicaid program." [2012 c 241 § 101.]

74.66.020
Civil penalty — False or fraudulent claims.

(1) Subject to subsections (2) and (4) of this section, a person is liable to the government entity for a civil penalty of not less than five thousand five hundred dollars and not more than eleven thousand dollars, plus three times the amount of damages which the government entity sustains because of the act of that person, if the person:

(a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(c) Conspires to commit one or more of the violations in this subsection (1);

(d) Has possession, custody, or control of property or money used, or to be used, by the government entity and knowingly delivers, or causes to be delivered, less than all of that money or property;

(e) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the government entity and, intending to defraud the government entity, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(f) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government entity who lawfully may not sell or pledge property; or

(g) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government entity, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government entity.

(2) The court may assess not less than two times the amount of damages which the government entity sustains because of the act of a person, if the court finds that:

(a) The person committing the violation of subsection (1) of this section furnished the Washington state attorney general with all information known to him or her about the violation within thirty days after the date on which he or she first obtained the information;

(b) The person fully cooperated with any investigation by the attorney general of the violation; and

(c) At the time the person furnished the attorney general with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(3) A person violating this section is liable to the attorney general for the costs of a civil action brought to recover any such penalty or damages.

(4) For the purposes of determining whether an insurer has a duty to provide a defense or indemnification for an insured and if coverage may be denied if the terms of the policy exclude coverage for intentional acts, a violation of subsection (1) of this section is an intentional act.

(5) The office of the attorney general must, by rule, annually adjust the civil penalties established in subsection (1) of this section so that they are equivalent to the civil penalties provided under the federal false claims act and in accordance with the federal civil penalties inflation adjustment act of 1990.

[2012 c 241 § 202.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.030
Public records exemption.

Any information furnished pursuant to this chapter is exempt from disclosure under the public records act, chapter 42.56 RCW, until final disposition and all court-ordered seals are lifted.

[2012 c 241 § 203.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.040
Attorney general — Investigation — Civil action.

The attorney general must diligently investigate a violation under RCW 74.66.020. If the attorney general finds that a person has violated or is violating RCW 74.66.020, the attorney general may bring a civil action under this section against the person.

[2012 c 241 § 204.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.050
Qui tam action — Relator rights and duties.

(1) A person may bring a civil action for a violation of RCW 74.66.020 for the person and for the government entity. The action may be known as a qui tam action and the person bringing the action as a qui tam relator. The action must be brought in the name of the government entity. The action may be dismissed only if the court, and the attorney general give written consent to the dismissal and their reason for consenting.

(2) A relator filing an action under this chapter must serve a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses on the attorney general in electronic format. The relator must file the complaint in camera. The complaint must remain under seal for at least sixty days, and may not be served on the defendant until the court so orders. The attorney general may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(3) The attorney general may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subsection (2) of this section. The motions may be supported by affidavits or other submissions in camera. The defendant may not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant.

(4) If the attorney general does not proceed with the action prior to the expiration of the sixty-day period or any extensions obtained under subsection (3) of this section, then the relator has the right to conduct the action.

(5) When a person brings an action under this section, no person other than the attorney general may intervene or bring a related action based on the facts underlying the pending action.

[2012 c 241 § 205.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.060
Qui tam action — Attorney general authority.

(1) If the attorney general proceeds with the qui tam action, the attorney general shall have the primary responsibility for prosecuting the action, and is not bound by an act of the relator. The relator has the right to continue as a party to the action, subject to the limitations set forth in subsection (2) of this section.

(2)(a) The attorney general may move to dismiss the qui tam action notwithstanding the objections of the relator if the relator has been notified by the attorney general of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion.

(b) The attorney general may settle the action with the defendant notwithstanding the objections of the relator if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(c) Upon a showing by the attorney general that unrestricted participation during the course of the litigation by the relator would interfere with or unduly delay the attorney general's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the relator's participation, such as:

(i) Limiting the number of witnesses the relator may call;

(ii) Limiting the length of the testimony of the witnesses;

(iii) Limiting the relator's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the relator in the litigation.

(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the relator would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the relator in the litigation.

(3) If the attorney general elects not to proceed with the qui tam action, the relator has the right to conduct the action. If the attorney general so requests, the relator must serve on the attorney general copies of all pleadings filed in the action and shall supply copies of all deposition transcripts, at the attorney general's expense. When the relator proceeds with the action, the court, without limiting the status and rights of the relator, may nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.

(4) Whether or not the attorney general proceeds with the qui tam action, upon a showing by the attorney general that certain actions of discovery by the relator would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not

more than sixty days. The showing must be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the attorney general has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding RCW 74.66.050, the attorney general may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any alternate remedy is pursued in another proceeding, the relator has the same rights in the proceeding as the relator would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state of Washington, if all time for filing the appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

[2012 c 241 § 206.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.070
Qui tam action — Award — Proceeds of action or settlement of claim.

(1)(a) Subject to (b) of this subsection, if the attorney general proceeds with a qui tam action, the relator must receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award an amount it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the relator in advancing the case to litigation.

(c) Any payment to a relator under (a) or (b) of this subsection must be made from the proceeds. The relator must also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs.

All expenses, fees, and costs must be awarded against the defendant.

(2) If the attorney general does not proceed with a qui tam action, the relator shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount may not be less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and must be paid out of the proceeds. The relator must also receive an amount for reasonable expenses, which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs must be awarded against the defendant.

(3) Whether or not the attorney general proceeds with the qui tam action, if the court finds that the action was brought by a person who planned and initiated the violation of RCW 74.66.020 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under subsection (1) or (2) of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of RCW 74.66.020, that person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal may not prejudice the right of the state to continue the action, represented by the attorney general.

(4) If the attorney general does not proceed with the qui tam action and the relator conducts the action, the court may award to the defendant reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the relator was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) Any funds recovered that remain after calculation and distribution under subsections (1) through (3) of this section must be deposited into the medicaid fraud penalty account established in RCW 74.09.215.

[2012 c 241 § 207.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.080
Qui tam action — Restrictions — Dismissal.

(1) In no event may a person bring a qui tam action which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(2)(a) The court must dismiss an action or claim under this section, unless opposed by the attorney general, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

(i) In a state criminal, civil, or administrative hearing in which the attorney general or other governmental [government] entity is a party;

(ii) In a legislative report, or other state report, hearing, audit, or investigation; or

(iii) By the news media;

unless the action is brought by the attorney general or the relator is an original source of the information.

(b) For purposes of this section, "original source" means an individual who either (i) prior to a public disclosure under (a) of this subsection, has voluntarily disclosed to the attorney general the information on which allegations or transactions in a claim are based, or (ii) has knowledge that is independent of, and materially adds to, the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the attorney general before filing an action under this section.

[2012 c 241 § 208.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.090
Whistleblower relief.

(1) Any employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent, is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this chapter or other efforts to stop one or more violations of this chapter.

(2) Relief under subsection (1) of this section must include reinstatement with the

same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees, and any and all relief available under RCW 49.60.030(2). An action under this subsection may be brought in the appropriate superior court of the state of Washington for the relief provided in this subsection.

(3) A civil action under this section may not be brought more than three years after the date when the retaliation occurred.

[2012 c 241 § 209.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.100
Procedure for civil actions.

(1) A subpoena requiring the attendance of a witness at a trial or hearing conducted under RCW 74.66.040 or 74.66.050 may be served at any place in the state of Washington.

(2) A civil action under RCW 74.66.040 or 74.66.050 may be brought at any time, without limitation after the date on which the violation of RCW 74.66.020 is committed.

(3) If the attorney general elects to intervene and proceed with a qui tam action, the attorney general may file its own complaint or amend the complaint of a relator to clarify or add detail to the claims in which the attorney general is intervening and to add any additional claims with respect to which the attorney general contends it is entitled to relief.

(4) In any action brought under RCW 74.66.040 or 74.66.050, the attorney general is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(5) Notwithstanding any other provision of law or the rules for superior court, a final judgment rendered in favor of the government entity in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, estops the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under RCW 74.66.040 or 74.66.050.

[2012 c 241 § 210.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.110
Jurisdiction — Seal on action.

(1) Any action under RCW 74.66.040 or 74.66.050 may be brought in the superior court in any county in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by RCW 74.66.020 occurred. The appropriate court must issue a summons as required by the superior court civil rules and service must occur at any place within the state of Washington.

(2) The superior courts have jurisdiction over any action brought under the laws of any city or county for the recovery of funds paid by a government entity if the action arises from the same transaction or occurrence as an action brought under RCW 74.66.040 or 74.66.050.

(3) With respect to any local government that is named as a coplaintiff with the state in an action brought under RCW 74.66.050, a seal on the action ordered by the court under RCW 74.66.050 does not preclude the attorney general or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of the local government to investigate and prosecute the action on behalf of the local government, except that the seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

[2012 c 241 § 211.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.120
Civil investigative demands.

(1)(a) Whenever the attorney general, or a designee, for purposes of this section, has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims act investigation, the attorney general, or a designee, may, before commencing a civil proceeding under RCW 74.66.040 or making an election under RCW 74.66.050, issue in writing and serve upon the person, a civil investigative demand requiring the person:

(i) To produce the documentary material for inspection and copying;

(ii) To answer in writing written interrogatories with respect to the documentary material or information;

(iii) To give oral testimony concerning the documentary material or information; or

(iv) To furnish any combination of such material, answers, or testimony.

(b) The attorney general may delegate the authority to issue civil investigative demands under this subsection (1). Whenever a civil investigative demand is an express demand for any product of discovery, the attorney general, the deputy attorney general, or an assistant attorney general must serve, in any manner authorized by this section, a copy of the demand upon the person from whom the discovery was obtained and must notify the person to whom the demand is issued of the date on which the copy was served. Any information obtained by the attorney general or a designee of the attorney general under this section may be shared with any qui tam relator if the attorney general or designee determines it is necessary as part of any false claims act investigation.

(2)(a) Each civil investigative demand issued under subsection (1) of this section must state the nature of the conduct constituting the alleged violation of this chapter which is under investigation, and the applicable provision of law alleged to be violated.

(b) If the demand is for the production of documentary material, the demand must:

(i) Describe each class of documentary material to be produced with such definiteness and certainty as to permit the material to be fairly identified;

(ii) Prescribe a return date for each class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) Identify the false claims act investigator to whom such material must be made available.

(c) If the demand is for answers to written interrogatories, the demand must:

(i) Set forth with specificity the written interrogatories to be answered;

(ii) Prescribe dates at which time answers to written interrogatories must be submitted; and

(iii) Identify the false claims law investigator to whom such answers must be submitted.

(d) If the demand is for the giving of oral testimony, the demand must:

(i) Prescribe a date, time, and place at which oral testimony must be commenced;

(ii) Identify a false claims act investigator who must conduct the examination and the custodian to whom the transcript of the examination must be submitted;

(iii) Specify that the attendance and testimony are necessary to the conduct of the investigation;

(iv) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(e) Any civil investigative demand issued under this section which is an express demand for any product of discovery is not due until thirty days after a copy of the demand has been served upon the person from whom the discovery was obtained.

(f) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section may not be sooner than six days after the date on which demand is received, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present which warrant the commencement of the testimony sooner.

(g) The attorney general may not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the attorney general, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(3) A civil investigative demand issued under subsection (1) or (2) of this section may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under:

(a) The standards applicable to subpoenas or subpoenas duces tecum issued by a court to aid in a special inquiry investigation; or

(b) The standards applicable to discovery requests under the superior court civil rules, to the extent that the application of these standards to any demand is appropriate and consistent with the provisions and purposes of this section.

(4) Any demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to any person. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(5) Any civil investigative demand issued under this section may be served by a false claims act investigator, or by a commissioned law enforcement official, at any place within the state of Washington.

(6) Service of any civil investigative demand issued under (a) of this subsection or of any petition filed under subsection (25) of this section may be made upon a partnership, corporation, association, or other legal entity by:

(a) Delivering an executed copy of the demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(b) Delivering an executed copy of the demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(c) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(7) Service of any demand or petition may be made upon any natural person by:

(a) Delivering an executed copy of the demand or petition to the person; or

(b) Depositing an executed copy of the demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(8) A verified return by the individual serving any civil investigative demand issued under subsection (1) or (2) of this section or any petition filed under subsection (25) of this section setting forth the manner of the service constitutes proof of the service. In the case of service by registered or certified mail, the return must be accompanied by the

return post office receipt of delivery of the demand.

(9)(a) The production of documentary material in response to a civil investigative demand served under this section must be made under a sworn certificate, in the form as the demand designates, by:

(i) In the case of a natural person, the person to whom the demand is directed; or

(ii) In the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person.

(b) The certificate must state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims act investigator identified in the demand.

(10) Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims act investigator identified in the demand at the principal place of business of the person, or at another place as the false claims act investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (25) of this section. The material must be made available on the return date specified in the demand, or on a later date as the false claims act investigator may prescribe in writing. The person may, upon written agreement between the person and the false claims act investigator, substitute copies for originals of all or any part of the material.

(11)(a) Each interrogatory in a civil investigative demand served under this section must be answered separately and fully in writing under oath and must be submitted under a sworn certificate, in the form as the demand designates, by:

(i) In the case of a natural person, the person to whom the demand is directed; or

(ii) In the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

(b) If any interrogatory is objected to, the reasons for the objection must be stated in the certificate instead of an answer. The certificate must state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information must be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(12) The examination of any person pursuant to a civil investigative demand for oral testimony served under this section must be taken before an officer authorized to

administer oaths and affirmations by the laws of the state of Washington or of the place where the examination is held. The officer before whom the testimony is to be taken must put the witness on oath or affirmation and must, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony must be recorded and must be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection does not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the superior court civil rules.

(13) The false claims act investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney general, any person who may be agreed upon by the attorney for the government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking the testimony.

(14) The oral testimony of any person taken pursuant to a civil investigative demand served under this section must be taken in the county within which such person resides, is found, or transacts business, or in another place as may be agreed upon by the false claims act investigator conducting the examination and the person.

(15) When the testimony is fully transcribed, the false claims act investigator or the officer before whom the testimony is taken must afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless the examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make must be entered and identified upon the transcript by the officer or the false claims act investigator, with a statement of the reasons given by the witness for making the changes. The transcript must then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after being afforded a reasonable opportunity to examine it, the officer or the false claims act investigator must sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons given.

(16) The officer before whom the testimony is taken must certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims act investigator must promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(17) Upon payment of reasonable charges therefor, the false claims act investigator must furnish a copy of the transcript to the witness only, except that the attorney general, the deputy attorney general, or an assistant attorney general may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(18)(a) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (1) or (2) of this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and must briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. The person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If the person refuses to answer any question, a special injury proceeding petition may be filed in the superior court under subsection (25) of this section for an order compelling the person to answer the question.

(b) If the person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of the person may be compelled in accordance with the provisions of the superior court civil rules.

(19) Any person appearing for oral testimony under a civil investigative demand issued under subsection (1) or (2) of this section is entitled to the same fees and allowances which are paid to witnesses in the superior courts.

(20) The attorney general must designate a false claims act investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and must designate such additional false claims act investigators as the attorney general determines from time to time to be necessary to serve as deputies to the custodian.

(21)(a) A false claims act investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section must transmit them to the custodian. The custodian shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material under subsection (23) of this section.

(b) The custodian may cause the preparation of the copies of the documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims act investigator, or employee of the attorney general. The material, answers, and transcripts may be used by any authorized false claims act investigator or other officer or employee in connection with the taking of oral testimony under this section.

(c)(i) Except as otherwise provided in this subsection (21), no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, may be available for examination by any individual other than a false claims act investigator or other officer or employee of the attorney general authorized under (b) of this subsection.

(ii) The prohibition in (c)(i) of this subsection on the availability of material, answers, or transcripts does not apply if consent is given by the person who produced the material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for the material, consent is given by the person from whom the discovery was obtained. Nothing in this subsection [(21)](c)(ii) is intended to prevent disclosure to the legislature, including any committee or subcommittee for use by such an agency in furtherance of its statutory responsibilities.

(d) While in the possession of the custodian and under the reasonable terms and conditions as the attorney general shall prescribe:

(i) Documentary material and answers to interrogatories must be available for examination by the person who produced the material or answers, or by a representative of that person authorized by that person to examine the material and answers; and

(ii) Transcripts of oral testimony must be available for examination by the person who produced the testimony, or by a representative of that person authorized by that person to examine the transcripts.

(22) Whenever any official has been designated to appear before any court, special inquiry judge, or state administrative judge in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to the official the material, answers, or transcripts for official use in connection with any case or proceeding as the official determines to be required. Upon the completion of such a case or proceeding, the official must return to the custodian any material, answers, or transcripts so delivered which have not passed into the control of any court, grand jury, or agency through introduction into the record of such a case or proceeding.

(23) If any documentary material has been produced by any person in the course of any false claims act investigation pursuant to a civil investigative demand under this section, and:

(a) Any case or proceeding before the court or special inquiry judge arising out of the investigation, or any proceeding before any administrative judge involving the material, has been completed; or

(b) No case or proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of the investigation:

Then, the custodian shall, upon written request of the person who produced the material, return to the person the material, other than copies furnished to the false claims act investigator under subsection (10) of this section or made for the attorney general under subsection (21)(b) of this section, which has not passed into the control of any

court, grand jury, or agency through introduction into the record of the case or proceeding.

(24)(a) In the event of the death, disability, or separation from service of the attorney general of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to civil investigative demand under this section, or in the event of the official relief of the custodian from responsibility for the custody and control of the material, answers, or transcripts, the attorney general must promptly:

(i) Designate another false claims act investigator to serve as custodian of the material, answers, or transcripts; and

(ii) Transmit in writing to the person who produced the material, answers, or testimony notice of the identity and address of the successor so designated.

(b) Any person who is designated to be a successor under this subsection (24) has, with regard to the material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor may not be held responsible for any default or dereliction which occurred before that designation.

(25) Whenever any person fails to comply with any civil investigative demand issued under subsection (1) or (2) of this section, or whenever satisfactory copying or reproduction of any material requested in the demand cannot be done and the person refuses to surrender the material, the attorney general may file, in any superior court of the state of Washington for any county in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of the civil investigative demand.

(26)(a) Any person who has received a civil investigative demand issued under subsection (1) or (2) of this section may file, in the superior court of the state of Washington for the county within which the person resides, is found, or transacts business, and serve upon the false claims act investigator identified in the demand a petition for an order of the court to modify or set aside the demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside the demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which the discovery was obtained is or was last pending. Any petition filed under this subsection (26)(a) must be filed:

(i) Within thirty days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within a longer period as may be prescribed in writing by any false claims act investigator identified in the demand.

(b) The petition must specify each ground upon which the petitioner relies in seeking relief under (a) of this subsection, and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(27)(a) In the case of any civil investigative demand issued under subsection (1) or (2) of this section which is an express demand for any product of discovery, the person from whom the discovery was obtained may file, in the superior court of the state of Washington for the county in which the proceeding in which the discovery was obtained is or was last pending, and serve upon any false claims act investigator identified in the demand and upon the recipient of the demand, a petition for an order of the court to modify or set aside those portions of the demand requiring production of any product of discovery. Any petition under this subsection (27)(a) must be filed:

(i) Within twenty days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

(ii) Within a longer period as may be prescribed in writing by any false claims act investigator identified in the demand.

(b) The petition must specify each ground upon which the petitioner relies in seeking relief under (a) of this subsection, and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(28) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (1) or (2) of this section, the person, and in the case of an express demand for any product of discovery, the person from whom the discovery was obtained, may file, in the superior court of the state of Washington for the county within which the office of the custodian is situated, and serve upon the custodian, a petition for an order of the court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(29) Whenever any petition is filed in any superior court of the state of Washington under this section, the court has jurisdiction to hear and determine the matter so presented, and to enter an order or orders as may be required to carry out the provisions of this section. Any final order so entered is subject to appeal under the rules of appellate procedure. Any disobedience of any final order entered under this section by any court

must be punished as a contempt of the court.

(30) The superior court civil rules apply to any petition under this section, to the extent that the rules are not inconsistent with the provisions of this section.

(31) Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (1) or (2) of this section are exempt from disclosure under the public records act, chapter 42.56 RCW.

[2012 c 241 § 212.]

Notes:

Sunset Act application: See note following chapter digest.

Intent -- Finding -- 2012 c 241: See note following RCW 74.66.010.

74.66.130
Reporting.

Beginning November 15, 2012, and annually thereafter, the attorney general in consultation with the health care authority must report results of implementing the medicaid fraud false claims act. This report must include:

(1) The number of attorneys assigned to qui tam initiated actions;

(2) The number of cases brought by qui tam actions and indicate how many cases are brought by the attorney general and how many by the qui tam relator without attorney general participation;

(3) The results of any actions brought under subsection (2) of this section, delineated by cases brought by the attorney general and cases brought by the qui tam relator without attorney general participation;

(4) The amount of recoveries attributable to the medicaid false claims; and

(5) Information on the costs, attorneys' fees, and any other expenses incurred by defendants in investigating and defending against qui tam actions, to the extent this information is provided to the attorney general or health care authority.

[2012 c 241 § 213.]**Notes:** **Sunset Act application:** See note following chapter digest. **Intent -- Finding -- 2012 c 241:** See note following RCW 74.66.010.

Washington's *Qui Tam*– Medicaid False Claims Act

Carrie Bashaw, Senior Counsel
Washington Office of the Attorney General
Medicaid Fraud Control Unit (MFCU)
carrieb@atg.wa.gov; 360-586-8895
October 3, 2013

Who is the MFCU?

- Established in 1978, the Washington State Medicaid Fraud Control Unit investigates and prosecutes criminal fraud committed by health care providers.
- **Effective June 7, 2012,** the Unit also prosecutes civil fraud under the Medicaid false claims act. RCW 74.66 *et seq.*
- The unit also investigates and prosecutes crimes committed against vulnerable adults.
- 8 Prosecutors, 11 Investigators, 5 Data Analysts/Auditors, 2 Paralegals, 6 Professional Support Staff

Medicaid Fraud In WA

- **Civil Case:** can be liable for three times the government's damages plus penalties of $5,500 to $11,000 per false claim, plus attorney fees & costs-RCW 74.66.020(1)
- **Criminal Case:** Medicaid False Statement, Class C Felony, five years imprisonment and/or a $25,000 fine. RCW 74.09.230; anti-kickbacks RCW 74.09.240
- **Fraud:** Those who knowingly submit, or cause another to submit, false claims for payment of Medicaid funds
- **Knowingly:** does not require specific proof of intent to defraud.

Private Citizen Action: *Qui Tam*

- *Qui tam*--The term "*qui tam*" is translated as “[s]he who brings an action for the king[queen] as well as for himself[herself]."

- *Qui tam* is the technical term for the unique mechanism in the False Claims Act that allows persons and entities with evidence of fraud against government programs or contracts to sue the wrongdoer on behalf of the government.

How do you pronounce *qui tam*

- The simplest is “key tam” (rhymes with "ham").
- Black's Law Dictionary suggests “kweye tam” (rhymes with "eye“).
- Some say “kweye tom” (like the common name, but often said with an upper crust accent).
- And some say “kwee tam/tom” (just like it sounds, but *not* “kway”).

Filing Procedures

- The qui tam complaint must be filed “in camera” and under seal, which means that all records relating to the case must be kept on a secret docket by the Clerk of the Court. RCW 74.66.050(2).

- The U. S. District Court, Western District of Washington does not put FCA cases on PACER and any attempt to locate the case through electronic means will get a “no record found” response.

- W.D. of Washington, Lori Landis, Chief Deputy Clerk, 206-370-8483

Exempt From The PRA

- Until a matter under the FCA is final and seal lifted, the information furnished pursuant to the Act is exempt from the Washington Public Records Act (PRA), chap. 42.56 RCW. This would include the court file. RCW 74.66.030.

- Any records and other information obtained pursuant to a civil investigative demand are entirely exempt from the PRA. RCW 74.66.120(31).

Conflicts With GR 15

- GR 15 (c) (1)Sealing or Redacting Court Records. (1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case...

- RCW 74.66.050(2) does not allow the for the defendant to be notified or served with the complaint until the seal is lifted.

GR 15(c)(4)

- Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

- RCW 74.66.030 provides: “Any information furnished pursuant to this chapter is exempt from disclosure under the public records act…until final disposition and all court-ordered seals are lifted.”

GR 15(5)(C)

- Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:
  - (C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

- RCW 74.66.030 provides: "Any information furnished pursuant to this chapter is exempt from disclosure under the public records act…until final disposition and all court-ordered seals are lifted."

Counties Potentially Affected

- A complaint can be filed in any county in which the defendant(s) can be “found, resides, transact business, or in which any act proscribed by RCW 74.66.020 occurred.” RCW 74.66.110(1).

Who Are The Parties

- The State of Washington (and any other governmental entity listed), should be identified in the court record as the primary party plaintiff because it is being brought in the "name of the government." RCW 74.66.050(1).

- In the caption, the Relator(s) should be listed after the governmental entity.

Captions

- The following information should be included on the first caption page of a complaint to the right of the parties:

FILED IN CAMERA
AND UNDER SEAL

or

FILED UNDER SEAL
Pursuant to RCW 74.66.050(2)

Identification of the Parties

Relator's counsel will often include a first cover caption that identifies the government, but not the relator or the defendant

State of Washington,
ex rel.
Plaintiffs

[UNDER SEAL]
Relator

v.

[UNDER SEAL]
Defendant

State of Washington,
ex rel.
Plaintiffs

v.

[UNDER SEAL]
Defendant

Then, a second caption page identifying all the parties is provided.

Who receives the complaint

- Copies of the complaint are given *only* to the WA Attorney General's Office (AGO), and to the assigned judge of the Superior Court; it is not to be served on the defendant until the court so orders. RCW 74.66.050(2).

- In the U.S. District Court, Western District Court, they pre-assign all FCA cases to a judge. (Lori Landis, Chief Deputy Clerk).

The Seal

- A qui tam complaint remains under seal for at least 60 days during which the AGO can investigate and decide whether to take over the action. RCW 74.66.020(2).

- Before the 60 day period expires, the AGO is authorized to seek an extension of the seal. RCW 74.66.050(3).

- At the federal level, most extension requests are for 6 month periods.

AGO Options

- **Intervene**. RCW 74.66.100(3). Intervention expresses the Government's intention to take over the lawsuit and act as the primary plaintiff in prosecuting any counts identified by the AGO.

- **Decline**. If declined, the relator may prosecute the action on behalf of the State. The State is not a direct party to the proceedings apart from its right to any recovery. RCW 74.66.060(3). The relator may be required to keep the AGO informed about the case and provide copies of pleadings and other material. RCW 74.66.060(3).

- **Intervene At A Later Date**. Upon a showing of good cause. RCW 74.66.060(3).

- **Move to Dismiss**. Requires court and AGO written consent to dismiss. RCW 74.66.060(2)(a); RCW 74.66.050(1). Encourage relator to voluntarily dismiss.

- **Settle The Case**. Prior to the intervention decision, regardless of relator objections. RCW 74.66.060(2)(b).

Investigative Tools

- Audits and data analysis
- Compel production of records and data: through a Civil Investigative Demand
- Evidence Under Oath: like a deposition, but not the same

Possible Court Hearings Before Unsealing

- Petitions for a court order compelling attendance or compliance.
  - May be filed in any county where the person needing to respond resides, is found, or transact business. RCW 74.66.120(25)

- Petition to modify or set aside a CID.
  - May be filed in any county where the person needing to respond resides, is found, or transacts business. RCW 74.66.120(26).

- The Washington Superior Court civil rules apply to petitions. RCW 74.66.120(30).

Initiating Intervention

- Upon intervention, the AGO has primary responsibility for prosecuting the action (RCW 74.66.060(1)), and along with the complaint would likely file:
  - 1) a notice of intervention;
  - 2) a motion to unseal the qui tam complaint and the court file

Who Is The Relator

- Usually the inside person who understands the fraud and has the evidence to support a fraud charge.
- Whistleblowers may have to overcome retaliation including losing employment and being excluded in their profession.
- Whistleblower cases take time and can have financial and emotional stress on relators and their families.
- Whistleblower relief is available. RCW 74.66.090

Examples of Fraud

- **Kickbacks & Off-label Marketing** – Pharm. Manufacturers
- **Unbundling** - Multiple billing codes instead of one
- **Double billing** – repeated billing for the same goods or service
- **Upcoding** - Inflating bills by using billing codes for more expensive illness or treatment
- **Billing for brand-named** drugs when generic drugs are actually provided
- **Unlicensed Practice** – persons other than the licensed practitioner providing the service

False Claims Act Math:

- **Assumption:** Amount defrauded from the Government is $10 M.
- **Triple damages** awarded = $30 M.
- **Relator awarded** national average of 17%, or $5.1 million, which is shared with the lawyer, & taxes are owed. Entitled to 15% - 30%.
- **Government nets** $24.9 M; typically 50% gets returned to the Federal government and 50% gets returned to the State of Washington.

Deficit Reduction Act

- **The DRA creates cash incentives for strong laws:** State's that enact a False Claims Act closely modeled on the federal version of the law, the Federal Government will increase the state share of FCA Medicaid awards by 10 percentage points.

- **10 percentage point increase.** When the Federal-State Medicaid split is 50-50, a DRA compliant state will split awards 40-60, with the state getting 60 percent.

Federal FCA Recoveries

- Since 1988, whistle-blowers have helped the U.S. government recover $24.2 billion, and 75 percent of that involved medical treatment, according to the Department of Justice.

- The pace is accelerating. Since 2009, 91 percent of the $10.6 billion recovered has come in health-care cases.

Facilities	Practitioners	Medical Support	Medical Support
Hospitals	Chiropractors	RN, PT, OT, RT	Dialysis Centers
Skilled Nursing Facilities	Doctors	Counselors, Psychologists	Ambulance, Transportation
Assisted Living	Dentists	Durable Medical Equipment	Radiology
Boarding Homes	Podiatrists	Pharmaceutical Manufacturer	Medical Device Manufacturer
Day Surgery	Optometrists, Opticians	Home Health	3rd Party Billing Co.
Mental Health Facilities	ARNP, PAs	Laboratory	Managed Care company
Substance Abuse Facility	Paramedics	Pharmacy	Medicaid Program

WA Case Metrics	June 7, 2012 through September 30, 2013
QT Global cases filed in Federal Dist. Cts. around the country	75
QT State only cases filed in WA Superior Cts.	1
QT filed in WA Federal District Cts.	2
non-QT civil cases filed in WA Superior Cts.	1
WA Intervention	0
WA formally declined	3
Civil Settlements	17
Prospective relief enforceable in WA courts- CIA, Settlement Agreements, Injunctions etc.	3
Total Active Civil Cases (includes monitored cases)	105

WA Cases	June 7, 2012 to September 30, 2013
Pharmaceutical Manuf.	48
Pharmacy	11
Laboratory	8
MD/OD	5
DME	5
Hospitals	2
Dentist	1
Home Health	1
Optometrist/Optician	1
Radiology	1
Skilled Nursing Facility	2
Other (medical device, dialysis, billing comp., orthotics)	10

WA Recoveries	6/7/2012 to 9/30/2013
WA Share QT Civil Restitution	$13,249,239
Fed. Share QT Civil Restitution	$22,502,968
Penalties Collected by WA	$8,285,087
WA State Only Non-QT (federal & state share)	$169,261
Interest collected by WA	$263,668
DRA 10% bump	$0
Amount To Relators	$0
Costs (MFCU salaries, admin., experts, etc.)	$1,050,188
Total Recoveries	**$44,470,223**

Points of Interest

- Washington's FCA does not have a statute of limitations. RCW 74.66.100(2)
- Qui Tam actions cannot be brought if the state is already a party to an administrative proceeding or civil suit on the same matter. RCW 74.66.080(1)
- Original Source & *No* Public Disclosure. RCW 74.66.080

Superior Court of the State of Washington
for the County of King

WILLIAM L. DOWNING
Judge, Department No. 43

Seattle, Washington
98104-2312

October 3, 2013

Hon. Thomas J. Wynne
Snohomish County Superior Court
3000 Rockefeller Ave., MS 502
Everett, WA 98201-4046

Re: Proposed Amendment to GR 15

Dear Judge Wynne:

Thank you again for all your good work on the JISC Data Dissemination Committee. Having had a chance to look over what I understand to be a proposed amendment to GR 15, I did want to offer a few comments for your consideration.

In section (c)(2) of the proposed rule, there appears to me to be a significant watering down of what I believe should be a rigorous process for a judge to order the elimination of the public's right to access their court records. Currently, the rule requires the court to enter written findings that the public's interest is outweighed by a specifically identified privacy or safety concern that the court finds to be compelling. It is my belief that the state and federal constitutions still require this. Yet, the proposed rule would simply have the judge "consider" a list of factors before denying the public access. My dictionary defines "consider" as "to think carefully about." Remember that these issues most typically arise when the litigants are in agreement and there is nobody arguing on behalf of the public interest. For the presumption in favor of public access to have even a fighting chance in these circumstances, the rule has to clearly tell the judge what he or she must find and not simply consider. I fear that the proposed language (inviting a judge to orally state "I've considered all the factors and now I'm sealing these records") is a big step backwards.

In what now appears to be GR 15(c)(4)(B), I have an old complaint. I believe a sealing or redaction requires the finding of a "compelling interest" that outweighs the value of public scrutiny. Parties to litigation routinely serve their private interests through agreed protective orders issued upon an ostensible showing of "good cause." How, then, can a sealing order be justified merely because it "furthers a protective order"?

My third concern is with a perceived shortcoming in GR 15(c)(5). I applaud the inclusion of a requirement for an expiration date attached to any sealing or redaction order. However, I think language should be added to incorporate the constitutional requirement that the duration of the denial of access be as short as possible and be tied to the finding of a need that continues to be compelling throughout that period. Without this language, I fear we will see more orders denying public access to public records for "ninety-nine years" (and I know that court clerks, looking out for their successors, don't like such orders either).

My fourth and final concern is more difficult for me to get a handle on – although perhaps the most important. It relates to the many new ways in which the proposed rule seems to facilitate the removal from public view of so much information about how police, prosecutors and judges have handled adult and juvenile criminal cases. This all raises some very important and difficult issues of social policy as well as political theory and constitutional law and I guess I'm just left feeling some discomfort with the rule-making process as the forum for their resolution.

Thank you for considering and sharing my comments.

Sincerely,

William L. Downing

WACDL

Washington Association of Criminal Defense Lawyers

Douglas R. Hyldahl
President

Teresa Mathis
Executive Director

October 3, 2013

Data Dissemination Committee
c/o The Honorable Thomas J. Wynne
Snohomish County Superior Court
3000 Rockefeller Ave
M/S 502
Everett, WA 98201

Re: Comments on Proposed General Rule 15

Dear Members of the Data Dissemination Committee,

WACDL thanks the committee for the opportunity to comment upon the proposed changes to General Rule 15, governing access to and sealing of court records. For over 25 years, WACDL has worked to improve the quality and administration of justice and to promote a rational and humane criminal justice system. Our members work hard in court to give life to the principle that people are innocent until guilt is proven beyond a reasonable doubt.

WACDL is strongly committed to the open administration of justice and the public's ability to oversee the courts, but also works on behalf of our members and their clients to protect individual privacy and preserve opportunities for successful reentry. The reasons these issues are critically important to our clients' lives are described in WACDL's April 11, 2013 letter to this committee.

Furthermore, for the reasons discussed in WACDL's letter to this Committee on April 11th of this year, we support the proposed changes to GR 15(c)(4)(D) that would permit sealing of non-conviction records. Also as discussed in those letters, we continue to oppose amending GR 15(c)(6) to prohibit redaction of a name in the court index; that issue remains pending in the Washington State Supreme Court in *Hundtofte v. Encarnacion*, No. 88036-1. We acknowledge that the current draft of GR 15 has removed the language of GR 15(c)(4) that was problematic, but the problems in GR 15(c)(6), described in WACDL's April 11 letter, remain.

Sincerely,

Teresa Mathis
Executive Director

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WACDL

Washington Association of Criminal Defense Lawyers

Kimberly N. Gordon
President

Teresa Mathis
Executive Director

April 11, 2013

Data Dissemination Committee
c/o The Honorable Thomas J. Wynne
Snohomish County Superior Court
3000 Rockefeller Ave.
M/S 502
Everett, WA 98201

RE: Comments to proposed Changes to General Rules 15 and 31

Dear Members of the Data Dissemination Committee,

I write on behalf of the Washington Association of Criminal Defense Lawyers (WACDL). For 25 years, WACDL has worked to improve the quality and administration of justice and to promote a rational and humane criminal justice system. Our members work hard in court to give life to the principle that people are innocent until guilt is proven beyond a reasonable doubt. This principle "is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law."[1]

If this fundamental principle is not also protected outside of the courtroom, citizens do not receive true justice. Such is the case with nonconviction data – arrest and court records relating to cases in which the government has never met its burden of proof, or cases in which an individual has earned, by all accounts, the right to say that they have never been convicted. We appreciate the Committee's dedication to working on this issue and thank you for the opportunity to provide comment.

We support amending the rules to create a clear process by which people can have courts make individualized assessments about the dissemination of nonconviction data. Our work has shown us how difficult it is to balance the many interests affected by dissemination of nonconviction data. We appreciate the Committee's hard work in attempting to do so and support much of the proposed language. We believe that much of the language comes close to providing a clear process by which people can have courts make individualized assessments about the dissemination of nonconviction data. Such a process will help make the presumption of innocence real, and also furthers these other important goals:

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[1] *Coffin v. United States*, 156 U.S. 432 (895).

- It will reduce unintended and unjustified but racially and economically disparate harms found in Washington's criminal justice system. Thereby, it will assist Washington's Board for Judicial Administration in fulfilling its Resolutions to "[e]valuate existing and proposed rules, policies and practices to determine whether they contribute to racial and ethnic disproportionality or disparate impact in the justice system," to "[i]dentify corrective measures and pursue system-wide improvements in racial and ethnic fairness," and to "[d]evelop and implement action plans to … eliminate racial and ethnic disproportionality, disparate treatment, and disparate impact in the justice system … ."

- It will improve our communities by removing unwarranted barriers to employment and safe, stable housing.

- It will bring these rules and the court's approach to criminal records in line with changing technology.

- It will make the protections offered Washingtonians consistent with those available in many other states.[2]

- It will give effect to Washington's Access to Justice Technology Principles, which recognize that "access to justice is a fundamental right in Washington State" and that:

> use of technologies in the Washington State justice system must protect and advance the fundamental right of equal access to justice. There is a particular need to avoid creating or increasing barriers to access and to reduce or remove existing barriers for those who are or may be excluded or underserved, including those not represented by counsel.

  Principle 3 notes "the justice system has the dual responsibility of being open to the public and protecting personal privacy."

- It will strike the balance enunciated by the United States Supreme Court – that with time, the public's right to know about non-conviction records decreases and an individual's right to privacy increases.[3] This balance was already recognized by this Committee in 2008 when it concluded:

> [o]ther court records … may not have been intended to be open to the public for long periods of time, especially now with remote accessibility of electronic court records. For example, the work group raised issues regarding the retention of non-conviction information for long periods of time. Such court records can be misleading, especially when it relies on AOC's name/case search "public view"

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[2] Summaries of some of these protections can be found in the Matthew Rosen's article via http://xa.yimg.com/kq/groups/1624843/1578842625/name/Expanding+Relief+in+Delaware+Report.pdf, and at U.S. DEP'T OF JUSTICE, THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS 4 (2006), http://www.justice.gov/olp/ag_bgchecks_report.pdf.

[3] *U.S. D.O.J. Et al v. Reporters for Freedom of Association et al.* 489 U.S. 749 (1989).

website, which provides very limited and specific information. Extended retention of these records serves no public purpose and may be a disservice to the public and subject of these records.[4]

- It is consistent with Executive Order 00-33 re: Public Records Privacy Protections, which declares in part:

> Citizens of the state of Washington are gravely concerned about their privacy, and that concern is well-founded. … It is the state government's added responsibility to protect the personal privacy rights of Washington's citizens and lead the private sector by example and by law.

- It works to remedy the problems highlighted and reforms suggested and justified by the Equal Employment Opportunity Commission,[5] the National Consumer Law Center,[6] the American Bar Association,[7] the New York Times,[8] MSNBC,[9] and Princeton University's Institute for Research on Poverty.[10]

Finally, people are the most important reasons to amend the rules pertaining to dissemination of nonconviction data. They include a single mother falsely accused of rape of a child while fleeing her abusive relationship. She was acquitted of all charges, but the record of the false accusation of rape continues to show up when she applies for jobs. They include a man placed on temporary leave by his employer after the discovery of a ten-year-old accusation. He lost work and pay for two months until he was able to obtain the records to show that the case had

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[4] A copy of the complete Report is attached as Appendix A.

[5] *See* http://www.msnbc.msn.com/id/38740828/ns/business-careers/t/background-checks-can-offer-bad-history-lesson.

[6] The National Consumer Law Center published a comprehensive and evidence-based 2012 report titled "Broken Records." The Report concludes, in part, that

> Despite the importance of the accuracy of criminal background reports, evidence indicates that professional background screening companies routinely make mistakes with grave consequences for job seekers. … With the explosive growth of this industry, it is essential that the "Wild West" of employment screening be reined in so that consumers are not guilty until proven innocent. Currently, lack of accountability and incentives to cut corners to save money mean that consumers pay for inaccurate information with their jobs, and thus, their families' livelihood.

The entire Report can be found at http://www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf.

[7] *See http://www.abacollateralconsequences.org/.*

[8] *See "Faulty Criminal Background Checks*" http://www.nytimes.com/2012/07/25/opinion/faulty-criminal-background-checks.html?_r=0.

> Sloppy reporting was not a huge problem in the past when there were fewer companies gathering data and the only way to get it was to examine court records in person. But, in recent years, this has become a computer-driven industry, with companies buying often incomplete records in bulk from the courts or from other screening companies and then not updating them. An incomplete report might show, for instance, that a job candidate was charged with a crime but not that he was exonerated. And faulty data can circulate forever.

[9] See *Supra*, note 5.

[10] *See The Mark of a Criminal Record* http://www.princeton.edu/~pager/pager_ajs.pdf and http://www.princeton.edu/~pager/annals_sequencingdisadvantage.pdf.

been dismissed. And they include a man who was arrested here 20 years ago on a misdemeanor charge that was later dismissed. Even though he is now a successful businessman who lives in New York, this ancient record causes him problems with international travel and housing. Just recently, his friend was denied a mortgage for an apartment because he was the co-signer on the mortgage and the index from his otherwise sealed, "nonconviction" record was discovered. Other stories abound on a local and national level.[11]

At the same time, we have serious concerns about the language proposed in GR 15(c)(4) and GR 15(c)(6). These sections, either alone or together, constitute a giant step backwards, making it even harder for anyone who seeks to limit the dissemination of nonconviction data. They will reduce access to justice for hundreds, if not thousands, of individuals.

GR 15(c)(4)'s requirement that the proponent of sealing and redaction "distinguish their case from similarly situated individuals" makes the remedies unavailable to most people. In fact, this amendment would result in a General Rule that is even *worse* than what currently exists. We understand that this proposed language is a response to the Court of Appeal's recent decision in *Hundtofte v. Encarnacion*.[12] But our Supreme Court's review of that case is pending, and it has been given strong reasons to disagree with the lower court's unprecedented decision.

GR 15(c)(6)'s upends the status quo recognized in the Court of Appeals decision in *J.S. v. State of Washington*.[13] In that case, the Court confirmed that GR 15(d)[14] does not restrict the ability of a court to redact, but "simply describes procedures and limits to public information when an 'entire court file' is ordered sealed."[15] GR 15(c)(6) should likewise make it clear that courts are authorized to order redaction of names from public court indices, when redaction is otherwise supported by factors found in the *Ishakawa* decision and GR 15(c)(2). We have represented too many people who are harmed solely by the unfair implication drawn from a name appearing in a case index. Indeed, this is the case with the man referenced in the last example provided above; the index connecting him to cases containing 20-year-old nonconviction data resulted in the denial of a mortgage.

Throughout the country, we are celebrating the 50th Anniversary of *Gideon v. Wainwright*. In the main opinion filed in that case, Justice Hugo L. Black, wrote this about the right to counsel:

> Without it, though [a layman] be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

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[11] *See* "*Think it Can't Happen to You? Stories of Real People Harmed by Inaccurate or Misleading Criminal Background Check Reports."* *http://www.nclc.org/images/pdf/pr-reports/broken-records-stories.pdf*.

[12] 169 Wn. App. 498, 280 P.3d 513 (Div. I, 2012).

[13] No. 65843-3-I.

[14] GR 15(d) currently provides:

> In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type with the notation "DV" if the case involved domestic violence, the adult or juvenile's name, and the notation "vacated."

[15] Slip. Op. at 10-11.

Similarly, without a means to truly prevent the dissemination of nonconviction data, individuals who have not been found guilty still face many of the dangers of conviction. This is because they cannot do anything about the unfettered dissemination of that information.
Currently, we constantly hear from people whom are denied meaningful participation in our society, even though they have never been convicted of any crime. Many of them have been led to believe by judges, by defense lawyers, and by prosecutors, that dismissal of the case or the decision not to charge, means something. When they learn otherwise, their faith and trust in our justice system is shaken to its core. Without changes to GR 15(c)(4) and (c)(6), the amendments will have little value. Individuals who otherwise go through the detailed and laborious process to obtain a favorable ruling will still find that they are unfairly defined by nonconviction data.

We are very supportive of the Committee's efforts to draft amendments to GR 15 and GR 31. We appreciate the opportunity to provide comment and are willing to work together with the Committee to find language that addresses these concerns.

Very Truly Yours,

WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Kimberly N. Gordon
President

Encl.

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LEGAL DIRECTOR

LA ROND BAKER
NANCY TALNER
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STAFF ATTORNEYS

MARGARET CHEN
FLOYD AND DELORES JONES FAMILY FELLOW

October 4, 2013

Data Dissemination Committee
c/o The Honorable Thomas J. Wynne
Snohomish County Superior Court
3000 Rockefeller Ave
M/S 502
Everett, WA 98201

Re: Comments on Proposed General Rule 15

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Members of the Data Dissemination Committee,

The ACLU of Washington (ACLU) thanks the committee for the continued opportunity to comment upon the proposed changes to General Rule 15, governing access to and sealing of court records. The ACLU is a nonprofit nonpartisan group of over 20,000 members dedicated to advancing civil rights and civil liberties. The ACLU is strongly committed to the open administration of justice and the public's ability to oversee the courts. It also seeks to protect individual privacy and preserve opportunities for successful reentry.

For the reasons discussed in our letters to this Committee on April 11th and July 30th of this year, we support the proposed changes to GR 15(c)(4)(D) that would permit sealing of non-conviction records. Also as discussed in those letters, we oppose amending GR 15(c)(6) to prohibit redaction of a name in the court index. We appreciate the Committee's consideration of these issues and welcome any questions.

Sincerely,

Vanessa Torres Hernandez
vhernandez@aclu-wa.org.
ACLU-WA Second Chances Project

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October 4, 2013

Judge Thomas Wynne
Chair, Data Dissemination Committee
Judicial Information System
Snohomish County Superior Courthouse
3000 Rockefeller Avenue
Dept. 9, Fl 5
Everett, WA 98201

Re: Proposed Amendments to GR 15

Dear Judge Wynne:

I am writing to reiterate the concerns of the Rental Housing Association ("RHA") about the Committee's proposed amendments to GR 15 that I have previously articulated in my July 24, 2013 letter to you and in my August 28, 2013 letter to Justice Fairhurst, copies of which are attached hereto.

On the Committee's proposed GR 15 amendments, RHA shares the concerns reflected in the October 3 letter of Judge William Downing of the King County Superior Court and believes the proposed changes to the GR 15 draft by the Committee reflecting Judge Downing's concerns are beneficial.

RHA continues to believe that any changes to GR 15 before the *Encarnacion* is decided by our Supreme Court would be premature.

RHA further believes that GR 15 should be a procedural rule only. Decisions on substantive policy questions of whether particular court records are accessible are for the Legislature.

RHA is concerned, in particular, with the proposed new GR 15(c)(4) and GR 15(d) that purport to authorize the sealing of records of persons who have received executive clemency. A Governor may choose to pardon for a variety of reasons. The underlying conviction should remain in the public domain.

Similarly, GR 15(d)(2) presumably includes acquittals by reason of insanity or due to incompetency to stand trial. The public deserves more information on such matters than "non-conviction."

Finally, the comment to the proposed amendment to GR 15(c)(4)(E) again mentions "deliberations of the Joint Legislative Court Records Privacy Workgroup in 2012." Deliberations of such a group is not a formal legislative committee, and that did not result in legislation or other policy adopted by the Legislature are not definitive actions by the Legislature of which the Committee should take cognizance.

Thank you for your attention.

Very truly yours,

Philip A. Talmadge

attachments

cc: Stephanie Happold

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July 24, 2013

Judge Thomas J. Wynne
Chair, Data Dissemination Committee
Judicial Information System
Snohomish County Superior Courthouse
3000 Rockefeller Avenue
Dept. 9, Floor 5
Everett, WA 98201

Re: Proposed Amendments to GR 15, 31

Dear Judge Wynne:

I am writing to you on behalf of the Rental Housing Association ("RHA") to express its concerns regarding the proposed amendments to GR 15, 31.

As you know, JIS's Data Dissemination Committee is considering extensive amendments to GR 15, the courts' rule addressing the sealing and redaction of court records, and GR 31, relating to access to court records.

RHA shares the Committee's belief that it is entirely appropriate for the Committee to establish appropriate *procedural* standards by which the public seeks to seal, redact, unseal, or access public records, with a major caveat to be expressed below. However, on the public policy as to which court records may be accessed, *substantive* access policy, RHA strongly believes that this is a matter for legislative policymaking where the broader opportunities for public participation can come into play.

The starting place for any discussion of access to court records should be the policy of *transparency*. The people themselves articulated this policy when they enacted Initiative 276:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is

> good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.

It is no different for court records, as GR 31(a) itself has acknowledged, particularly where article I, § 10 of our Constitution is also implicated.

As noted above, RHA supports clear procedural rules in GR 15 and 31. However, the proposed comments to GR 15 make reference to specific court decisions and statutes. Plainly, court decisions and statutes may change. It may not be wise to tie the procedural rules for access, sealing, redacting, and unsealing records to specific decisions or statutes, except as may be absolutely necessary.

More critically, from RHA's perspective, is any effort by amendments to GR 15 and 31 to enact substantive changes on access to court records. This Committee should know that *numerous* bills were offered in the 2013 legislative session purporting to restrict access to court records, records that have been used to make employment and housing decisions. *See* attached. RHA is concerned that the proponents of these bills, having failed to enact them in the Legislature, are turning to this Committee as an alternate forum in which to secure relief that they could not obtain in the Legislature.[1]

RHA *opposes* any changes in GR 15 or 31 that affect substantive policy on access to court records. The policy of access announced in GR 31(a) should remain intact and this Committee should not be a forum for enacting substantive changes that detract from a policy of public access to court records. The Legislature, with its broader opportunities for public participation, is the more appropriate forum for such efforts.

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[1] For example, in California, legislation was enacted limiting access to unlawful detainer information. The California Supreme Court invalidated such legislation. *U.D. Registry, Inc. v. State*, 40 Cal. Rptr.2d 228 (Cal. App. 1995), *review denied* (Aug. 17, 1995), *cert. denied, sub. nom. Cisneros v. U.D. Registry, Inc.*, 516 U.S. 1074 (1996) (statute prohibiting consumer credit report from containing unlawful detainer information violated First Amendment).

I will be participating in the Committee's July 29 teleconference. If I can provide additional information to you and the Committee on RHA's behalf, please do not hesitate to let me know.

Very truly yours,

Philip Talmadge

Philip A. Talmadge

cc: Bill Hinkle

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August 28, 2013

Justice Mary Fairhurst
Chair, Judicial Information System Committee
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Re: *September 6, 2013 JISC Meeting*

Dear Justice Fairhurst:

I am writing to you on behalf of the Rental Housing Association of Washington ("RHA"), a statewide organization of over 5000 rental housing owners and managers, to express its concerns regarding any proposed amendments to GR 15, 31 and the recent decision of the JISC Data Dissemination Committee to prohibit the bulk dissemination of juvenile offender court records in JIS by AOC.

As you know, JISC's Data Dissemination Committee is considering extensive amendments to GR 15, the courts' rule addressing the sealing and redaction of court records, and GR 31, relating to access to court records. At its July 31 meeting, the Committee specifically voted to amend its policy on data dissemination to "exclude from any bulk distribution by the Administrative Office of the Courts [juvenile offender records] otherwise authorized by GR 31(a), except for research purposes as permitted by statute or court rule." RHA believes that such a step is a serious move contrary to transparency in JIS. RHA wants to provide you its background thoughts on any GR 15/31 amendments and the decision regarding bulk dissemination of juvenile offender records.

RHA has the highest respect for Judge Thomas Wynne, as chair, and the members of the Data Dissemination Committee. The Committee's task is a most serious one. However, RHA believes that the Data Dissemination Committee *assumed* that it needed to act with respect to juvenile records based on the alleged interest of the Legislature on that topic. The Committee has overstated legislative "concern" on the issue. Moreover, any such action on juvenile records is inconsistent with the policy on data

dissemination RHA believes should animate JISC's efforts. Finally, any JISC decision on GR 15/31 or juvenile records should await the Supreme Court in *Hundtofte v. Encarnacion*, 169 Wn. App. 498, 280 P3d 513 (2012), *review granted*, 176 Wn.2d 1019 (2013).

(1) The Legislature Has Not Directed Action by the Data Dissemination Committee Decision on Juvenile Records

On the legislative issue, Senator Debbie Regala (who retired after the 2012 session) sponsored SB 5019 in the 2011-2012 legislative cycle. That bill purported to restrict access to "non conviction records" relating to individuals in the criminal justice system. That bill did not pass. In 2013, SB 5341 was introduced in which the Legislature called upon the Supreme Court to adopt court rules to implement "public policy interests" associated with offender non-conviction records. That bill did not even receive public hearing.

Similarly, HB 1651 was introduced in the 2013 session to restrict access to the court file of juvenile offenders. This legislation also failed.

Thus, efforts to limit access to court records, particularly those of juvenile offenders, have shifted from the Legislature to JISC and the Data Dissemination Committee when the legislative efforts were unsuccessful. The Legislature has not asked JISC to act. JISC should not tolerate this forum-shopping.

(2) The Proper Policy for JIS Data Dissemination

RHA believes that it is entirely appropriate for JISC and its Data Dissemination Committee to establish appropriate *procedural* standards by which the public seeks to seal, redact, unseal, or access court records. However, on the public policy as to which court records may be accessed, *substantive* access policy, RHA strongly believes that this is a matter for legislative policymaking where the broader opportunities for public participation can come into play.

The starting place for any discussion of access to court records should be the policy of *transparency*. The people themselves articulated this policy when they enacted Initiative 276:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority,

> do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected.

It is no different for court records, as GR 31(a) itself has acknowledged, particularly where article I, § 10 of our Constitution is also implicated.

RHA opposes any effort by amendments to GR 15 and 31 or the Data Dissemination Policy to enact substantive changes on access to court records. The policy of access announced in GR 31(a) should remain intact and JISC and the Data Dissemination Committee should not be a forum for enacting substantive changes that detract from a policy of public access to court records. The Legislature, with its broader opportunities for public participation, is the more appropriate forum for such efforts.

Specifically, RHA believes that an amendment to the Data Dissemination policy forbidding bulk distribution of juvenile offender records by JIS is a *substantive* decision, and represents a first step a broader policy, contrary to principles of transparency, that attempts to restrict how and by whom records *that are otherwise public*[1] may be used. This is inappropriate.

Further, such an effort to limit access raises constitutional concerns. For example, in California, legislation was enacted limiting access to unlawful detainer information. California courts invalidated such legislation. *U.D. Registry, Inc. v. State*, 40 Cal. Rptr.2d 228 (Cal. App. 1995), *review denied* (Aug. 17, 1995), *cert. denied, sub. nom. Cisneros v. U.D. Registry, Inc.*, 516 U.S. 1074 (1996) (statute prohibiting consumer credit report from containing unlawful detainer information violated First Amendment).

(3) JISC Should Not Act Until Encarnacion Is Decided

In *Encarnacion*, the Court of Appeals determined that tenants who had settled their unlawful detainer action were not entitled to an order redacting the court records and inserting initials for their actual names.

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[1] The juvenile records at issue are accessible, to the degree permitted by statute, in public court files.

Division I concluded that article I, § 10 of the Washington Constitution on openness of judicial decisions also compelled full access to court records. That constitutional provision assured the public and the media a right to access to court documents. The policy of openness as to public records was so fundamental as to make any exception to that policy "appropriate only under the most unusual circumstances" that implicated significant interests.

The Supreme Court has granted review in *Encarnacion* and heard arguments in the case. It would be premature for JISC to make any recommendations to the Court on GR 15 or 31, or for the Data Dissemination Committee to amend the Data Dissemination Policy until the Court files its opinion in *Encarnacion*.

RHA will be present at JISC's upcoming September 6 meeting. If I can provide additional information to you and the JISC on RHA's behalf, please do not hesitate to let me know.

Very truly yours,

Phil Talmadge

Philip A. Talmadge

cc: Bill Hinkle

Columbia Legal Services

Institutions Project

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Aurora Martin, Director

Ms. Stephanie Happold
Data Dissemination Administrator
Administrative Office of the Courts
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To: Members of the Data Dissemination Committee
From: Merf Ehman
Re: Proposed Changes to GR 15
Date: October 3, 2013

Columbia Legal Services (CLS) thanks the Committee for their efforts in amending GR 15 and for an additional opportunity to comment.

CLS is a statewide nonprofit legal services organization based in Seattle that has provided free civil legal services to low-income individuals and families since 1967. The organization's mission is to advocate on behalf of people living in poverty by seeking social and economic justice for them through systemic change. CLS does this through transactional legal work to community based organizations, large scale litigation, policy advocacy and community education. CLS exists to eliminate barriers to the justice system so that all people of low-income can fully engage in civic life, including equitable access to employment, housing, and education. This work includes supporting the successful and safe transition of children and adults with criminal records back to our communities. We submit these changes on behalf of our clients.

We support the changes made in the second GR 15 proposal regarding juvenile records. We continue to support the proposed changes to the treatment of non-conviction data under the proposed rule. However, we still have serious concerns regarding the absolute prohibition on any redaction to the court indices.

Juvenile Records

CLS applauds the Dissemination Committee's decision to remove the proposed language that would have required an *Ishikawa* analysis for all juvenile sealing applicants. Dissemination Committee Draft Proposal, GR 15(c)(2)(A) (April 2013). This change restores the current language of GR 15 and is consistent with the requirements of RCW 13.50.050. Requiring a court to consider the Ishikawa factors would be inconsistent with the legislature's statutory intent to treat juveniles involved in the criminal justice system differently than adults. This differential treatment is based upon the developmental differences between juveniles and adults and the juvenile justice system's rehabilitative purpose.

We support the Committee's proposal to exempt children from the requirement that every sealing order specify an expiration date. Proposed GR 15(c)(5). No expiration date is required under the Juvenile Justice Act. This change will help effectuate the purpose of the Act – to facilitate the rehabilitation of those with youthful offenses. Additionally, we agree with the committee's proposal to make the existence of a sealed juvenile offender case not accessible to

the public in accordance with RCW13.50.050(14)(a)[1]. Proposed GR 15(e). This change is essential to carrying out the strong legislative intent to keep juvenile records confidential. The statute requires all agencies to state that it cannot give any information concerning sealed juvenile records including whether or not they exist. *Id.*

Non-conviction Data

CLS supports the amendments to GR 15(c)(4) that include additions to the list of findings that may be weighed when a court considers whether to seal a record. Under the proposed change, a court may now consider whether the information a party tries to seal includes preliminary appearances, dismissed charges, pardons or acquittals.

This change removes a black mark from the record of Washington residents who did not engage in any illegal conduct. No longer will they need to explain that the charges were dismissed or were never even filed. This change furthers the fundamental constitutional principle of assumed innocence.

For those that made mistakes and did engage in unlawful conduct, this change will further their rehabilitation process. Many times people have turned their lives around, but a criminal record continues to haunt them- even a very old one. Sealing and redaction of a court record will facilitate reentry and rehabilitation. This supports a purpose of our criminal justice system, which is to "offer the offender an opportunity to improve himself or herself." 9.94A.010.

Court Index Redaction

We strongly oppose the proposal to bar redaction of a name from the JIS index. Proposed GR 15(c)(6). There is no case law supporting the proposition that redacting a name from a court index is not a viable option under both GR 15 and *Ishikawa. See Hundtofte v. Encarnacion*, 169 Wash. App. 498, (2012) *review granted*, 297 P.3d 707 (Wash. 2013)*; Indigo Real Estate Services v. Rousey,* 151 Wash.App. 941 (Wash.App. Div. 1 2009). In *Rousey,* a party moved to have her name redacted from the court index and the court remanded. The court emphasized that after the trial court applies GR 15 and the *Ishikawa* factors, that it still "must exercise discretion to decide whether the interests asserted by Rousey are compelling enough to override the presumption of openness." *Id.* at 953. The court left the decision of whether and how to redact a court record up to the discretion of the trial court. *Id.* GR 15 should not reduce the discretion of a trial court to determine the most constitutionally appropriate means to redact a court file given the circumstances presented.

Although the public has a constitutional right of access to court records, this right is not absolute. *State v. Waldon,* 148 Wash.App. 952, 957, 962 (2009); *Seattle Times v. Ishikawa*, 87 Wash.2d 30 (1982). A party should have the opportunity to present evidence to show compelling circumstance to redact his or her name from a court index. Whether the party's compelling circumstances might outweigh the public's right of access to that particular part of the court

[1] The comment's cite to the statute should be RCW 13.50.050 rather than RCW 13

record should be determined by a trial court using an analysis under GR 15 and *Ishikawa*. *Rousey,* 151 Wash.App. at 953.

For example, a woman who has vacated her criminal conviction may wish to seek a redaction of her name from the JIS index. She applies for many jobs, but is continually denied employment because her name appears in a court index showing she was a defendant in a criminal case. These continued rejections happen even though the case was vacated. Under these circumstances, she should have the opportunity to petition the court for a redaction of her name from the court index. Moreover, allowing an opportunity to redact in a case regarding a vacated criminal record is in line with the legislature's intent. The statute provides that once a criminal conviction is vacated "the offender shall be released from all penalties and disabilities resulting from the offense." RCW 9.94A.640(3).This includes permitting the party to state on employment applications that he or she was never convicted of that crime. *Id.*

Another example of someone who might an opportunity to seek redaction is an innocent tenant who won his eviction case. In those circumstances, the tenant prevailed at court, but cannot find housing because his name remains in the court index. Under the proposal, he would have no opportunity to seek redaction of his name from the court index by demonstrating compelling circumstances and meeting the requirements of GR 15 and *Ishikawa* Whether a redaction is appropriate should be made by a trial court under GR 15 and *Ishikewa* rather than predetermined by a court rule.

center for
CHILDREN & YOUTH
JUSTICE

September 20, 2013

JIS Data Dissemination Committee
Administrative Office of the Courts
PO Box 41170
Olympia, WA 98504-1170

RE: Final Proposed GR 15 Draft

Dear Judge Wynne and Members of the Committee:

I write in support of the JIS Data Dissemination Committee's final proposed amended GR 15. We at the Center for Children & Youth Justice greatly appreciate the committee taking into consideration the impact of this rule change on vulnerable youth and young adults.

We appreciate the Committee's hard work and commitment to addressing the need for public safety and open courts. In addition, you've recognized that a large number of youth in the juvenile justice system are also youth who are or have been in the child welfare system, these young people face formidable barriers as they try to become self-supporting and positive contributors to society while lacking the support and resources that many other young people have as they begin their journey into adulthood. Their juvenile offense records, when public, are frequently used to deny them employment, housing, and even educational benefits, essential components of independence. This happens even when these young people have remained clear from involvement with the justice system for significant periods of time.

Thank you again for your work and for allowing us to provide comments throughout the rule-making process. The Center for Children & Youth Justice will continue to be an available resource for you on this issue. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

Bobbe J. Bridge

Justice Bobbe J. Bridge (ret.)
Founding President/CEO
Center for Children & Youth Justice

615 2nd Ave, Ste 275
Seattle, WA 98104
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Better systems. Better lives.

Washington Defender Association
110 Prefontaine Place S., Suite 610
Seattle, Washington 98104

Christie Hedman, *Executive Director*
Michael Kawamura, *President*

Telephone: (206)623-4321
Web: *www.defensenet.org*

October 2, 2013

Data Dissemination Committee
c/o The Honorable Thomas J. Wynne
Snohomish County Superior Court
3000 Rockefeller Ave
M/S 502
Everett, WA 98201

Re: Comments on Proposed General Rule 15

Dear Data Dissemination Committee,

I am writing on behalf of the Washington Defender Association (WDA) to support proposed changes to General Rule 15(c)(4)(D), governing access to and sealing of court records, and to express our opposition to the proposed amendments to GR 15(c)(6). WDA was established in 1983 and has over 1300 members who provide public defense services across Washington. The indiscriminate dissemination of court records has significantly affected our clients' ability to move on with their lives after involvement in the justice system and is of grave concern to us.

The proposed changes to GR 15(c)(4)(D) permitting sealing of non-conviction records are crucial to protect former public defense clients from the misleading use of non-conviction data that may prevent them from obtaining or retaining employment, housing, or volunteering for their children's school activities.

We oppose amending GR 15(c)(6) to prohibit redaction of a name in the court index as that issue remains pending in the Supreme Court in *Hundtofte v. Encarnacion.*

Please let me know if you have any questions or if I can provide you with further information. I can be reached at 206-623-4321 or at hedman@defensenet.org.

Sincerely,

Christie Hedman

Christie Hedman
Executive Director

DANIEL T. SATTERBERG
PROSECUTING ATTORNEY

King County

Office of the Prosecuting Attorney
CRIMINAL DIVISION - Appellate Unit
W554 King County Courthouse
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Seattle, Washington 98104
(206) 296-9650

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

RE: Comments to Proposed Changes to GR 15

Dear Ms. Happold,

Thank you for soliciting comments regarding the proposed changes to GR 15. My comments are set forth below.

1. **Adding the Ishikawa[1] factors to the rule is a good idea.**

Parties and courts often are at a loss for the precise factors when a sealing issue arises unexpectedly. Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982). However, the proposed rule does not include the Ishikawa requirement for written findings. While people may disagree over whether written findings are too burdensome for trial courts, the Ishikawa case requires written findings as a constitutional imperative. It cannot be removed through the rule-making process.

2. **Juvenile Court Records Are Presumed Open Under Art. I, § 10.**

There are a number or provisions in this proposed amended rule that apply to juvenile records. The comment to proposed GR 15(c)(2) says: "GR 15(c)(2)(A) does not address Juvenile Offender records sealed pursuant to RCW 13.50.050. This section does apply to Juvenile Offender records sealed under the authority of GR 15, only"; proposed GR 15(c)(5) says "...except for sealed juvenile offenses..."; GR 15(c)(9) says "Except for juvenile offenses".

The rule should not categorically exempt juvenile records from the constitutional presumption of openness. The proposals should be rejected for the following reasons.

First, the existing rule says that it applies to "all court records..." GR 15(a). "Court records" are defined in GR 31(c)(4). Juvenile courts are a division of the superior court and their records fall within GR 31. Thus, the proposed amendments create an internal conflict with the other provisions of the general rules.

Second, the Washington Supreme Court has repeatedly rejected arguments that any particular type of record is categorically exempt from article I, §10 of the Washington Constitution. Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 848

[1] Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 37-39, 640 P.2d 716 (1982).

P.2d 1258 (1993) (statute unconstitutional where it required courts to redact identifying information of child victims of sexual assault made public during the course of trial or contained in court records); In re Detention of D.F.F., 172 Wn.2d 37, 256 P.3d 357 (2011) (court rule for involuntary commitment proceedings unconstitutional to the extent that it presumed closure instead of openness); State v. Chen, No. 87350-0, slip op. at 2, 2013 WL 4758248 (Wash. Sept. 5, 2013) (notwithstanding statutory provisions that arguably suggest competency reports are private, "once a competency evaluation becomes a court record, it also becomes subject to the constitutional presumption of openness, which can be rebutted only when the court makes an individualized finding that the Ishikawa factors weigh in favor of sealing."). *See also* State v. DeLauro, 163 Wn. App. 290, 258 P.3d 696 (2011) (competency reports relied upon by court are presumed open).

If neither the Supreme Court through it's rule-making power, nor the legislature through statutory law, can exempt a category of records from article I, § 10, then it is certainly inappropriate to create such an exemption through this changes to this rule.

Comments to the proposed rules note that juvenile systems have been rehabilitative but those comments fail to address the fact that even rehabilitative systems can be abused where records are routinely sealed, and that there is a substantial body of literature arguing that juvenile court systems are not served by secrecy of proceedings or records. *See* William McHenry Horne, The Movement to Open Juvenile Courts: Realizing the Significance of Public Discourse in First Amendment Analysis, 39 Ind. L. Rev. 659 (2006) ("History sheds little light on whether juvenile court proceedings should be open"); Stephan E. Oestreicher, Jr., Toward Fundamental Fairness in the Kangaroo Courtroom: The Due Process Case Against Statutes Presumptively Closing Juvenile Proceedings, 54 Vand.L.Rev. 1751, 1758-68 (2001) (discussing history of juvenile courts and arguing that "...as the United States Supreme Court suggested ... if a person's liberty is at stake, public scrutiny is the only tolerably efficient check against potential abuse or malfunction of the adjudicative process.") (internal quotation marks omitted); Emily Bazelon, Public Access to Juvenile and Family Court: Should the Courtroom Doors Be Open or Closed, 18 Yale. & Pol'y Rev. 155, 168-80 (1999) (summarizing history of closure versus openness); Jan L. Trasen, Note, Privacy v. Public Access to Juvenile Court Proceedings: Do Closed Hearings Protect the Child or The System?, 15 B.C. Third World L.J. 359, 369-74 (1995).

The same reasons that mandate openness of adult court records apply to juvenile court records. They should not be categorically exempted from constitutional requirements through the rule-making process, even if there is a "clear legislative intent" to treat juvenile records differently. The constitutionality of this question should be addressed by the courts.

Third, the relationship between article I, § 10, GR 15, and RCW 13.50.050 is presently the subject of litigation in Division One of the Court of Appeals. See State v. SJC, No. 69154-6-I. This proposed rule should not be implemented until the issue is decided in the pending litigation.

3. Acquittals Should Not Be Presumptively Sealed.

The proposed rule at one place (GR 15(c)(4)) allows a trial court to consider an acquittal as a basis to seal. As long as this is a single consideration that is weighed against the strong public interest in access to court records, the proposal is consistent with constitutional requirements.

At other places, however, (GR 15(c)(9) and (d)), the proposed ruled appears to *presume* that vacated, dismissed convictions, or cases resulting in acquittal, should be closed. It should be remembered that acquittals often occur under very controversial and politically-charged circumstances. See e.g. John P. Sellers, III, Sealed With An Acquittal: When Not Guilty Means Never Having to Say You Were Tried, 32 Cap. U. L. Rev. 1 (2003) (discussing the controversial killing of a citizen by police who were later acquitted). Acquittals should not be categorically removed from the constitutional presumption of openness. This part of the proposed rule is likely unconstitutional.

4. Proposed GR 15(c)(8) Should Address Service of Proposed Sealing Orders on Opposing Parties.

This proposed addition appears to be consistent with the McEnroe decision and will inform parties how to submit documents without sacrificing their privacy. However, the proposed rule does not address an issue that was latent, and unaddressed, in McEnroe, to wit: under what circumstances may a party submit documents under this provision *ex parte*? In McEnroe, that issue was not addressed because it was presumed that the State should not have access to the documents (which were submitted pre-trial and were related to defense counsel's strategy in a death penalty case), but this will not always be the case. A party should not be permitted to submit documents *ex parte*.

5. The rule should not permit destruction of court records without the consent of the parties.

Proposed GR 15(9)(5)(A) provides that trial exhibits may be destroyed "if the court so orders." Trial courts or clerk's offices may not be aware of pending appeals or collateral attacks that could result in a reversal of criminal convictions. Nor would courts or clerk's know whether personal and valuable property admitted into evidence should be returned to its rightful owner. This change would put at risk many important trial exhibits that may be needed for retrials, and may permit the destruction of private property that should be returned to witnesses or victims.

Thank you again for considering comments on this important rule change.

Sincerely,

James M. Whisman
Senior Deputy Prosecuting Attorney (King County)
Appellate Unit, Chair
206-296-9660/jim.whisman@kingcounty.gov

Superior Court of the State of Washington for Snohomish County

THOMAS J. WYNNE
JUDGE

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October 14, 2013

Carrie Bashaw
Senior Counsel
Washington State Attorney General's Office
WA Medicaid Fraud Control Unit
P.O. Box 40114
Olympia, WA 98504-0114

RE: GR 15 proposed amendments

Dear Ms. Bashaw:

Thank you for your comments and proposed language amending GR 15, based upon the Washington Medicaid False Claims Act. By this letter, I am advising you that the Data Dissemination Committee did not act on your recommendations at our October 8 meeting.

RCW 74.66.030 relies upon an exemption to the public records act, Chapter 42.56 RCW, as a basis to seal court records created in an action to enforce the provisions of this act. However, our Supreme Court ruled in Nast v. Michels, 107 Wash. 2d 300 (1985) that the public records act does not apply to court records.

Chapter 74.66 RCW appears to be devoid of any analysis of how Article I, Section 10 of the Washington Constitution and Seattle Times v. Ishikawa, 97 Wash. 2d 30 (1982) and associated caselaw would interplay with the statute.

Given these issues, the Data Dissemination Committee has serious concerns whether the Medicaid False Claims act can be implemented in Washington State, as written. As a result, recommendations for adoption of proposed GR 15 amendments have been forwarded by the Data Dissemination Committee to the Judicial Information Systems Committee for appropriate action at the October 25 meeting, without the inclusion of your recommended language.

Please let Data Dissemination Administrator, Stephanie Happold, know if you wish to further address or discuss the issues raised herein with respect to GR 15 and Chapter 74.66 RCW.

Very Truly Yours,

Thomas J. Wynne
Superior Court Judge
Chair, Data Dissemination Committee

CC: DD Committee
Stephanie Happold

PUBLIC HEARING OF THE DATA DISSEMINATION COMMITTEE

MEMBERS IN ATTENDANCE

Judge Thomas Wynne, Chair
Snohomish County Superior Court

Judge J. Robert Leach
Court of Appeals, Division I

Judge Steve Rosen
Seattle Municipal Court

Judge James Heller
Pierce County District Court

Judge Jeanette Dalton
Kitsap County Superior Court

Barb Miner
King County Clerk

William Holmes
Director, Kittitas County Probation Services

John Bell
Staff Attorney for AOC

Everett, Washington
April 12, 2013

April 12, 2013

JUDGE WYNNE: It is now after 1:30. All the committee members are here. We have a good number of people here in the audience and we still have folks signing in over here. I would like everybody to sign in if you haven't already signed in so we know who is here, and we can later communicate with you, if necessary.

I'm Judge Thomas Wynne, Snohomish County Superior Court, serving as Chair at this time of the Data Dissemination Committee.

I'm going to introduce the other members of the committee: Judge J. Leach, Court of Appeals, Division I, Steve Rosen, Seattle Municipal Court, Barb Miner, King County Clerk. To my left is Jim Heller, Pierce County District Court, Jeanette Dalton, Kitsap County Superior Court, and William Holmes, Juvenile Court Administrator in Kittitas County. On the other side is John Bell. He is staff attorney at AOC, and is the advising staff from the Administrative Office for the Courts. John Bell has a good deal of experience with adoption of GR 31, GR 22, and amendments to GR 15.

We have some proposed amendments to GR 15 and we will run through those in just a few minutes. I have a few comments before we do that.

This is a starting point in the process of looking at amendments to the court rules on access to court records. This is not an ending point. The drafts you see here today are the drafts Judge Leach and I prepared. Some of the other committee members have some suggestions. I know Barb Miner has some things she will talk about in the course of this meeting. Judge Rosen has made some suggestions that Judge Leach and I would like to incorporate into some of these as we go.

We are going to have substantial additional time to consider the written comments submitted today, the oral testimony submitted today. My goal anyway, and I think the other committee members would be okay with this, is be able to submit recommendations through the JIS Committee in September. The JIS Committee would then consider this committee's recommendations, and all the committee here are members of the JIS Committee. The JIS Committee would then provide recommendations to the Supreme Court of rule changes in October. That would fit the normal process of the Supreme Court for adoption of amendments to the rules. The Supreme Court would then publish them and determine how long the comment period would be before adoption, assuming the Supreme Court is in agreement with our recommendations.

What we do here today is No. 1, the JIS Committee

recommending any recommendations we make and the Supreme Court accepting those recommendations for publication and consideration to the rule changes.

The JIS Committee is charged by JIS rules with considering rules dealing with access to court records. The bylaws of the JIS Committee provide that the Data Dissemination Committee make those recommendations to the Supreme Court. Historically, when there have been changes to the rules and access to court records dealing with GR 31 that was adopted and GR 15 amendments in 2005, I think it was. Is that right, Barb?

MS. BARB MINER: Yes.

JUDGE WYNNE: We recommended the proposed adoption of GR 22, all of those with the Data Dissemination Committee. Barb Miner has worked on these. John Bell has worked on them. I have participated. Jim Heller has been around for a long time, and has dealt with a lot of those.

Our proceedings today are being reported. I had my court reporter, Karen Avery, come over and report this. She is going to produce a transcript at the end of this hearing and provide it to all the committee members. If any of you would like an individual copy of a transcript of today's proceedings, you can contact Ms. Avery, and Ms. Avery will produce those for an appropriate fee, just

as you pay for transcribed court proceedings.

I'm going to ask each of you, if you do provide public testimony, to step up here to a microphone and identify yourself as you would to any court proceeding, so we can identify in the record who is speaking.

Does anybody have any questions as we start this?

I'm glad to see so many people here today. We have a number of comments from people. I would just like to run through some written comments we have seen. We have seen some comments from Judge Garrow from the District and Municipal Courts Judges Association. Don Horowitz has provided some comments that Judge Leach and I each have looked at. We have a letter from Representative Luis Moscoso, First Legislative District, and the members have been provided a copy of that letter. We have Washington Criminal Defense Lawyers and the Washington Defense Association, WPDA has provided letters, Tenants Union of Washington. I just have the one letter from them, so I will have to share that with committee members when we're done. Also, ACLU has provided a letter. Columbia Legal Services has provided a letter and some materials, and I will have to share that with committee members because I don't have copies for everybody here.

We also received an e-mail from Cheryl Kleinman on behalf of the Center for Children and Youth Justice

chaired by Retired Justice Bobbe Bridge, indicating Bobbe Bridge will have some written testimony to send to the committee in the next week or so. When I get that, I will provide that to all the committee members. Justice Bridge used to chair the JIS Committee and worked through all the adoption of GR 22 and GR 31 and GR 15, so she is well aware of the process here.

We are first going to run through what we have up here on GR 15. My law clerk, Seth, is here at the computer. We will start with Page 1 and go down to the definition of "Dismissal." This is relevant in that it comes up later in terms of the draft on Page 3.

The definition of "Dismissal" here is missing a couple statutory references. Judge Rosen has pointed that out. It is missing reference to RCW 3.50.220 and RCW 3.66.067 applying to Courts of Limited Jurisdiction. I just missed those in drafting. Judge Rosen pointed those out and they should be added. Those are consistent with RCW 9.95.240, Gross Misdemeanors in Superior Court. In the next draft, we will add those.

Let's run through Page 2. Section (c)(2) is currently drafted with the amendment to include factors that are prescribed by Ishikawa and State vs. Bone-Club.

Judge Leach, do you have any comments on those factors?

JUDGE LEACH: I don't have any comments other

than this is the area that is still involved in the Supreme Court's accepted reviews last week and a couple more open public courtroom cases which may add some gloss to this in an area of sublet cases where the Court changed its analysis.

JUDGE WYNNE: We are constantly looking at what the Supreme Court has done. Our guidance in terms of drafting the rules is the decisions of the State Supreme Court and Court of Appeals on this subject matter. We are not trying to forge any new law, but trying to discern what the law is as given to us by the State Supreme Court.

Looking at the top of Page 3, Subsection (3), there are two things here. Judge Rosen has suggested some other language where it says: "Sufficient privacy or safety concerns that may be weighed against the public interest." He has suggested we add the language "in the open administration of justice." That language comes straight from Ishikawa. Judge Leach and I thought that was appropriate, and we would like to add that.

Also, I'm going to suggest that that last sentence be broken off into a separate section for emphasis, and emphasize that separately from the other part of Subsection (3). It's just a drafting issue.

On Page 3, we have a number of things that are in Subsection (D). Subsection (D) has some issues that were

raised first by a Public Case Workgroup chaired by Justice Fairhurst when she first became JIS Chair, and later raised in the Legislature in terms of how to deal with dismissed cases, acquittals, and cases in which there have been pardons.

If you look at the pardon portion of this, Subsection (F), Judge Rosen has made another suggestion that the language "by the Governor" at the end of that, we substitute "pursuant to law." He has encountered some out-of-state cases in which there was some supervision by the Washington DOC that resulted in data entries.

JUDGE ROSEN: That's correct.

JUDGE WYNNE: That looks like an appropriate amendment that I just didn't think of.

Okay, my mic wasn't on. Hopefully you can all hear me now.

Group dynamic works well in terms of adopting rules of this nature. One person will have some ideas, and somebody else will point out problems with those ideas. We have plenty of time here to consider all the ramifications of what's proposed.

If we go down to the bottom of Page 3, Subsection (4), there is some language that: "The proponent of sealing or redacting shall distinguish their case from similarly situated individuals if (c)(3)(c), (D), (E), (F) or (H),"

and there is a qualifier on that: If (c)(3)(C), (D), (E), and (F) or (H) constitute the basis for sealing or redacting a court record." The intent there was to deal only with those limited circumstances that are added in Subsection (C) here.

An argument was made or a point was made by the Court of Appeals in Hundtofte vs. Encarnacion. I don't know if Columbia Legal Services cited that. Somebody did. The argument, the rationale there, is that individualized consideration must be made in terms of whether a particular record will be sealed.

We can't create a de facto automatic sealing on a certain category of cases without individual consideration. Therefore, in the case of dismissals or acquittals or pardons, there needs to be some setting aside of that case from other similarly-situated cases so that, in fact, the Court is making an individualized consideration. Otherwise, we don't meet the test set up in case law.

Judge Leach, did you have any other comments on that?

JUDGE LEACH: Only that, as I noted earlier, we are always watching what the Supreme Court has done when review has been accepted, so we will have some guidance from the Supreme Court on whether the rule suggested in that case is in fact law in the State of Washington.

Whether we will have that before our process is through is highly speculative given the present scheduling.

JUDGE WYNNE: If the Supreme Court changes the ruling in Hundtofte vs. Encarnacion, it likely would not accept this recommendation of the committee.

JUDGE LEACH: Right.

JUDGE WYNNE: Now, Subsection (5), Barb Miner had a comment on that. Why don't we hear from you at the bottom of Page 3, Barb?

MS. BARB MINER: I know this stems from I think either the Court of Appeals or the Supreme Court ruling that items shall be sealed for the smallest amount of time as possible. However, it has proven that the operational issues for the County Clerk, and I imagine some limited jurisdictional clerks, as well, we don't have tools to report this kind of alarm-setting.

In terms of the way we read it, an order would come in saying this document or this file should be sealed four years or eight years or 10 years or whatever it might be or six months. We don't have the ability really to kind of set that automatic alarm and have it unsealed after that.

So from an operational perspective, it's a challenge for the clerk to put a burden on the clerk on the potential liability to us that we are not very comfortable

with.

We certainly support the idea of sealing things for the least amount of time possible.

JUDGE WYNNE: Is that something we can talk about further?

MS. BARB MINER: Yes. There is some kind of solution, I'm sure.

JUDGE ROSEN: Judge Wynne, I have a question.

I don't know if you know. You generally deal with SCOMIS. Does it have the same limitation or do you know or maybe Judge Heller?

JUDGE WYNNE: I don't know.

MS. BARB MINER: Unless there is limited jurisdiction, I don't know.

JUDGE ROSEN: How is, for example, the King County Clerk dealing with it now? I assume some Superior Court Judges are two years or five years sealing. Do you know?

MS. BARB MINER: No, I don't.

We have geri-rigged something that will potentially get us to that point in the ballpark of that date, but not at all reliable that we feel very competent in. It's something we just kind of geri-rigged and, again, it's not very legitimate. I don't feel like it's very reliable. It could still be a liability for us.

JUDGE WYNNE: Let's go to Subsection (6) at the top of Page 4. We received a number of comments from folks regarding Subsection (6), which says: "The name of a party to a case may not be redacted from an index maintained by the Judicial Information System or by a court."

The only case that deals with that subject matter is Hundtofte vs. Encarnacion we talked about and the Rousey case cited by folks.

When the GR 15 amendments were last adopted and GR 31 was proposed, at least for those of us that served on that committee, it was never anticipated in the GR 15 amendments when we talked about redaction, you could redact the name of a party in the index. I think Barb Miner and I discussed that.

Now we are seeing motions to redact the names of parties in the index. If you redact the name of a party where the party is in an index, you effectively have masked the existence of that case, and no one knows that case exists. Therefore, I felt and Barb Miner, I think, also feels on behalf of the clerks, that that specifically should be prohibited. It was never intended to be allowed to begin with. The drafters didn't think to deal with it at that time. So some of you are going to have further comments about that.

JUDGE LEACH: I have some comment about that.

In the context of juvenile records, we have talked about developing screens so that access to names would not be available, but that the administrator of the system would still have access to that information. It would be like a book taken out of circulation, but not burned.

JUDGE WYNNE: That's a good analogy is burning a book. If you take it out of circulation, once you burn the book, you can't find it at all if you burn the book.

Barb Miner drafted some provisions dealing with the McEnroe case, which came out of King County, which deals with documents submitted at the same time as a motion to seal those documents.

So Barb, did you want to comment on those provisions on Page 4?

MS. BARB MINER: Sure.

I don't know that I can take credit, but this is from language in the King County Local Rule and it was developed by our committee at King County Superior Court to address the McEnroe decision. To a great degree, it comes very directly out of the McEnroe ruling. The ruling practically gives us procedural information.

So the point of this is that the Supreme Court created a process whereby a motion to seal shall be submitted directly to a judge, not to the clerk, which is normal

practice, and the judge decides on the sealing decision. Then, if I understand it, if the decision is not to seal, the documents can go back to the parties without ever touching the court file or the Clerk's Office.

That's now in that decision in McEnroe. So this process needs to be laid out. I have to say it's confusing and new, I think, to people to submit motions directly to the Court without them going to the Clerk's Office, at least at the Superior Court level. None of this will touch the case file in certain circumstances. That is quite unusual, but apparently authorized by the Supreme Court.

I have to say one of important things about getting this rule is if, in fact, people do submit these things to the Clerk's Office, say, by mistake or just normal practice, the Clerk's Office will keep them, because that's what we do, and there is no provision in law to remove them from the Clerk's Office.

So if people don't follow this procedure appropriately, and they touch the Clerk's Office at the Superior Court level, we'll keep them, so they won't, I guess, enjoy the peace that the Supreme Court authorized, which is this whole practice outside of the court file.

I can't say that I love this, but I think that the Supreme Court put it out in their McEnroe ruling, so it's

worthwhile having procedure in place so that people are aware of it.

JUDGE WYNNE: The procedure appears to be consistent with what the Supreme Court decided in the McEnroe case.

Moving to the bottom of Page 5, (D)(1), this deals with the way not only vacated cases are dealt with, but provides that dismissals, acquittals, and pardons that have been sealed will be dealt with in a similar way to the manner in which vacated cases are now dealt with. Also, this goes on to the top of Page 6, so scroll to the top of Page 6 here.

Barb Miner had some comments there both in terms of juvenile cases and the fact that to add the term "non-conviction" would require some work and changes to the current system.

MS. BARB MINER: Right.

JUDGE WYNNE: Barb?

MS. BARB MINER: Just in terms that we had some correction language. This is repeated from language that is already in the rule. For instance, you see that case type with the notification "DV." That is not part of the index. It's from a correction standpoint. That's a mistaken entry in that part right there.

JUDGE WYNNE: That's what the rule says now?

MS. BARB MINER: Yes.

THE COURT: Current practice is not consistent with what is in the rule.

MS. BARB MINER: It's not there. So that is a mistake on our part when we originally drafted GR 15. So this is a good time to correct that.

JUDGE WYNNE: Also, in terms of the way juvenile cases are handled.

MS. BARB MINER: Right. The way the current practice is for juvenile criminal cases, if a sealing order is entered and we implement the sealing command with the JIS system, that case is actually removed from the index. I think it's worthwhile for our committee to discuss that and make sure that's the proper interpretation of the statute, but that's currently the practice.

However, Line 55 there speaks to the fact that a juvenile's name shall remain. In fact, it does not remain now.

JUDGE WYNNE: That is largely for deferred dispositions in Juvenile Court?

MS. BARB MINER: Any sealing order, but you're right, that's part of the practice that's in there. Any sealing order in Juvenile Court will remove the name and the whole case from the index.

JUDGE WYNNE: Again, that is a practice that is not really covered in the rule, but stems from primarily the statute dealing with deferred dispositions, so we will have to look at that.

I also had at the end some comments in terms of case law we are primarily looking at in terms of trying to implement this. That was for you folks in terms of looking where some of these proposals came from, and also this gets to the JIS Committee and the Supreme Court both in terms of looking at where we divide the intent of the Supreme Court and the JIS Committee to see where these rule changes came from.

Steve, do you have anything else on GR 15?

JUDGE ROSEN: Not that I recall. I sent it off to you. I think we covered it all.

JUDGE WYNNE: I think we have got it.

Barb, do you have any other comments on GR 15?

MS. BARB MINER: Judge, did you mention there is a provision here that's relatively new relative to the preliminary appearances on Page 3?

JUDGE WYNNE: No, I didn't specifically mention that. Page 3?

MS. BARB MINER: Page 3, Subsection (H). That is an issue we have been dealing with for quite some time that people are speaking to deal with these preliminary

appearance documents or files that aren't case filings.

So this provision in (H) allows for that in a long list of things that may be considered for sealing and allows these kind of documents to be part of that consideration.

JUDGE WYNNE: Again, we are not talking about automatic sealing, but individualized sealing on a case-by-case basis looking at those differentiated from other similarly-situated cases. That is what the case law allows to be done.

GR 31 again deals with that subject matter. We are going to look at that in just a moment. I understand the clerks are supportive of that provision in GR 15 dealing with preliminary appearances and probable causes.

MS. BARB MINER: Yes.

JUDGE WYNNE: Judge Heller, do you have any comments on GR 15?

JUDGE HELLER: No.

JUDGE WYNNE: Judge Dalton?

JUDGE DALTON: No.

JUDGE WYNNE: Mr. Holmes?

MR. HOLMES: No.

JUDGE WYNNE: Thank you.

Let's go to GR 31. GR 31 has only one proposal that deals with the preliminary appearances we have just been talking about. There has been a longstanding data

dissemination policy adopted by the Data Dissemination Committee and JIS Committee that documents that are available at the courthouse shall also be available electronically. That is referred to as a single-tiered system, rather than a two-tier system that is available in some states.

This whole concept in terms of the single-tiered system versus a double-tiered system was in issue at the time when GR 31 was adopted. It was debated strongly by Workgroup and JIS Committee at the time. The Supreme Court let us know at that time that it did favor a single-tiered system. It's incorporated really into GR 31.

What I'm proposing here is that for the purpose of preliminary appearance in which no charge has been filed or is associated with that court record, that that court record be available only at the courthouse and not be accessible to the public in electronic form so it won't appear on the Washington Courts website. If they go to the courthouse and ask about it, they give it to them.

I don't think we can screen preliminary appearance records or probable cause records from public access as that wouldn't meet the test of Article 1, Section 10 that justice shall be administered openly, but the Supreme Court could provide for a two-tiered system as to court

appearances in which no charges have been filed because those are based only on a probable cause standard. The probable cause standard is not a particularly high standard in terms of burden of proof.

This would be a departure from prior practice in Washington and would also require an amendment to our dissemination policy by the JIS Committee.

Some of you may have some comments about this proposal. Barb, you addressed that in your letter to the committee. I know the clerks are not in favor of that. Do you want to talk about it at this time?

MS. BARB MINER: I think for exactly the reasons you mentioned, Judge, that the clerks don't favor a two-tier access concept, so this would dictate exactly that from our perspective and disagreement with (a) and (b) above.

We certainly do agree with the idea of GR 15 that these kind of documents could be considered for sealing, but not that they would be dictated to be kept off of electronic access mechanisms.

JUDGE WYNNE: Do any of the other committee members have any comment regarding this proposal?

JUDGE LEACH: I would indicate there isn't any case law that supports this. There is a uniform approach to access to court records by a dual system. The only

place I know for public records are not available online, but are available to the public by PDC documents, say, relating to financial disclosures by public officials.

JUDGE WYNNE: Whether the committee will agree to propose this or the JIS Committee will then find this appropriate to propose to the Supreme Court, I don't know, but it's worthy of discussion at least at this point.

The comment to this acknowledges that we don't have any money. The Legislature looks at the House budget or the Senate budget. We really don't have any money because that provides for a $20 million JIS fund sweep. We wouldn't be able to proceed with a Case Management System. The Court of Appeals wouldn't be able to go ahead with the Electronic Data Management System, although the FTEs are funded, the acquisition to the system isn't funded in the Senate budget.

The House budget is a little more favorable to the courts, although the $2 million in project money isn't there, but it does fund information networking of the Court of Appeals' Electronic Data Management System and the Superior Court Case Management System that is about to end with contract negotiations.

So if this were to go forward, what I suggest is it not be part of the change to current systems, but only adopted to apply to new case management systems adopted after we

put it into effect after January 1 of next year, and the Local Case Management Systems at some appropriate point in time, and I just picked January 1, 2015.

Now, the lack of money also affects the ability of AOC to implement anything, any proposed rules that requires any change in coding, like the notation "non-conviction" in the computer records dealing with dismissed cases or acquittals or pardons. We don't yet have a fix on how much that will cost. We don't know what the final AOC budget is going to be or what funds can implement that.

All of that is dependent on AOC being able to implement it. We really can't propose anything. That we won't have the resources given by the Legislature from the JIS fund which is there to fund these things, unless it is appropriated by the Legislature. If we don't have the money, we can't do it. That's the bottom line.

Do any of the other committee members have any comments?

JUDGE ROSEN: I do.

I appreciate what the drafters of Subsection (C) were trying to do here. We deal with this on a regular basis. I'm a limited jurisdiction court judge.

Often -- I don't want to say "often," but not more than 50 percent, but on a very, very regular basis, a daily basis, police officers in our jurisdiction file cases

directly to the Court without consulting with any prosecutors and an electronic record is created.

In a number of those cases, there is no charge ever pursued by the prosecutor. A person may be cited and/or booked into jail, but the charges are then ended often within 24 hours. The prosecutor thinks that since there is no charge, there was no crime. We have seen cases where the victim was charged upon further investigation by the prosecutor. So it's clear to me that this is trying to address a lot of the injustices that are done by that system.

Now, I think there are a lot of smart people in this room who might have alternative proposals to this two-tiered system. I would invite, either today or in the future, other ideas, because while I support the idea, I have grave, grave concerns about this two-tiered system. I think if something should be public, it should be public, and I think that's what the Supreme Court said. If it shouldn't be public, then it shouldn't be public, but not just "sort of" public.

I think this is a very, very important issue. This Subsection (C) in preliminary appearance cases affects an awful lot of people and an awful lot of them have been shown by the prosecutor not to have done anything wrong.

If there are any other ideas, please forward them to

us.

JUDGE WYNNE: This is an area we have struggled with for several years in terms of finding ways to deal with this within the resources we have and within the confines of Article 1, Section 10 of the Constitution as interpreted by the Supreme Court.

Any other comments? Judge Dalton?

JUDGE DALTON: The thought occurs to me working on the SCOMIS retirement process that we are currently in negotiations on acquiring a new statewide Case Management System that would hopefully replace and allow SCOMIS to be fully retired.

The new system contemplates that these types of proceedings would have a different case number associated with them or a different case type number associated with them electronically.

So keeping those private could be easier in the future if the new system is acquired. Right now, it's a dinosaur, so it's very, very difficult with respect to the paper and the electronics, but in the future the electronic version could be dealt with.

I do agree with Judge Rosen that we would truly like to invite some creative solution to these issues, anything you might propose.

MS. BARB MINER: Relative to what the Judge just

mentioned in the new CMS System, we do want to separate them. Part of the problem and comments we heard from people before is these probable cause or preliminary appearance matters look like a court case, and that is confusing. It looks as if someone has been charged or has multiple cases when, in fact, as Judge Rosen mentioned, a lot of times it's just a police action that has never followed through with the actual filing of charges.

We certainly do want, and I think the clerks have actually asked for, a way to keep these separate so they are in a separate index so they don't look like a case, District Court, Superior Court, Muni Court case, and that they are separately indexed as preliminary appearance documents.

Again, I don't know that overall I would support the idea of them all being confidential, but if the judge seals them by order, that's great. That is a decision that can be made. It is, in fact, important, I think, to separate them and make them look different than a filed case.

JUDGE WYNNE: One of the problems we have run into is that in every county it is done differently in terms of the way they appear and in terms of case numbers.

MS. BARB MINER: Right.

JUDGE WYNNE: The felony first appearances in

King County and Snohomish County are made in District Court. If you go to Spokane County, those are done in Superior Court. Many felony first appearances are done in Superior Court.

Now, one of the things we haven't done, and I will point out to those who are here, we have IT Governance Request 41. In 2008, we had a subcommittee chaired by Judge Heller that looked at how District and Municipal Court records of non-conviction data should be dealt with in terms of retention of those records.

The recommendation was made in 2008 by the Workgroup. The decision was made by the Data Dissemination Committee. It was run through the JIS Committee, and the JIS Committee approved that back in 2008, but it was never implemented because it required resources to implement it.

That decision was to destroy any records of felony cases filed initially in District Court after three years, and also to destroy any records of preliminary appearances in District and Municipal Court after three years and to non-archive those. Also, dismissed cases would be destroyed after 10 years. Is that correct, Jim?

JUDGE HELLER: Yes.

JUDGE WYNNE: Now, that is in the process of being implemented right now under the IT Governance process. So that is going to be done. We have a few

issues on that yet that have been referred back to us to work out at our next meeting.

Jim?

JUDGE HELLER: With respect to, say, in regards to this, there is another group of people that get pulled in, and perhaps this is inviting again the comment if you have a solution, we would love to hear one.

When somebody uses a false name, and that is only discovered after the case has gone on, it's in the record. I know this applies more in District and Municipal Courts because we don't have biometrics in which people's identities are established. I would suspect it happens in preliminary appearances, also.

There is this area where people who have never done anything is not even considered as a charge. They weren't the person in this record and it affects them the same as if -- it is not even non-conviction data. I'm not sure what to call it.

We are looking at those issues trying to make sure that we are open, but that we are also fair, and I suspect there are at least some people I think now who have not had our attention.

JUDGE WYNNE: Destruction of those kinds of records in Superior Court is not an option because we are a court of record and we have to maintain those records in

perpetuity. District and Municipal Courts, not being a court of record, does not have to maintain those records in perpetuity, but the Judgments and Sentences upon conviction must be maintained.

I think we are ready for public comment unless somebody else on the committee has any comment or statement. We are ready for public comment, folks. We would ask that you step up here to the microphone. If you have a public comment you wish to make, I would be happy to hear it.

Who is first.

MS. FERNANDA TORRES: My name is Fernanda Torres. I am a criminal defense attorney. I am here on behalf of the Washington Association of Criminal Defense Lawyers. Thank you for the opportunity to provide comment. I have also provided some written materials from the Washington Association of Criminal Defense Lawyers.

I'm going to limit my comments to the effect of the rule changes on the non-conviction data on dismissed cases. I want to let the committee know that we support amending the court rules to create a process whereby the courts can consider from the bench on the dissemination of non-conviction data on that individual on a case-by-case basis.

Creating such a process to limit access to non-conviction data is critical and will help achieve many

goals that we have discussed in the letter provided to you. It protects the presumption of innocence and the erosion of that cornerstone principle of unfettered dissemination of non-conviction data. It reduce barriers to housing and employment and creates safe communities that way, and it brings Washington in line with other states that provide protections to limit the dissemination of non-conviction data. It also will go a very long way towards reducing the hugely disproportionate impact of the criminal justice system on economic and racial minorities.

So for all of these reasons, we support these changes and the efforts to amend General Rule 15 and General Rule 31. We are enthusiastic about this committee's efforts. However, we do have very serious concerns about two specific sections, and you probably know the sections I'm about to address.

The first one is Subsection (C)(4), and the requirement of the proponent of sealing or redacting distinguish their case from similarly-situated individuals make these remedies unavailable to most people; therefore, virtually meaningless. In fact, I would say it's a step backwards. It would limit the ability -- it will make the ability to limit access to non-conviction data even harder than under the current rules.

So it's a change we are very concerned about. We urge

the committee to remove it. We understand from Your Honor's comments that this is a response to the Encarnacion case. As Your Honor pointed out, review has been granted on this case. So at a minimum, it's premature. I understand the fact that this is a long -- it seems to me that this is a long process. So I suppose it alleviates some concerns, but I wanted to let you know that is our biggest concern.

The change in body also in Subsection (C)(6) is also a grave concern. People are harmed by the information in the index alone. I can tell the committee, from my own personal experience litigating cases, people with convictions -- I'm sorry, non-convictions, cases dismissed 10 or 15 years ago, that it is the information contained in the index only that we are trying to deal with most of the time.

I can also tell the Court -- I'm sorry, the committee members, that --

JUDGE WYNNE: What is in the index besides the name?

MS. FERNANDA TORRES: It will say, in effect, "offenses," and then it will have a case type caption, so like "CR" for criminal. That alone is the basis for people losing jobs, losing employment. I hear from clients frequently that that is the information that is

out there.

In my own personal experiences and experiences of colleagues in WACDL, as well as my experience as the Vacating and Sealing Records Advisor for the King County Bar Association, that the remedy that folks are often seeking is limiting that information; not sealing the entire record necessarily, but limiting the unfettered dissemination of that information.

So a section that is this blanket prevention from redacting the public information index is also a concern. (C)(6) should make it clear that courts are authorized to redact names from the public index when redaction is supported by the Ishikawa factors and by GR 15 (C)(2) or, as the Court ruled, as proposed today, incorporating Ishikawa factors into the rule.

I understand there are logistical hurdles, but when the name is redacted from the public record, this committee in the past has shown a willingness to work with those logistical hurdles in the new JIS System. So we are happy to help the committee on that.

JUDGE LEACH: Let me ask you a question.

If the case type were eliminated from the index, but the name remains intact, would that provide any relief?

MS. FERNANDA TORRES: I don't know. I haven't considered that. I think that eliminating the case type

would go a long way, but the name of the person associated with a case would still be floating out there and available to anyone through a wide dissemination of these records. I suppose it would provide some sort of relief. I don't know to what degree that would be satisfactory.

JUDGE ROSEN: I had a comment on that question. In a conversation with Ms. Miner, both of our experiences in some of the redactions she was referring to, the case type is not currently listed in SCOMIS or any sort of case. You can generally tell a case type for lawyers by a case number. The third digit certainly is indicative of that. But despite the rules, sort of like the rules Ms. Miner mentioned earlier, even though the rule says that it is indeed done, currently case type is not displayed on the case type, and it is also not being displayed in SCOMIS.

MS. FERNANDA TORRES: What is displayed, if I understand it, though, is the word "defendant," so it's that information that's again widely disseminated.

JUDGE ROSEN: Thank you.

MS. FERNANDA TORRES: Thank you for the opportunity to comment. I can answer any questions.

JUDGE WYNNE: Do we have any other questions?

JUDGE DALTON: What types of harm do you see to your client from just simply having their names associated

with the word "defendant?"

MS. FERNANDA TORRES: Well, I can tell Your Honor that from past experience in specific cases, as well as from what I'm hearing from folks that handle criminal defense cases, that we are hearing from clients whose cases were dismissed 10, 15 years ago, who have, for example, gained employment, a background check is run, that information comes up, and it is only the information in the index system, and that offer is rescinded. That's the kind of harm that is resulting just from that display.

JUDGE DALTON: Thank you.

MS. FERNANDA TORRES: Thank you.

JUDGE WYNNE: Who is next?

Roland Thompson, you never have been at a meeting you haven't spoken.

MR. ROLAND THOMPSON: Thanks for inviting me.

JUDGE WYNNE: You're welcome.

MR. ROLAND THOMPSON: I promise to attend the meetings more faithfully in the future.

Judge, Your Honors, your Clerkship, thank you for having me here today.

I think I'm going to limit my comments primarily to GR 31 and what you're attempting to do there. I have counsel with me today to address the issues in General Rule 15. I'm a little busy right now that the Legislature

is in session.

Your Honor, you and I have been associated with discussions around the two-tiered system for about a decade-and-a-half, I would say. We were both at the meeting in November of 1999 when Justice Talmadge was the Chair of the JIS Committee.

JUDGE WYNNE: Right.

MR. ROLAND THOMPSON: There was a full public hearing then held by the JIS Committee. That issue was primarily laid to rest, I think, at that public hearing and in the subsequent discussions after that.

If the Court is going to operate in an electronic age and allow filings remotely and all the other conveniences and acquisitional advances that we are able to make for information, the same things will be able to be used by the public when they are interacting with the court system. We need to allow the public to have full access to the court system and that guaranteed by Article 1, Section 10 of the Constitution.

If you go to this two-tiered system, it's unclear to me how you're going to be able to have other documents associated with it that wouldn't be available. As you know, we in the news business try to keep track not of the activities of the defendants solely, but of the activities of those that we charge to go out and to police the

streets, to enter the probable cause statements, and to make the judgments ultimately on those people when they are brought in.

In the jurisdiction in which I live, Olympia, they have the police post their daily activity report, what they call their daily activity report. It carries the names of everyone that has been arrested and the charge under which they have been arrested by the police department. How that interacts with Olympia District Court or with the Superior Court in Thurston County, I am not certain, but they do post those things.

The probable cause documents can be acquired if they exist from the offices of the prosecutors in those cases. So there is access to all of those cases, as well as the fact if anyone is in the jail, you can see the jail log by simply going to the Thurston County Sheriff or to the Olympia Police Department and the jail log is available with the name and the number associated with that person.

JUDGE WYNNE: I will admit to using our jail log this morning.

MR. ROLAND THOMPSON: Exactly.

So you are in a position where there would be a chain of control and arrest and all the rest of it that would be associated with, and then you would get to the court system and you would have essentially a dead file. People

would know these things, but would not know what they culminated in if these preliminary appearances were not handled the way they currently are today. The accountability of the system is really important to us. Things are already known. It's counter-intuitive in a way that you would withdraw those things. My concerns with GR 31 center around that issue.

We think actually with the system, hopefully you do get your $20 million back. I have been involved in those discussions.

JUDGE WYNNE: We'd appreciate any help we can get.

MR. ROLAND THOMPSON: This morning, just before I came actually, I was with the Chief Justice and Justice Fairhurst speaking to the Chair of the Senate Ways and Means Committee about this issue. Hopefully something will come about with that.

It seems to us that more information is better than less in this instance. You can fully vet out what happened and those sorts of things if they are known, if those sorts of conclusions and findings and the rest, if they are known to the public will free these people more than simply having a break in the chain of the known information. It would be better off more fully making disclosable these things in how they have been dealt with.

I appreciate the fact that you have people who are brought in by the police, Judge, and they are not really passed through the prosecutorial screen, and that they are brought to you, and then nothing is done by the prosecutor. But the actions of the police when they do those things are matters of public concern. They could be bothering populations of color would be an example to use. You could have disproportionate numbers of people that are being arrested for certain things or people who are brought in after demonstrations or all sorts of things that will happen in these cases where they never do come to any type of cause. But those people have been brought in because of their political views, the fact that they are protesting. All of those are matters of great public concern.

I think that more information in these instances is far better than less. Hopefully, if we do move forward with this new JIS System and funding for SCOMIS and also for DISCIS, if that's possible, you will have a full iteration of what's there. It will be liberating for those people, rather than simply have limited information that have their names listed with this type of appearance, it appears as though they were actually charged with a criminal charge. We would like to leave it at that on that issue.

The issues in General Rule 15, I think we are going to have fuller discussions about these after it's over. I promise you I will show up at the DD subcommittee meetings from here on throughout the course of the year.

JUDGE WYNNE: Thank you. We appreciate your comments. Any questions?

MR. ROLAND THOMPSON: Thank you.

JUDGE WYNNE: I think I saw somebody else who wanted to speak.

MS. SARAH DURAN: My name is Sarah Duran. I'm with Davis, Wright, Tremaine, but I'm also the follow-up to Roland Thompson. Thank you all for giving me the opportunity to speak.

JUDGE WYNNE: Could you spell your last name?

MS. SARAH DURAN: It's Sarah Duran, D-u-r-a-n, like the group.

I am here on behalf of Allied Daily Newspapers of Washington. You all may know of them already. It is an organization that represents daily newspapers throughout the State of Washington.

I'm speaking today on behalf of newspaper editors, publishers, media outlets, and groups that advocate and favor access to government operations.

We are very concerned about the proposed changes under GR 15 and 31. As you know, court files are presumptively

public. Anyone who wants to file under seal or keep a record out of the public eye must give a compelling reason and explain why that reason outweighs the public interest in it. That mandate is well established under Ishikawa and under its progeny and administered through GR 15.

Our concerns fall generally into two buckets. On the one hand, there is admissions in the area of (C)(2) that relate to incorporating the Bennett decision from the Supreme Court earlier this year, and the additions that relate to the criminal cases.

Addressing first the Bennett decision and the language relating to Bennett, it's our position that much of the section appears to be a premature attempt to codify what, to a certain extent in Bennett, is dicta or minority holdings from the Bennett decision.

I don't know if the committee is aware of this, but the Bennett decision is currently the subject of a motion for reconsideration before the Court. The Court has taken this request seriously enough that it has sought full briefing. It has been two months ago, and we haven't heard anything from the Court, which tells me that it's not a slam-dunk, easy decision for the Court. They are obviously struggling with what they are going to do about Bennett. So at this point, it's definitely premature what the ultimate result is going to be of the Bennett

decision.

Bennett also arose on very narrow facts. So that is one factor that the committee should be aware of. It's very ambiguous and a lead decision. Again, there was no majority decision. The lead decision is arguably dicta.

JUDGE WYNNE: There was a four-judge plurality decision.

MS. SARAH DURAN: Yes, Justice Madsen was in the middle. She obviously discussed the dicta, and was not agreeing with much of the decision. She was agreeing to a certain extent with the outcome, but not necessarily with a lot of the language.

In particular, and this is one of the things that we're concerned about under the proposed rule, is the language regarding third-party notice, notification in Bennett. This is clearly dicta. This is nothing that has ever come out in Ishikawa.

JUDGE LEACH: Well, the context is a bit unusual in that the taxpayers referred to (inaudible). (Interrupted by the court reporter for not being able to hear).

MS. SARAH DURAN: Absolutely.

JUDGE LEACH: Don't you think that person should get notice under those circumstances?

MS. SARAH DURAN: I would say that, first of

all, just going back to your point that the circumstances were unusual, yes, they were unusual, which goes back to the point why take a case that has unusual facts and make an entire rule out of it.

JUDGE LEACH: That's my question. I was on the panel in the Court of Appeals in that case, and we had the case. We don't have a choice. We don't get to say this is a narrow problem, go away. Anybody that is aggrieved that comes to court, the concept is if your privacy is going to be invaded, perhaps you ought to get told about it. I would like you to address why that's a bad idea.

MS. SARAH DURAN: Your Honor, I don't disagree the public has a right whether or not the individual has a right.

JUDGE LEACH: If it's my privacy that's going to be invaded, do I have the right to be heard before a decision is made regarding that invasion? That's all the third-party notification does. It doesn't change the balancing under Ishikawa at all.

MS. DURAN: Ishikawa actually does recognize that the right to --

JUDGE LEACH: No, Ishikawa doesn't. What I'm asking you to address, which you have artfully dodged so far, is what is wrong with giving notice to someone whose privacy will be invaded before the Court decides the

question?

MS. SARAH DURAN: I don't take issue with somebody being given the right to be notified. What we're saying is that that should not necessarily be in the rule.

Personally, as counsel, I understand --

JUDGE LEACH: Why would the trial court ask to do that if it's not in the rule?

MS. SARAH DURAN: I'm not saying that the trial court should be the one to say you have to do it. I'm saying, as somebody who represents other clients who are not media, just through general litigation, I would always make sure that my client understands, hey, this information is in there, we need to address this.

I do this on a regular basis where I say to my client here is some information that we'll need to seal because it's the right thing to do and it's information like tax information. We know things like Social Security numbers should be. We do that on a routine basis already.

JUDGE LEACH: It's nice to rely on the goodwill of lawyers. But what's wrong with someone who is affected having a chance to be heard? That normally is a fundamental part of due process.

MS. SARAH DURAN: Well, then, I would say just as much as that person has a right to be able to speak and be heard, so does the public and the public has its right,

and that is a very important right, as well.

JUDGE LEACH: Nothing about giving an individual notice includes the public also obtaining notice, does it?

MS. SARAH DURAN: It does not. Is the public going to get notified every time there is a motion to seal? I mean, it's kind of like putting all the balls in the court of the person who wants to seal, and the media doesn't even know about it until -- an example, since I represent the media, they don't even know until long after the fact, and suddenly now they are in a position of actually being the requestor trying to unseal, and the burden is suddenly on them to try to unseal. Whereas, in an ideal world, everyone would know it and everyone could come to court at the same time. Now, this is making sure only the person who wants to protect their interest has their interest recognized. We made sure that they have been notified.

The whole practicality of doing this is amazing. Does that mean that that person always has a leg up and the opportunity to object, whereas my client never would know in advance?

JUDGE LEACH: Why aren't you asking that the rule be amended to require notification to the press rather than objecting to the affected person being notified?

MS. SARAH DURAN: Either way, it's an incredibly impractical rule. First of all, it's not Ishikawa. It's completely contrary to the Washington Constitution.

JUDGE LEACH: What provision in the Constitution renders unconstitutional the giving of notice?

MS. SARAH DURAN: What I'm referring to is Section 10, which refers to the open administration of justice. As soon as you start sealing documents, you do not have the open administration of justice.

JUDGE LEACH: The rule you are objecting to doesn't change any of the factors which our Supreme Court says is the correct analysis under Article I, Section 10.

All it says is somebody who is directly impacted by the decision has notice and an opportunity to be heard the same way as anyone in the courtroom who has an interest in the proceedings to be there in the first place also has an opportunity to be heard.

I don't understand why it's unfair to give someone who has an interest an opportunity. You have identified another group that is adversely affected and that would strike me as a reason to give that entity notice, as well. Perhaps if you are going to seal a file or give some kind of public notification in an electronic age, it's easy to do.

I'm curious about the approach of not telling somebody

rather than telling more people, given that our ultimate goal here is to have an open process.

MS. SARAH DURAN: We are not saying people should not be notified.

JUDGE LEACH: I thought that is what you said.

MS. SARAH DURAN: No, I never said that people should not be notified. We are just saying it should not be part of GR 15. That is what we are concerned about.

JUDGE LEACH: Where should that requirement be?

MS. SARAH DURAN: It should be unstated, but there are a lot of things that are unstated. It does not need to be. I think counsel should be the one taking care of it. Now the way it's drafted and the way our reading of Bennett is, everything comes to a grinding halt to make sure this person who may or may not care gets a chance to be heard.

JUDGE LEACH: You would advocate for a court process that has unstated rules?

MS. SARAH DURAN: I would advocate for the way the system currently operates, and as far as we are concerned, this is not consistent with the Constitution. This is not consistent with Ishikawa, and to the extent this relies on Bennett, Bennett is still very much in the air. Justice Madsen clearly had questions about this third-party notification.

So at this point, our position, our very clear position, is this is all very much premature. This has been an interesting conversation.

JUDGE LEACH: It has.

MS. SARAH DURAN: I'm happy to answer any more questions, but I also don't want to bring things to a grinding halt.

JUDGE LEACH: You had another objection to the rule. Maybe you could address that, as well.

MS. SARAH DURAN: Actually, our other concern about Bennett is it does not define what it means to be part of the Court's decision-making process. This rule attempts to codify Bennett, and we have concerns about that.

JUDGE LEACH: You indicated a concern about the criminal component.

MS. SARAH DURAN: Yes.

Regarding GR 15, the way the rule is currently listed or drafted, it has very specific areas that permit sealing, such as trade secret cases, criminal conviction has been vacated. The proposed changes seek to add a number of new areas that could be considered per se sufficient privacy interests in criminal actions. We are talking about the acquittals, the dismissals, situations where the Governor has issued a pardon, documents used at

a preliminary appearance, these types of documents.

The vacated convictions makes sense to a certain extent. The Legislature has specifically determined what crimes can and cannot be vacated. There are numerous conditions. There are the conditions of a vacated conviction. The Legislature, to a certain extent, has spoken about the effect of these type of court resolutions.

JUDGE WYNNE: The jury speaks to us and tells us a person is not guilty. Shouldn't that have the same effect?

MS. SARAH DURAN: We disagree. You are basically talking about an acquittal. An acquittal, as the US Supreme Court held in Watts, 519 US 148, an acquittal does not prove that the defendant is innocent. It merely proves the existence of reasonable doubt as to his guilt. So there is a distinction.

An acquittal, a dismissal, those are all the types that did not result in some sort of a finding that is very nebulous, the reasons, the rationales --

JUDGE WYNNE: You still need to follow the Ishikawa factors.

MS. SARAH DURAN: Absolutely.

JUDGE WYNNE: You have to differentiate those, as people have objected here, to other similarly-situated

cases. That doesn't provide for a lot of cases that will be sealed and involve dismissals or acquittals. It certainly doesn't apply to every dismissal or acquittal that could be sealed.

MS. SARAH DURAN: We don't know how it's going to play out. That is part of our concern, the way the rule is currently drafted. We don't really know that. If they are reading that into the rule, great. If they think it will make it harder, we don't know that. It's not really clear to us.

JUDGE WYNNE: We are looking for a balance, but in your position and some of the other positions taken by other people, we shouldn't be so restrictive and require them to be differentiated from similarly-situated folks. What's the balance?

MS. SARAH DURAN: That is a good question and part of an ongoing conversation, and yet that is a dodge. The point is we do see that there is a difference.

In the case of a vacated conviction, the Legislature has very much defined what is a vacated condition. If you meet all these conditions and only in these circumstances, only if you have done these things, will that even put you into the group of criminal resolution, for lack of a better phrase, that will p ut you into the GR 15.

All these other things are undefined dismissals,

acquittals. They are just too nebulous. It is not necessarily based on something the Legislature has spoken to, like they have very clearly with respect to vacated convictions.

There is also, to a certain extent, a practical reality. Again, in the case of an acquittal, one of the Ishikawa factors is whether or not this would even be effective. He just had an open trial; it's all in there.

So again, I'm not saying we have the answer. We are not trying to say we know exactly what the balance is and we don't envy your position because it is a balance. We understand that.

Having said that, we obviously do have some concerns about procedurally how these proposed changes will play out, and whether or not you have the extreme case where everybody is filing a motion to seal. As a practical matter, as soon as a defense attorney shows up, and nobody has yet been charged because the police are still completing their investigation, everything gets sealed because everybody shows up immediately.

The media can't be there every day. The public can't be there necessarily every day to know to say, hey, you don't have the right to do that. It will get sealed immediately. That's our concern. The practical reality of having too many criminal cases sealed way too quickly.

JUDGE LEACH: One of the purposes of (C)(4), which you referred, comes under considerable criticism, and you will have a chance to review the written comments. Almost all of the focus is on the claimed defects of the proposed rule.

MS. SARAH DURAN: That is on my list of things to follow up on is get the written comments. We are just looking at the practical reality. I think Your Honors certainly, and those of you who work in the court system, have all seen the types of stories my clients write and they put on TV. Quite often we do have this.

Unfortunately, all too common, there is somebody who didn't necessarily have charges or convictions end up doing a heinous or horrible crime that offends the community. If you can't go back and check that record and say, for instance, in the case of drunk drivers who kill families and innocent individuals and have this long laundry list of the arrests that don't necessarily result in charges, the public can't assess whether it's criminal justice system was adequately responding to this person in multiple arrests. That's one example. I hate to use it because it could become a bit of a talisman.

But obviously, Maurice Clemmons is the perfect example of somebody where he had a list of crimes. Are these the cases we want to hide all the background information on?

That's what our concerns are and this is what we would like the committee to take into consideration, as I'm sure you all will, because I sense you are taking all of these comments into consideration.

JUDGE WYNNE: That is why we are trying to do this at the start of the process.

MS. SARAH DURAN: Thank you.

I will just wrap up my remarks and encourage you all to think about the impact of these changes on the clearly well-established case law and the Washington Constitution, which does require that justice be administered openly.

JUDGE WYNNE: Thank you, Ms. Duran.

Anybody else have any questions? Thank you.

MS. SARAH DURAN: Thank you.

JUDGE WYNNE: Good afternoon.

MS. VANESSA HERNANDEZ: Good afternoon, Your Honor and Committee Members.

My name is Vanessa Hernandez. I'm the attorney with the ACLU of Washington. I'm on the Second Chances Project, which means that I provide legal services to people with criminal history or are facing barriers to housing and employment.

Over the past year, I have counseled and represented over 300 individuals who have called me regarding inability to secure jobs, to secure housing, to secure

volunteer opportunities, really basic substance level ability to reintegrate into society on account of criminal history.

I would echo the comments of the Washington Association of Criminal Defense Lawyers. The ability to seal non-conviction data is a very important step, and we applaud this committee for proposing that. We share their concerns about Section (C)(4) and I would like to articulate why it is that we are concerned, and suggest perhaps a way that this can be addressed.

The reason that we are concerned with incorporating the requirement, that a person whose conviction has been vacated or dismissed, that they distinguish their case from all others similarly situated, we are concerned that would erect an insurmountable barrier. Even people who could otherwise meet the Ishikawa factors and are prepared to provide an individualized assessment of their risk would be unable to say, no, there isn't any other person on earth who shares this interest.

So let me give you an example. I have worked with a number of clients whose convictions have been vacated. In fact, have long been vacated, some of them for 10 or 20 years. One client has a single conviction from 25 years ago which was vacated five years ago, and who then went to apply for a job and didn't disclose it, as was his

statutory right, that the Legislature determined him to say he has never been convicted.

The employer went directly into the JIS System, pulled up the case notation, saw "S-1," recognized that that was criminal, and said you have a criminal charge and you lied to me.

I can't say that that person is wholly distinguishable from any other person on earth. In fact, most people who have vacated convictions who call me are calling me because they have been denied a job because they took advantage of their legislative right to say they have not been convicted. That is not a unique interest. It's not common, but it's not unique.

To say a person has to distinguish themselves from all other similarly situated leads very easily to a requirement that they prove no one else shares that interest. What I would suggest instead, if the committee is concerned about an individualized case-by-case analysis, is to fall into the rule that was established in Waldon.

In Waldon, which concerned a vacated conviction and I think is analogous to dismissed cases, the Court said that a person couldn't rely solely on the fact that their conviction had been vacated, but instead had to go through the Ishikawa factors and prove that in their specific

case, their interest in a vacated conviction was under serious and imminent threat.

Then, you wouldn't have people who had jobs and had homes coming in and saying, well, my conviction has been vacated, take it away. They would instead have to prove a significant threat in their individualized circumstances.

JUDGE LEACH: How do you suggest to do that if no harm had ever occurred to them?

MS. VANESSA HERNANDEZ: I think you would have to present the likelihood of harm. For an example, if a person was applying to work as a nursing assistant and had a conviction that had been vacated, which was statutorily disqualifying for DSHS, in that instance, I think the fact that the conviction could show up on a background check is extremely likely that that would pose a serious and imminent threat to that person's situation.

Again, you would want individualized circumstances, individualized threats, and some ability for the Court to ask the person to demonstrate that the threat exists.

Hundtofte is really a very different case than the criminal conviction dismissed or vacated cases. I think the lynchpin of the Court's analysis in Hundtofte vs. Encarnacion, which is up for review, was that there was no statute or court rule which recognized the interest that the tenants were proposing.

Here when we have many statutes which recognize privacy rights and non-dissemination of non-conviction records, when we have a vacate statute, when a bedrock constitutional principle that a person who has not been convicted shall not be imposed the penalties of conviction, I think those interests take this out of the territory of Encarnacion and more into Waldon.

So I would suggest that (C)(4) be amended, removed, revised to incorporate the rule in Waldon, if you are particularly concerned about the individualized analysis.

I would also like to point out to the committee, though, that I believe there are a number of cases pending before the Supreme Court and the Courts of Appeals which address or which will likely address the question of whether interests which are shared by multiple individuals can constitute a basis for sealing.

In addition to Encarnacion, there is a case currently pending before the Supreme Court called State vs. Chen, which involves the sealing of competency reports under statute. That case presents very directly to the question of whether Ishikawa must be applied to a statutory sealing provision.

There is a similar case that's currently pending before Division I, took review last week, called State vs. SJC, which involves a juvenile sealing statute. The question

presented in SJC is entirely whether Ishikawa applies to the juvenile sealing statute.

I think to the extent that this rule in Section (C)(2) is read to require Ishikawa analysis on all sealing motions, juvenile and adult, or sealing motions where there are statutory bases for sealing, I would suggest that that rule is premature.

SJC and Chen may very well establish that when there is a statutory basis for sealing, Ishikawa does not apply. Particularly, with respect to juvenile records, I do think that the way this rule is currently drafted --

JUDGE LEACH: Let me ask you a question.

MS. VANESSA HERNANDEZ: Yes.

JUDGE LEACH: The Ishikawa standards are founded in the Constitution.

MS. VANESSA HERNANDEZ: Yes.

JUDGE LEACH: Statutes are passed by the Legislature. Generally, we don't review the Legislature's ability to amend the Constitution.

MS. VANESSA HERNANDEZ: I agree.

JUDGE LEACH: So how do we separate Ishikawa from any analysis whether a record should be sealed because the Legislature told us something different?

MS. VANESSA HERNANDEZ: I think, Your Honor, if you read Ishikawa itself closely, it says that the

presumption of openness is not absolute, and that court records and proceedings can be closed to protect other compelling interests.

Ishikawa itself doesn't establish how and why that happens. In fact, the Supreme Court has, for example, with juvenile proceedings, said that a categorical closure by statute of juvenile proceedings was constitutional under Article 1, Section 10, In Re Lewis, an older case from 1957.

JUDGE LEACH: Isn't there a later case that brought into question whether --

MS. VANESSA HERNANDEZ: Yes, Ishikawa and Kurtz both cited Lewis. Lewis has been superseded by statute now that the statute has been amended.

The core principle the Legislature has authority or that the Court has authority to close certain classes of records or to recognize interests inherit in classes of records, that's still unsettled, and I think will be squarely addressed by these two cases.

Again, particularly as it concerns juvenile records where I believe the general practice is to seal by statute, I think that it would benefit this committee to wait for at least the guidance of the Court of Appeals in SJC, and perhaps the guidance of the Supreme Court in Chen before adopting that rule.

JUDGE LEACH: What do you consider inadequate about Subpart (A) that says that sealing or redactions permitted by the statute is sufficient to establish the privacy or safety concern, but that still must be weighed against the public interest which is the interest that is imbedded in Article 1, Section 10?

MS. VANESSA HERNANDEZ: I believe, Your Honor, that it remains unsettled whether that must be done on an individual case-by-case basis or whether that can be done by the Legislature or by court rule. Again, I'm taking no position at this point on the ultimate decision that this committee should reach. I'm simply highlighting that those questions remain open, that the Supreme Court in Division I will be addressing them squarely, and in ways that are directly on point with the way this rule will be applied.

The last thing that I would just like to highlight is that I really want to thank this committee for taking upon itself really an almost Herculean task to balance the interests of the public against the interests of individuals. Those interests are not always obviously intentioned, but I think with the continued widespread electronic dissemination of court records, with the increase in background checks and data dissemination, we are seeing something, particularly in recent years, which

has never been the aim of our justice system. It's not the aim of our justice system to continue to shackle people to incidents from their past.

For people who either have not been convicted, for people whose convictions have been vacated or pardoned, that is something to be commended and supported. I understand there are often multiple variables that stay here, but I appreciate your willingness to take the time to consider this all carefully. I'm happy to answer any other questions.

JUDGE WYNNE: Thank you.

I have the Waldon case here. I will look through it again to see if it has any other guidance for us in terms of language that is an alternate to Hundtofte vs. Encarnacion. The McEnry case, a Division II case, is also very similar to Waldon, a 2004 case.

MS. VANESSA HERNANDEZ: Yes.

JUDGE WYNNE: Thank you.

MS. VANESSA HERNANDEZ: Thank you.

JUDGE WYNNE: Any other questions?

Anyone else wish to address?

MR. BILL WILL: Thank you, Your Honor, Mr. Chairman. I'm Bill Will from Washington Newspaper Publishers Association, representing the weekly newspapers of Washington state.

JUDGE WYNNE: Could you spell your last name?

MR. BILL WILL: W-i-l-l.

JUDGE WYNNE: Thank you.

MR. BILL WILL: I will state briefly to both proposals.

I will start with GR 31. I agree with the previous assessment that was delivered by a member of the panel that something is either public or it's not. It can't be a little bit hidden. It's impractical.

I think the standard in the state has been that the records have been open, and that is what our Constitution asks for, and I would like to see that maintained.

In terms of the proposed changes to GR 15, one particular provision gives me pause, and that is the section that talks about -- it would create essentially a different standard for sealing records if it was determined that something in the court file wasn't used in the decision-making process.

From my standpoint, I think that unnecessarily muddies the waters. I think the historical standard is if a document is filed with the Court, it goes into the court file. If a decision needs to be made about sealing, then --

JUDGE WYNNE: Has the Supreme Court addressed that?

MR. BILL WILL: I think they have addressed it, but I think in a muddled fashion, and they have contradicted themselves in that area. I think the standard should be it's in the court file. If there is a motion made to seal, then we proceed with that process using the Ishikawa factors and proceed from there.

That's all I have to say. Thank you.

JUDGE WYNNE: Thank you.

Are there any questions?

MR. CHESTER BALDWIN: Your Honors, my name is Chester Baldwin. I'm here today testifying on behalf of the Washington Apartment Association, Rental Housing --

JUDGE WYNNE: Your last name is spelled how?

MR. CHESTER BALDWIN: Baldwin, B-a-l-d-w-i-n.

JUDGE WYNNE: Thank you.

MR. CHESTER BALDWIN: I'm here testifying on behalf of the Washington Apartment Association and our 1,500 members, the Rental Housing Association and their 5,000 members, and the Manufactured Housing Communities of Washington.

We all oppose the changes to GR 15, and here are the reasons why. We believe that Washington has a long history of open public access to accurate court records and policies and the Constitution reflects that. As landlords, we have a strong need to protect the rights of

our tenants and protect the safety of our current tenants. Without the information, they could be sealed in these records and could be taken away from us, we don't believe we can do that.

JUDGE WYNNE: What in the proposed amendments specifically are you opposing?

MR. CHESTER BALDWIN: Well, I think we are opposing a few of the different things in there. The ability to seal non-conviction data is one of those things.

I have worked as a criminal defense attorney for more than five years. I happen to know that I have used this process many times to help clients who may not be blameless in whatever the situation was in order to take care of and get something classified as non-conviction rather than a conviction. Whether that's through a plea deal or whether that's through some other means that we come up with for the resolution in that case, it doesn't mean that that person was innocent of those charges, and it doesn't mean that those records shouldn't be available to landlords in making the decision on whether to choose to house someone or not.

Additionally, we believe that the current process in place for sealing these records is adequate and does the job, and I have used that process with clients to take

care of these issues.

JUDGE LEACH: Let me ask you a question. How would you reconcile the circumstances right now GR 15 articulates one standard for sealing and we have a constitutional standard reflecting Ishikawa that's different than the rule?

MR. CHESTER BALDWIN: I believe that the Ishikawa factors are taken into consideration with GR 15 in choosing whether to seal a record. You have a court rule, but you also have judicial interpretations that have come from that.

JUDGE LEACH: Do you think it would be appropriate to have the court rule reflect any constitutional considerations of someone, particularly a lay person looking through the rule book, to figure out how to do something, would have an accurate description of what is required before the Court acts?

MR. CHESTER BALDWIN: I think that -- I guess we believe the court rule adequately does that now, and the search of case law will bring up any cases that have --

JUDGE LEACH: You see, the search of case law is easy for lawyers to talk about, but making the judicial system accessible to everyone requires rules to tell you the whole story and not just part of the story, and requires you to hire a lawyer to do in-depth legal

research, which you have to bring to the courthouse to get what you want.

One of the goals of this amendment process is to conform the rule to what's really required so someone reading the rule would know that.

Is the group of people you represent opposed to that?

MR. CHESTER BALDWIN: I don't believe that we would be opposed to that. I believe our opposition is much more in the sealing and the making unavailable records that we have always had access to.

Additionally, and I think this is an important point, we believe the Legislature should be the body to make the decisions on what gets sealed and how we do that. Also, as far as non-conviction data and those sorts of things, I can tell you that there have been many bills in the last couple of sessions, at least down in Olympia, dealing with these issues, and none of them have passed out. There is obviously a reason the Legislature has not chosen to move forward with any of those. We would hope that that would be taken into consideration by this body, as well.

JUDGE WYNNE: The draft of the last bill asked our committee to look at these issues. Have you seen that?

MR. CHESTER BALDWIN: Yes. We understand that this is part of that process.

JUDGE LEACH: You also understand that the courts, in our separated divisions of government, can determine what does and doesn't comply with Article 1, Section 10?

MR. CHESTER BALDWIN: We do.

JUDGE LEACH: You wouldn't want to delegate that to the Legislature?

MR. CHESTER BALDWIN: No, we are not advocating that.

Thank you.

JUDGE WYNNE: Thank you.

Any other questions?

MS. STINA JANSSEN: Good afternoon, Your Honors. Thank you so much for the opportunity to speak today.

My name is Stina Janssen, and I'm a housing counselor for the Tenants Union of Washington State.

JUDGE WYNNE: Could you spell your last name?

MS. STINA JANSSEN: Yes, J-a-n-s-s-e-n.

We are a state organization that has been providing free housing counseling to thousands of Washington renters for over 35 years. I want to start by saying I am not a lawyer, so I have not read all the case law, and I hope to share with you some anecdotal stories from our members and our expertise in speaking and working with tenants who are experiencing the impact of some court records.

We want to start by saying that we support the proposed amendment to the rule regarding sealing and redacting non-conviction data. I would like to focus on the proposed General Rule 15(c)(4) amendment and we urge you to reconsider this section of the amendment, which would remove the Court's ability to redact the names from a court index under all circumstances.

We hear from tenants across the state that they are denied housing based on court records which are generally viewed by landlords when tenants apply for housing, even when that information is unrelated as to whether they can meet their tenant obligation.

We agree with what the Washington Association of Criminal Defense Lawyers said because we know that it's standard practice for the tenant screening companies to look at the names of the applicants that are visible on the index, and not necessarily look at the rest of the documents pertaining to that case.

Under the current rule, a party has the opportunity to present her individual situation to a court and have the Court determine whether she has identified a compelling safety or privacy interest that outweighs the public interest and access to the court records. Then, the Court determines whether sealing redaction is warranted, and what is the least restrictive way to do so.

This rule change would negatively affect Washington tenants. As you know, in the existing system, if a tenant wins an eviction or has their case dismissed because it was erroneously filed, the eviction record is available for use by future landlords.

JUDGE LEACH: Can I ask you a question about that?

MS. STINA JANSSEN: Sure.

JUDGE LEACH: Do you know if the organizations that gather data for the landlords wait until the case is resolved or do they look at the filings? If they look at filings, by the time the case is dismissed, it's too late to do anything to protect the tenant from becoming another name on the sheet of people who have been parties to unlawful detainer proceedings. So the sealing or redacting a name from the index doesn't really accomplish anything.

MS. STINA JANSSEN: We understand that the tenant screening companies look at the index. Would you concur on that, Merf? I hope that answers your question. Merf may be able to answer that.

JUDGE LEACH: Well, they look at the index after the case is resolved. They don't look at the filing index to see what cases are coded as landlord-tenant cases the date they are filed.

MS. STINA JANSSEN: I'm sorry, you may need to ask Merf about it because I'm not sure I understand.

JUDGE LEACH: It was a point made about criminal convictions, as well. If there is a wealth of information on the Internet already, sealing something doesn't really provide any protection. It just provides a roadblock to finding out what really ultimately happened. It's a fact the unlawful detainer action already is out in the Internet world, but if we delete the name from the index, you can't look to see that the case was dismissed, and you can speculate that the person was evicted. I guess it's a question of being careful what you ask for.

MS. STINA JANSSEN: I will let Merf speak to that, as well.

I have some examples that I would like to share with you. For many of the tenants that we speak with, the eviction record prevents them from getting housing in the future. Most that we have spoken with have faced homelessness as a result. We hear these stories every day, and I have three examples.

An Issaquah tenant had already moved out of her foreclosed home as required, but the bank filed for eviction anyway. Banks are filing so many evictions at this time that, in this tenant 's case, they didn't bother to close the case, and the court administratively

dismissed the eviction for lack of adjudication.

With a dismissed eviction on her record, Lisa was denied housing time and again, was homeless for three years, sleeping on couches and unsafe environments and in hotels when she was also battling thyroid cancer. As she stated: "OnSite," which is a tenant screening company, "treated me like a criminal and misused their power, saying they hear this story every day. I let them know I was never evicted and it was false information. I assumed clearing my record would be simple. I was wrong."

A tenant from Tacoma had a landlord refuse to repair the water leaking from a light fixture. When she was pursuing repair, the landlord claimed her lease was void. She was fully paid up on rent, and when the judge saw her signed copy of the lease, he dismissed the case. With the dismissed eviction record on her file, she was denied housing five times, and when she was accepted, she was forced to pay an additional deposit of $600 in addition because she was labeled a risk.

We also recently spoke with a Section 8 tenant from Seattle who went all the way through the eviction process because the Housing Authority withheld a portion of her rent due to an administrative error. The Housing Authority paid the full amount it owed and her tenancy was reinstated. But since the eviction had been filed and she

was not able to remove that in her attempts to seek housing, she requested the screening company to omit the record, and they have refused. She also has not been able to find housing.

The tenants we have spoken with who have erroneous evictions have experienced unnecessary obstacles in their life, which is directly related to the eviction record, including loss of employment, medical problems, being forced to return to abusive relationships, and frequently homelessness.

Each of these tenants shall have the opportunity to ask a court to determine whether or not there is a sufficiently compelling reason to have information, any part of their record, redacted or sealed based on the specific circumstances they present. Rather than have certain avenues of redaction or sealing removed from consideration, the Court would decide on the least restrictive manner of redaction or sealing based on the input presented at the hearing.

Thank you again so much for your time.

JUDGE WYNNE: Anybody have questions? Thank you.

Good afternoon.

MS. MERF EHMAN: Good afternoon. My name is Merf Ehman. I'm an attorney with Columbia Legal Services.

As many of you know, Columbia Legal Services is a statewide legal aid organization. We represent low income people, and we engage in systematic advocacy including class actions and policy reform.

I will try not to repeat what other speakers have talked about already today. I would like to focus my remarks mainly on (3)(C)(d), the proposed amendment that talks about redacting the index from the court record.

JUDGE WYNNE: For our court reporter, your last name is spelled E-h-m-a-n.

MS. MERF EHMAN: That's correct. I'm from the east coast.

JUDGE LEACH: Do you have an answer to my last question to the last speaker?

MS. MERF EHMAN: Your question about sealing records and the information that --

JUDGE LEACH: The information is assembled by organizations that provides data to landlords. Is it based on filings or dispositions?

MS. MERF EHMAN: I think that it is sometimes based on either or both, depending, I think, on what information is in the court record. It's some "each county." Some counties do it differently. Some counties list actual dispositions that happen in a case, but some counties don't.

So most tenant screening companies in my experience don't go through and look at the docket to see what was the outcome of the case. They report the filing, whether this case has been concluded or not.

I think the important thing to think about is the Fair Credit Reporting Act. If a case has been sealed or redacted, most tenant screening companies will not report that information because if they do so, they are not reporting information that has a maximum possible accuracy, which is what they are required to do under the Fair Credit Reporting Act.

Why we think it is so important for individuals to be able to redact their record in this way is that, for some folks, it's the only way to attack their access to employment and housing. I think in the Rousey case and the Encarnacion case that have been discussed today, none of them said that this type of motion is unlawful or violates Ishikawa. Their holdings were based on other things.

In each of those cases, the Court could have said plaintiffs or parties moving to close can no longer argue or move to have their record redacted in that way. In fact, the Clerk's Office asked the Court to find that that record, that removing the name from the index in fact destroys that record like the book burning example you

gave earlier, and the Court refused to do that. In fact, in Rousey, the Court remanded to have the Ishikawa factors considered.

We urge this committee to keep what the current rule is. The current rule is that a party can go into court, and if they can show the Ishikawa factors, that the Judge should decide what is the least restrictive alternative to have that record redacted. None of the general rules take any particular part of the record and make it more important than any other particular part of the record.

The definition of a criminal record itself includes the index. So a specific type of information like a name or a specific type of court record shouldn't be singled out and say that that particular thing could never be redacted when other parts can. So we think that that's unfair, and that the rule should remain the same or, at the very least, this committee should wait and see what the Supreme Court has to say in Encarnacion.

I would like to give an example of clients who this procedure would be very helpful to them. For example, we have clients who are victims of identity theft. So they have done nothing wrong, but someone has stolen their identity, their credit card, their information. They have gotten an apartment in their name and then get evicted. That person doesn't know anything about it, so they go and

rent an apartment, and all of a sudden they have an eviction on their record, and they haven't done anything wrong. For them, the only way to protect that interest is to remove their name from the court record, and it's inaccurate information.

JUDGE WYNNE: Isn't that the same as sealing the whole court record because nobody knows it is there?

MS. MERF EHMAN: No. They could move and ask, if they can find out who the actual party is, that the court record be reflected to show what actually happened, because that person was never convicted, was never evicted. So their name shouldn't be there. The rest of the court record with the incorrect name will be there, so that would be the least way they do it. Their name wouldn't be in the index. Or they could ask that their name be removed from different parts.

The other course is if a court will allow a party to go in and amend the caption. So it could be analogous if the person going in and amending the caption, then the court record should reflect the amending of the caption in that case. We think that this rule is too absolute. There should be exceptions and there should be times when people should be able to go into a court and say, look, I amended the caption. I was a victim of identity theft. There was a serious problem here, and it appears the criminal court

record showing this was the person who was evicted, and not me, here is the police report, and be able to do that.

We think this not allowing the index to accurately reflect the court case is really important, and that the committee should consider that before making a final decision on that issue.

The other piece that has been discuss is State vs. SJC. There are some discussions in that case. We think that the rule --

JUDGE WYNNE: That deals with juvenile.

MS. MERF EHMAN: That deals with juvenile, yes.

So our concern is that the new proposed court rule applies Ishikawa in every single case. That isn't the rule right now. The rule right now is, and maybe there is some --

JUDGE WYNNE: Is SJC limited to deferred disposition?

MS. VANESSA HERNANDEZ: No.

JUDGE WYNNE: Deals with deferred disposition?

MS. VANESSA HERNANDEZ: No.

MS. MERF EHMAN: No, I think that was a vacated case. I don't think it was a deferred disposition. I'm trying to remember. I just read it this morning, but I don't think so.

In that case, Judge Mack did a more thorough analysis

in her trial order, and she reviewed Ishikawa and the prosecution's motion that Ishikawa should apply in that case. Then, she reviewed the state statutes that are at issue. That experienced trial court judge said, no, Ishikawa doesn't apply in that situation. So --

JUDGE LEACH: What's the reason it doesn't apply?

MS. MERF EHMAN: In the trial court order, Judge Mack said that the Legislature had made a finding that this particular category of records is a statutory requirement. If the person can show that they meet all the requirements of that sealing statute, that they then are able to seal the record without considering the constitutional ramifications of that.

You may disagree with Barbara Mack, and the Court of Appeals is about to decide that, and what we are asking the committee is --

JUDGE LEACH: Is this an argument made to Judge Mack that the Legislature can make the determination as to what satisfies Article 1, Section 10?

MS. MERF EHMAN: No, but the prosecutor made an argument to Judge Mack to say that Ishikawa should apply, and Judge Mack ruled that the record be sealed.

So my point is that the Court of Appeals has accepted that for discretionary review, and this committee should

consider that and wait and see what the Court of Appeals has because --

JUDGE LEACH: What grounds does the Court of Appeals accept review on? Is it a clear error standard?

MS. MERF EHMAN: I think that it was, yes.

JUDGE LEACH: Those doesn't bode well for Judge Mack's decision.

MS. MERF EHMAN: It might not, Your Honor. The Court may be leaning in a specific way. What I'm saying is this committee should not enact this broad-base rule, and should not propose it at this time because there are still questions out there that are dealing with this specific issue, and that there are legal lines that think differently on this issue, and that our organization --

JUDGE LEACH: Since you are an advocate for the statute, what is the argument that the Legislature gets to decide what satisfies Article 1, Section 10?

MS. MERF EHMAN: I think that the Legislature has the authority to make a statute which they think is in the public interest or reflects a public policy. Then, the Court of Appeals in this case will decide whether or not that meets constitutional parameters.

JUDGE LEACH: What criteria, other than Ishikawa, will the Court use to decide that question?

MS. MERF EHMAN: Just as Judge Mack did, will

use the six or seven factors that are contained in the sealing statute. The Legislature has said that juveniles are different. So they have made a rule that says that juveniles are different and should be treated differently. We do that. We have the Juvenile Rehabilitation Administration. We don't treat juveniles the same as we treat adults in many different ways in the Criminal Justice System. We have recognized --

JUDGE LEACH: What it sounds to me like you're advocating is a rule that says the Legislature could preclude the Court from deciding whether or not it satisfies Article 1, Section 10 as bound by the legislative determination. Is that your argument?

MS. MERF EHMAN: I would not say that that is my argument. I would say that --

JUDGE LEACH: What we have the Court looking to is another statute. I mean, that's very circular. The Legislature defining what the Court gets to look to, and the Legislature looked to those things, and the Legislature made the decision, so the Court no longer has a role in the decision-making process.

JUDGE ROSEN: Can I make a comment? This has come up a number of times. What does the statute mean passed by the Legislature to the Court in sealing? The position has been made by different people here that

statute means you follow the statute and there is automatic sealing when certain criteria are met.

First, I note from years of practice that courts have generally, I think, almost without exception, but not without exception, treated that issue in juvenile sealing issues differently. I never understood why. I always thought there is a statute, it meets the requirements of the statute, but that's the Legislature, and they cannot tell the Court what to do in this record, so the Court must apply Ishikawa. That's not the common practice. The common practice, from my understanding, is different.

What I don't understand, and I have never been able to wrap my head around is the two positions you raise are both supported by Supreme Court case law. State vs. TK and several cases afterwards, and I forget the initials, said quite clearly if certain statutory criteria are met, the Court has no discretion. Someone has their words vested in the right to seal a file.

But on the other hand, there are a number of cases that say no matter what, like Waldon that's been mentioned, you also must consider Ishikawa. I don't know how you reconcile those two, how one reconciles those two different positions, because there is authority in the State Supreme Court that if you meet the statute, it's automatic. That wasn't the Legislature saying that. That

was the State Supreme Court. So we have the two conflicting opinions.

I'm somewhat unsure as to what the end result should be. I have my personal opinion of what I like, but there is an area of disagreement between the Supreme Court's decision that has never been resolved in my opinion.

MS. MERF EHMAN: I would agree with that.

I would say that this is a complicated issue, and I appreciate the thoughtfulness that everyone is thinking about it. We just ask that the committee wait before moving forward with the rule and take into consideration the discretionary review that is granted.

As an organization who represents and works with juveniles, remember that juveniles are different and that the Legislature has raised that issue and continues to. It just amended a statute in 2010 and 2011. I don't know how the Court of Appeals will rule. I know that you have an idea of how they might rule.

JUDGE LEACH: I have an idea how the Commissioner views the problem. He signed the order. The Court hasn't indicated how it will rule.

MS. MERF EHMAN: That may work itself through that process and end up in the Supreme Court, but these are complicated issues.

The last point I wanted to make is it was brought up

before that on Subsection (3)(C)(6), about redacting from the court index, that the trial courts remain and have the discretion that it has now to consider Ishikawa. For example, in the McEnry case, if someone comes forward and is unable to meet that standard, then they won't redact or seal. For example, in that case, the proponent of closure said it affects my housing and it affects my employment. The Court said, well, you have owned your home for 20 years or you have owned your home and you also have had a job for 20 years. But all folks should be able to come before the Court and try to meet that standard. Whether they meet it or not should be in the discretion of the trial court. It shouldn't be a court rule that determines what -- the court rule should determine the procedure, but not the substance of the compelling interest that is considered by the trial court.

JUDGE DALTON: Can you state that another way? The substance of the compelling interest --

MS. MERF EHMAN: I think that the purpose of the court rule is to state procedure and also to reflect what the Supreme Court has said or other Courts of Appeals have said over and over and over again. In Ishikawa and Bone-Club, the courts say it is on a case-by-case basis.

So any proponents of closure should be able to come forward and make their case under the Ishikawa factors.

The Judge should have the discretion and the Judge should have to meet that standard and write those written findings and make that. It shouldn't preclude the person from being able to come forward and make that motion.

Thank you.

JUDGE DALTON: Thank you.

JUDGE WYNNE: Any questions?

MS. BARB MINER: Judge, can I say something really quick, please?

Lots of folks are mentioning the change in Section 6 about the name of the parties in a case may not be redacted. I just want to reiterate something that Judge Wynne said earlier.

From our prospective, for those of us who originally worked on drafting this rule, that has been part of the rule all along. It has been in Section 9 where it gives specific instruction to the clerk when we receive an order to seal. It talks to us about what it is we should do. It says: "The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices," and then it goes on to say what information in the indices should be there.

I know there has been decisions, Rousey and Encarnacion, that have potentially discussed this issue, but from those of us who worked on drafting it, what's in

9 has always been the intent, I would say, and 6 helps to clarify that or reiterate that. So it's not, from my perspective, a change. It's been there.

JUDGE LEACH: I would like to be the countervailing view. I'm the author of Indigo Realty vs. Rousey, which holds that the rule would authorize the action if an appropriate showing is made. That's the reason this is required.

MS. BARB MINER: I thought you probably just missed what was in 9.

JUDGE WYNNE: In Re TK was also mentioned. I remember that case well because I was the trial judge in one of the underlying cases that went up on appeal.

While that case dealt with sealing, the issue in the case was a change in the statute and whether to apply a statute retroactively or prospectively only and whether it was remedial in nature. In Re TK never really considered the application of the Ishikawa factors at all, and that wasn't an issue in that case. So I don't think that stands for a whole lot in terms of whether Ishikawa applies to sealed juvenile cases.

Does anyone else wishes to speak?

MS. KIM AMBROSE: Good afternoon. My name is Kim Ambrose, and I'm here on behalf of the King County Juvenile Records Sealing Clinic. It's a free clinic that

runs in partnership between Team Child and Street Youth Legal Advocates of Washington. That is in my volunteer position where I have been supervising that clinic. Since 2004, we have been providing free legal services to young people in King County to seal juvenile records. My day job is I teach at the University of Washington Law School.

JUDGE WYNNE: We have talked before down in Olympia.

MS. KIM AMBROSE: Yes, we have. I feel it's a group of old friends here. I have been with many of you.

A couple things. I won't add anything. I concur with much of what my colleagues said, Ms. Ehman and Ms. Hernandez, about some of the issues.

I'm here to talk about the juvenile records piece. To the extent of the rule, to be honest, I'm frightened and confused about how this rule is going to apply to juvenile records. I'm not entirely sure.

My reading of it is that it will -- if it does apply to juvenile records, it makes the process more burdensome than those under the statute, a problem that Judge Rosen has kind of outlined for us, which I completely agree with, that we have some real confusion right now that needs to get resolved by the Supreme Court.

Right now what happens with respect to conviction data and non-conviction data, we file motions to seal when they

meet the requirements of 13.50.050. When those records are sealed, what appears is no record is found on the indices. To the extent that now this committee is trying to treat juvenile records in the same way as adult records, vacated records, are being treated when they are sealed, I would ask you not to do so for many of the reasons that have already been stated. That is, juveniles are different from adults. We're headed toward a decision that will resolve that, hopefully.

I would just like to say they are constitutionally different than adults.

JUDGE WYNNE: How?

MS. KIM AMBROSE: Our United States Supreme Court has said no less than three times over the last 10 years that juveniles are different than adults. Granted, they said it in the context of sentencing and cruel and unusual punishment, but what they were actually talking about is the life-long consequences of their actions while they were juveniles.

I would submit to you that these records are also life-long consequences. In that regard, we need to take a different view of what a juvenile is with respect to how we treat the life-long consequences of their misbehaviors when they are youth.

I wanted to just clear up a couple of things about SJC.

It was a misdemeanor conviction for Assault 4. That's what's going to be going up. I also want to say the parties are considering asking for direct review from the Washington State Supreme Court. If they don't, it looks like the briefing schedule that I saw or got wind of was that this matter will not probably be argued until late fall or winter of next year. So that's what we are looking at.

I think, Judge Rosen, you brought it up. I get so frustrated when we're talking about Ishikawa, Ishikawa, Ishikawa when we are talking about juvenile records, because Ishikawa is a case about a pretrial hearing in an adult murder trial, and that we are applying a standard that applied to a pretrial hearing for an adult murder trial to vacated records of juvenile offenses after a waiting period.

My opinion is that needs to change. That's not the appropriate standard to apply. It's a completely different context even when we are looking at Article 10 of the Constitution.

I'm looking forward to the Supreme Court taking that issue on, and I think that it would be premature for this committee to craft -- go through this entire process of crafting a rule that may or may not align with what the Supreme Court will tell us about what's constitutionally

required.

I would certainly ask you not to go beyond what is constitutionally required at this stage, and to look to the statute as guidance and their intent to try to address the rehabilitative needs of juveniles.

That's all I have to say. Any questions?

JUDGE WYNNE: Thank you.

Anyone else that hasn't addressed us?

Thank you all for attending. As I said, we are going to produce a transcript. If any of you would like to have a copy of the transcript, you can get a phone number from Karen and make arrangements to get a copy of that transcript. We are going to produce a transcript and provide that to all of the members of the committee so we will have that to review.

JUDGE ROSEN: Can I say something?

JUDGE WYNNE: Yes.

JUDGE ROSEN: These are complicated issues and I don't mean to wax poetic about it. It is clear what has been said here that there are different sides of the same interest here.

I appreciate what has been done by the drafters of this proposal largely because it tries to put everything in one place, and that would be the first time that that has happened. It would make things easier, especially on an

access to justice issue.

I personally sat down with Ms. Ambrose a long time ago and tried to come up with forms so that the public could access the Municipal Court in a more cost-effective way. We were unable to come up with forms that were easy enough to use for the public under the current set of guidelines. Putting it all together is a great idea.

I do want to urge this committee to have some caution about changing rules. Putting them all in one place, I fully support. I have some concerns because of the changing nature of the law right now. If Hundtofte is decided, I think we will have a lot more guidance, perhaps in some of the other cases that have been mentioned. There will always be cases on appeal, and I recognize that.

It seems to me that with Rousey, although I certainly don't want to sit in front of Judge Leach, who is the court reviewing my decisions on occasion, there is a Court of Appeals decision which allows cases to be redacted, and the Court should look at that. I'm not sure this is the right forum to change that, but I wonder if that is not better decided by the Supreme Court.

I get very nervous about us making proposals that go to the Supreme Court, a case in controversy, and both sides being fairly argued on. I just ask for caution on the

changes. I love the idea of putting it all in one spot.

JUDGE WYNNE: Anything else from any other members?

JUDGE DALTON: I also have a question.

Some of the members who spoke today had a lot to say and very substantive information to give, but they didn't provide anything in writing or comments in writing. Is that over or is there still an opportunity, for example, for Mr. Baldwin or the attorney from Davis Wright, who is gone now, to submit more substantive comments in writing?

JUDGE WYNNE: We are not going to preclude anybody from submitting anything in writing. Justice Bridge said she would be submitting something in writing. If you have something to submit in writing, feel free to do so. Send it to me or to John Bell, and we will get it distributed to everybody.

JUDGE ROSEN: Could we set an end date so people know when to submit it by or should we?

JUDGE WYNNE: I'd rather not do that at this time.

JUDGE LEACH: I will say I don't think there is any reason to set a closing period because there will be an opportunity to comment to the JISC, as well as the Supreme Court, so there is no reason we shouldn't get the benefit of any late thoughts anybody might have. We are

going to be reviewing this issue at least twice, as members of this committee and as members of the JISC. If you have a bright idea late in the game, we will want to hear about it.

JUDGE WYNNE: We can take a look at whether we want to stay with the timeline we talked about earlier or in light of cases on appeal, waiting for those decisions. As Judge Rosen said, there are always cases on appeal, and there seems to be a lot of open court cases in the appellate courts these days.

We do have one other issue, John, that we need to take up before the committee adjourns today. That will end the public hearing in this matter. If any of you have comments, send them in, any additional comments.

If you want to remain for the short remainder of the meeting that deals with the Family Civil Law Rules that have been proposed by the Supreme Court, you may.

(Public Hearing in recess)

Empowering people who serve the public®

Washington Superior Courts
JISC

Odyssey Implementation
October 25, 2013

tyler technologies

WASHINGTON COURTS

Introductions

Tom Bartel
VP Professional Services, Courts and Justice

Kristin Wheeler
Regional Project Manager,
Western Region

Paul Farrow
Project Manager

Agenda

	Tyler Background & Experience
	Contract Highlights
	Key Business Drivers
	Governance and Project Execution
	Critical Success Factors
	Next Steps
	Q&A
	Appendix

Tyler Technologies

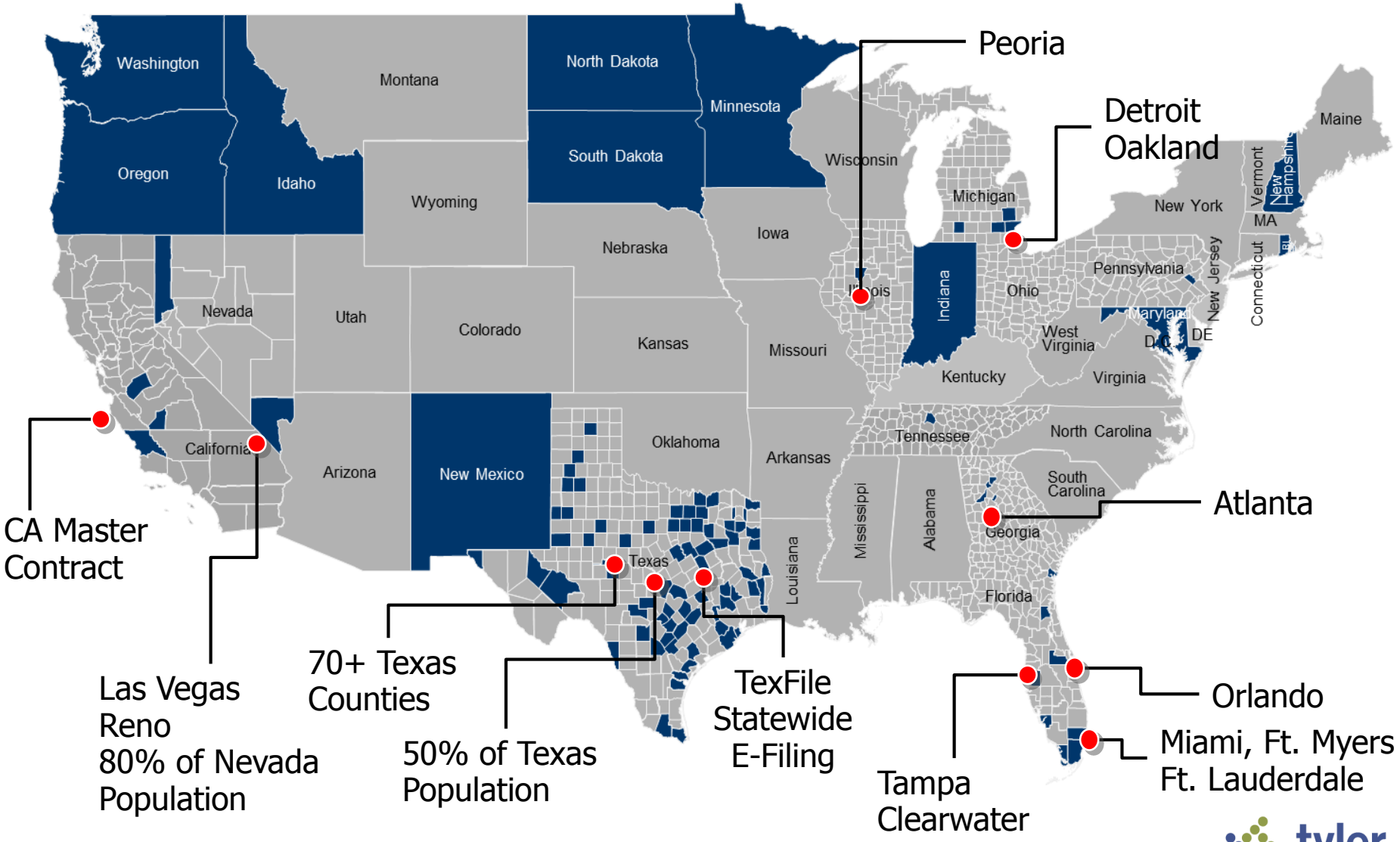
Tyler Technologies

- $400 Million Public Corporation
- Solution portfolio
  - ERP / Financial
  - Courts & Integrated Justice
  - Appraisal & Tax
  - Schools
  - Municipal Services
  - Public Safety
- All 50 States, Caribbean, Canada, United Kingdom
- 2700 Employees

Tyler Courts & Justice Division

- $70 Million Division
- Dedicated exclusively to Courts & Justice solutions
  - Court Case Management, Jail, Prosecutor, Supervision, e-Filing
  - 20 States, 11 statewide systems; over 400 counties
- ~380 Employees

Most widely selected justice solution



Tyler benefits from visibility into initiatives across the country

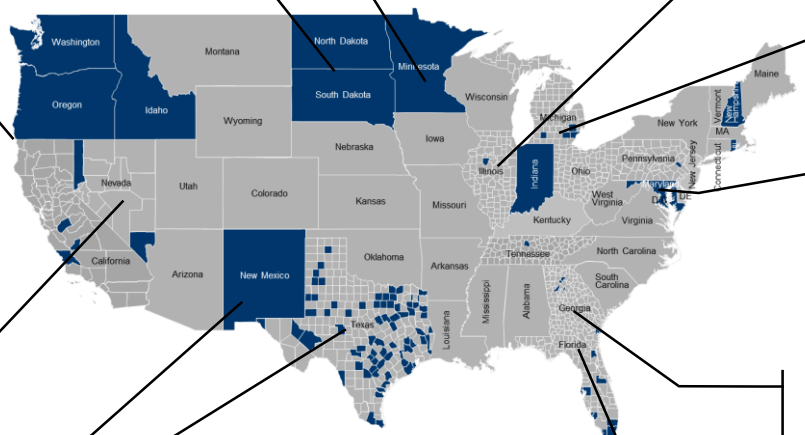
North Dakota and South Dakota
E-Filing
Virtual Courthouse

State of Minnesota
Virtual Courthouse
Mandatory E-Filing
Self-Represented Litigants
Electronic courtrooms

Peoria, Will Counties, Illinois
Integrated Justice
E-Filing

Detroit
Kalamazoo
Mandatory E-Filing
Electronic courtrooms

State of Oregon
Virtual Courthouse
Mandatory E-Filing
Self-Represented Litigants



State of Maryland
Statewide E-Filing
Virtual Courthouse
Self-Represented Litigants

Clark/Reno, Nevada
Virtual Courthouse
Mandatory E-Filing

Fulton County, Georgia
Integrated Justice
Electronic Filing
Virtual Courthouse

State of New Mexico
Virtual Courthouse
Mandatory E-Filing

Texas Counties
Integrated Justice
Electronic courtrooms
Regional data sharing
Statewide E-Filing
Virtual Courthouse

Florida Counties
Electronic Filing
Electronic courtrooms
Regional data sharing

Environment for a thriving "network"

- Common technology foundation
- Common goals and objectives
- Colleagues, not competitors
- Has reached critical mass
- Share learnings, experiences, successes, failures
- Vehicles exist to provide feedback, discussion

Agenda

	Tyler Background & Experience
	Contract Highlights
	Key Business Drivers
	Governance and Project Execution
	Critical Success Factors
	Next Steps
	Q&A
	Appendix

Contract Highlights


Case Manager


Financial Manager


Document Scan

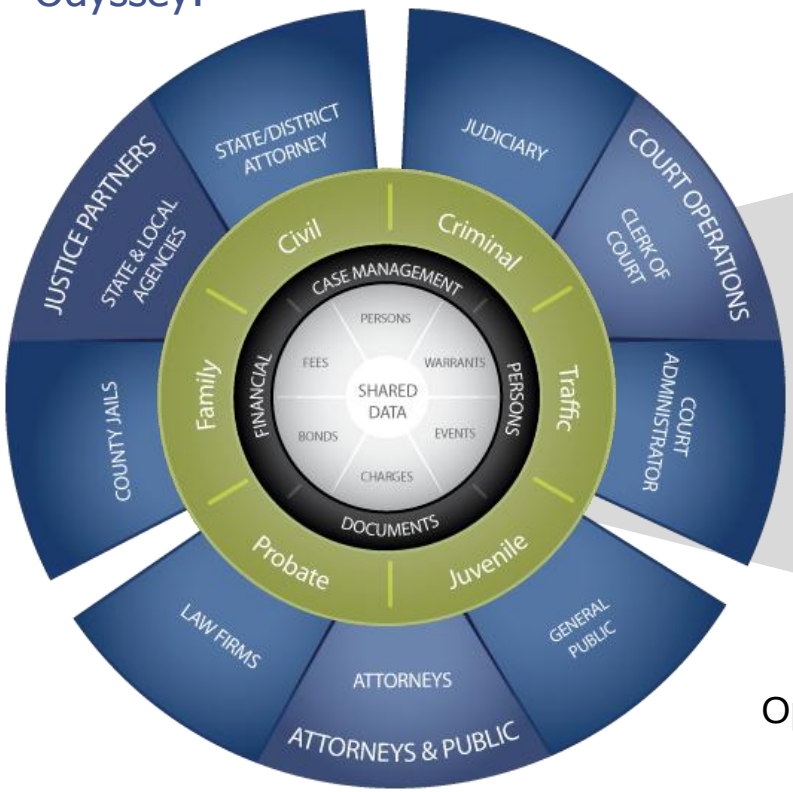

Public Access


Electronic Signatures

- **Five Year Implementation**
  - Phase 1 – Project Initiation and Planning
  - Phase 2 – Solution Design and Development
  - Phase 3 – Pilot Court Deployment
  - Phase 4 – Early Adopter Court Deployment
  - Phase 5 – King County Deployment
  - Phase 6 – Statewide Rollout
  - Phase 7 – Project Closeout
- **Odyssey Software Modules**
  - Case Manager
  - Integrated Case Financials and Financial Manager
  - Supervision
  - Integrated Document Management (Batch Scanning/Workflow/RDS)
  - SessionWorks – Judge Edition
  - SessionWorks – Clerk Edition
  - Integration Toolkit
  - Enterprise Custom Reporting
  - Electronic Signatures
  - Public Access
  - Session Sync

Key Drivers

Odyssey:



Increased Efficiency

- Maximize efficiency of business processes in Washington Superior courts
- Improve integration with business partners

Supported Solution

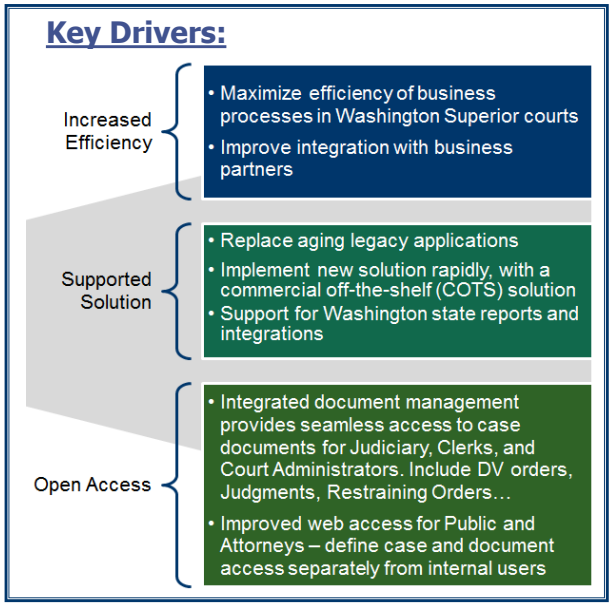
- Replace aging legacy applications
- Implement new solution rapidly, with a commercial off-the-shelf (COTS) solution
- Support for Washington state reports and integrations

Open Access

- Integrated document management provides seamless access to case documents for Judiciary, Clerks, and Court Administrators. Include DV orders, Judgments, Restraining Orders…
- Improved web access for Public and Attorneys – define case and document access separately from internal users

Statewide Document Management

- Benefits
  - Internally: better decisions on Judicial actions: access to documents containing release decisions, judgments, sentences
  - Externally: better service to the bar and the public; potential for revenue generation



- Considerations
  - Document security is configurable, statewide and locally
  - Policy should drive access decisions
    - Policy can make appropriate documents available to appropriate **internal** users statewide
    - Policy can put decision-making and access for **external** documents at the county level

Agenda

	Tyler Background & Experience
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Proven Approach to Statewide Projects

Pilot Courts

- **Build** solution: product, integration, configuration, conversion, training, go-live
- **Baseline** reliable repeatable process
- **Implement** pilot courts quickly

State Rollout

- Achieve velocity
- Execute repeatable implementation events
- Logically group events
- Lessons learned

Month 1 - 18

Month 19 - 60

Pilot Critical To Downstream Success

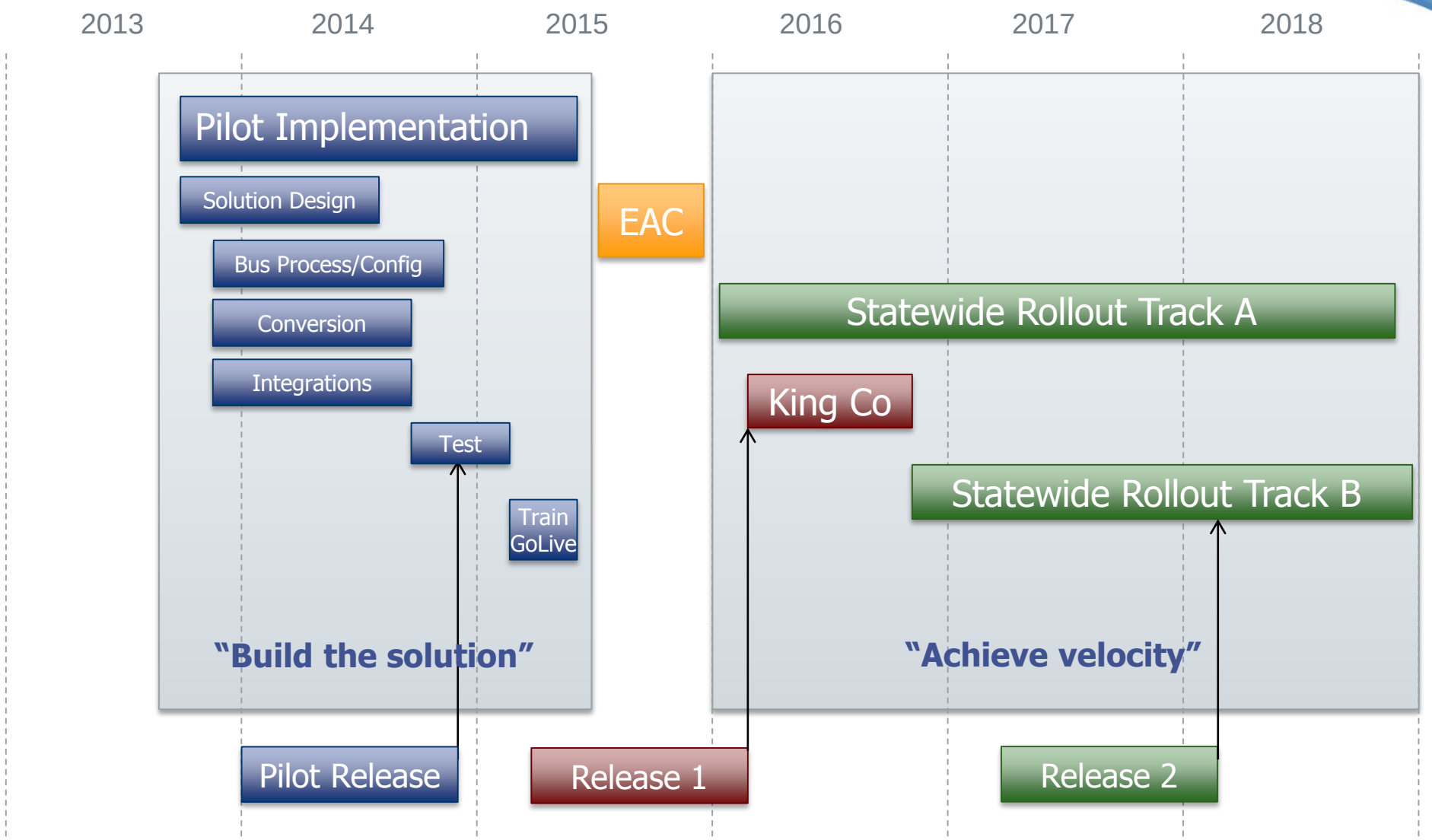
1. **The Pilot Courts must be "All In"**
   - The Pilot County implements the major elements of Odyssey solution
   - Pilot County SMEs are involved in all aspects of the project: fit, configuration, bus. process, conversion, training, etc.
   - The Pilot County culture needs to be one that embraces change and willing to explore possibilities
   - Understand nothing is permanent, avoid pursuit of perfection
   - Where possible reduce complexity to lower risk

The pilot phase is key to achieving project success downstream

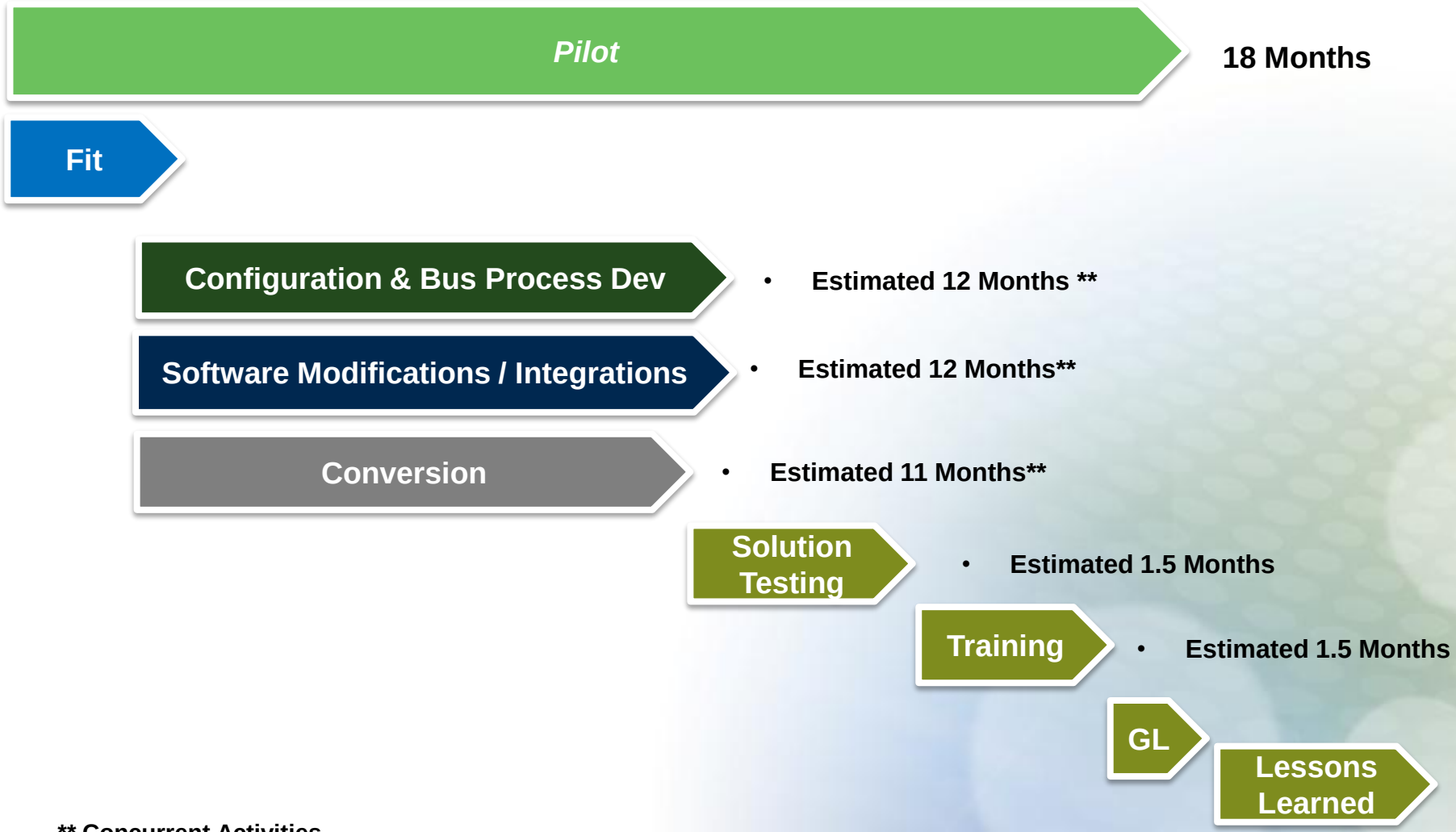
2. **Early Adopter Counties solidify solution**
   - Incremental improvements/adjustments can be made from the Pilot
   - Want to exit with a repeatable implementation method

3. **Roll Out Counties benefit from Pilot and EA Counties**
   - Odyssey solution is tested
   - Odyssey Implementation method is refined
   - County by County preferences are now considered against a solid baseline

Washington Courts Implementation



Implementing the Pilot



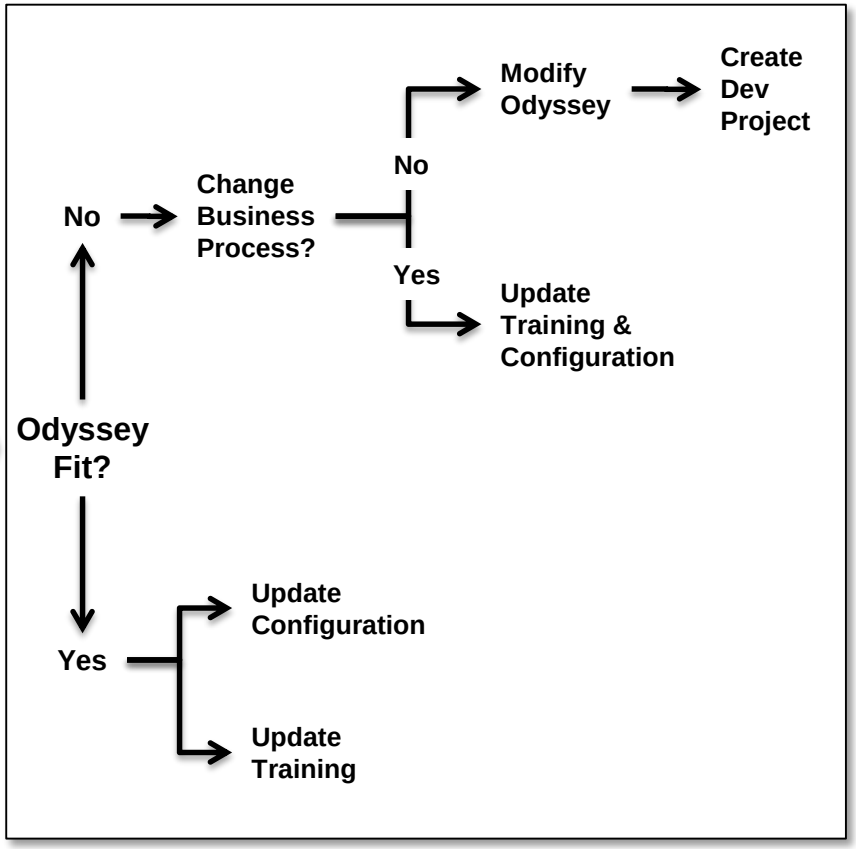
**** Concurrent Activities**

Fit Analysis

Review Processes

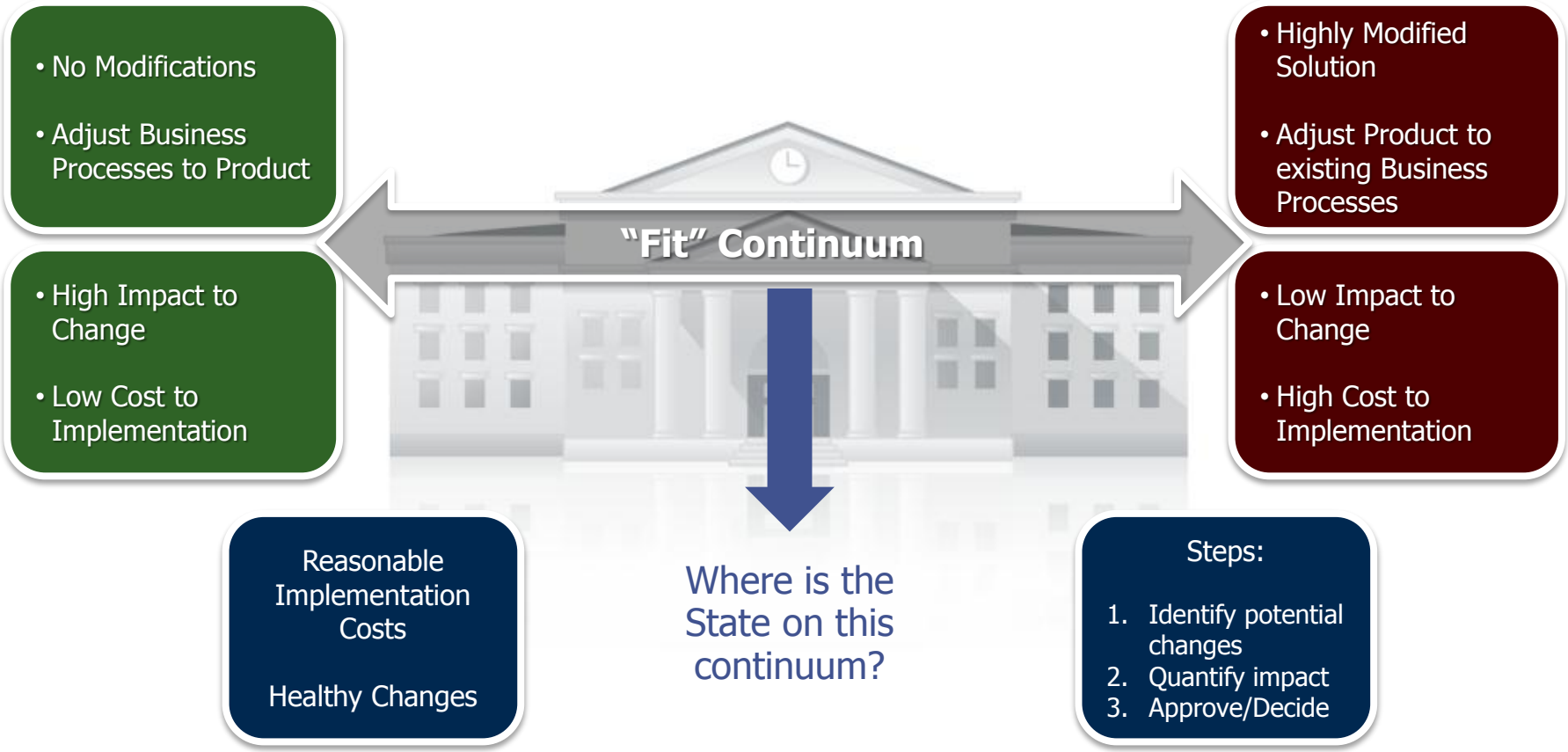
Process ID	Process Categor	Group Inde	Process Name
FM-1	FM	1	Minor Adoption Case
FM-2	FM	2	Non-Custodial Collections
FM-4	FM	4	IV-D Case Filing
FM-5	FM	5	Child Support Enforcement
FM-6	FM	6	Child Support Modification
FM-7	FM	7	Child Protective Service
FM-8	FM	8	Juvenile Delinquency
FM-9	FM	9	Family Judgment
FM-10	FM	10	"One Judge One Family"
FM-11	FM	11	Paper Service
FM-12	FM	12	Adult Adoption
FM-13	FM	13	Divorce - Children
FM-14	FM	14	Divorce - No Children
FM-15	FM	15	Cash Bond Receipt
FM-16	FM	16	Surety Bond Receipt
FM-17	FM	17	Ad Litem Process
FM-18	FM	18	Jury Trials
FM-19	FM	19	Non Jury Trials
CV-1	CV	1	Small Claims Process
CV-2	CV	2	Paper Service Process

Develop Action Plan

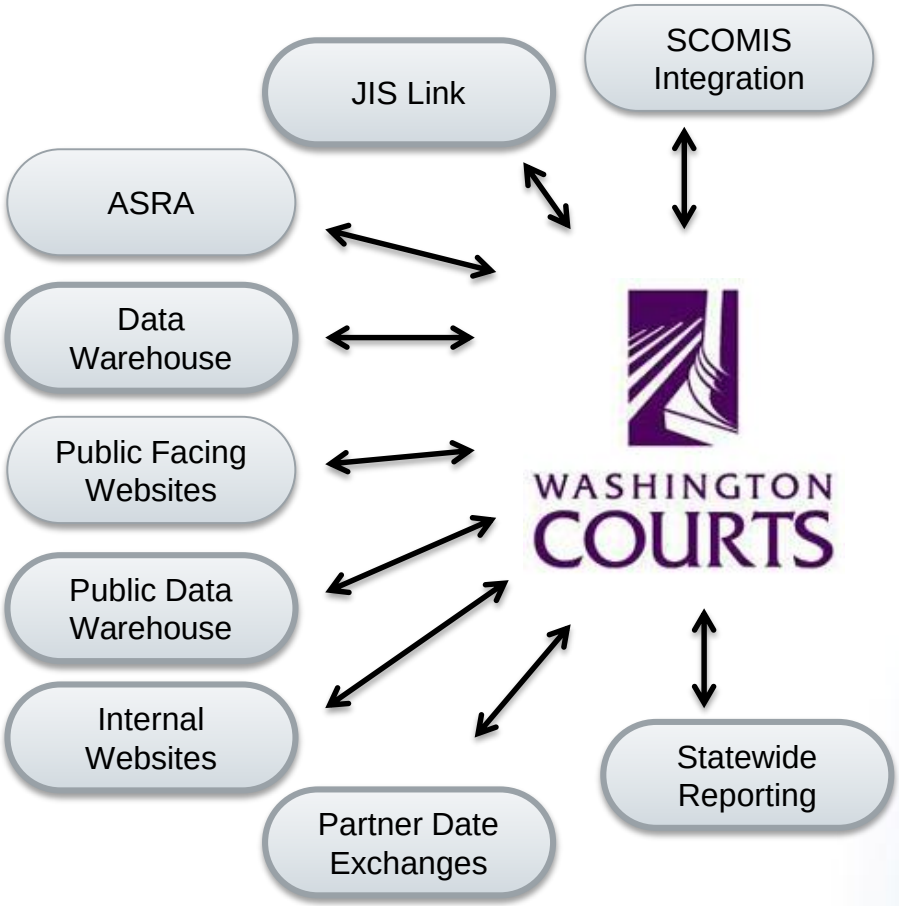


Fit Objective

Typical Challenge: Users tend to be more comfortable attempting to make the software "fit" the existing processes versus exploring different ways of conducting business with the new application



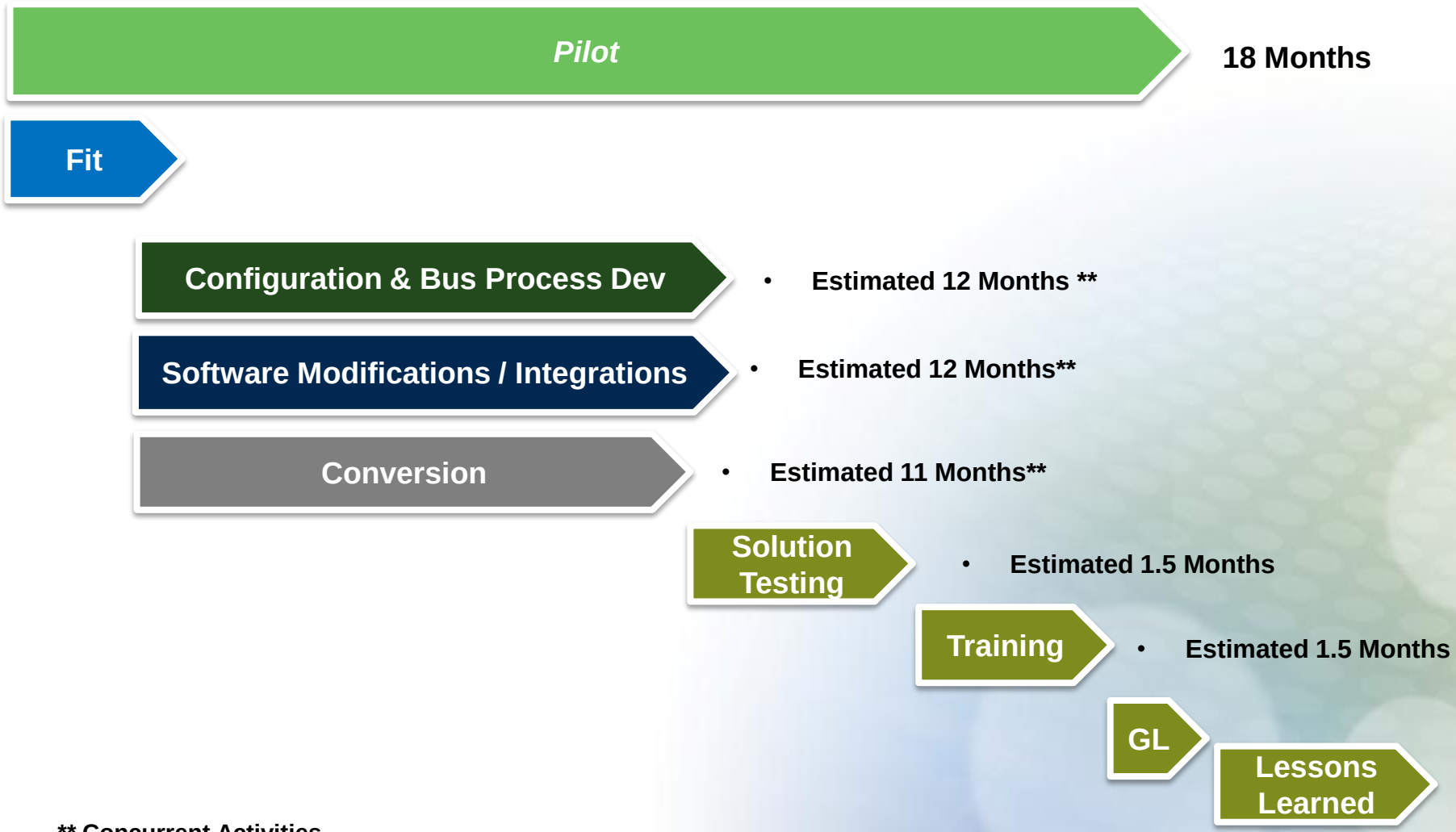
Integration Approach



Integration Process

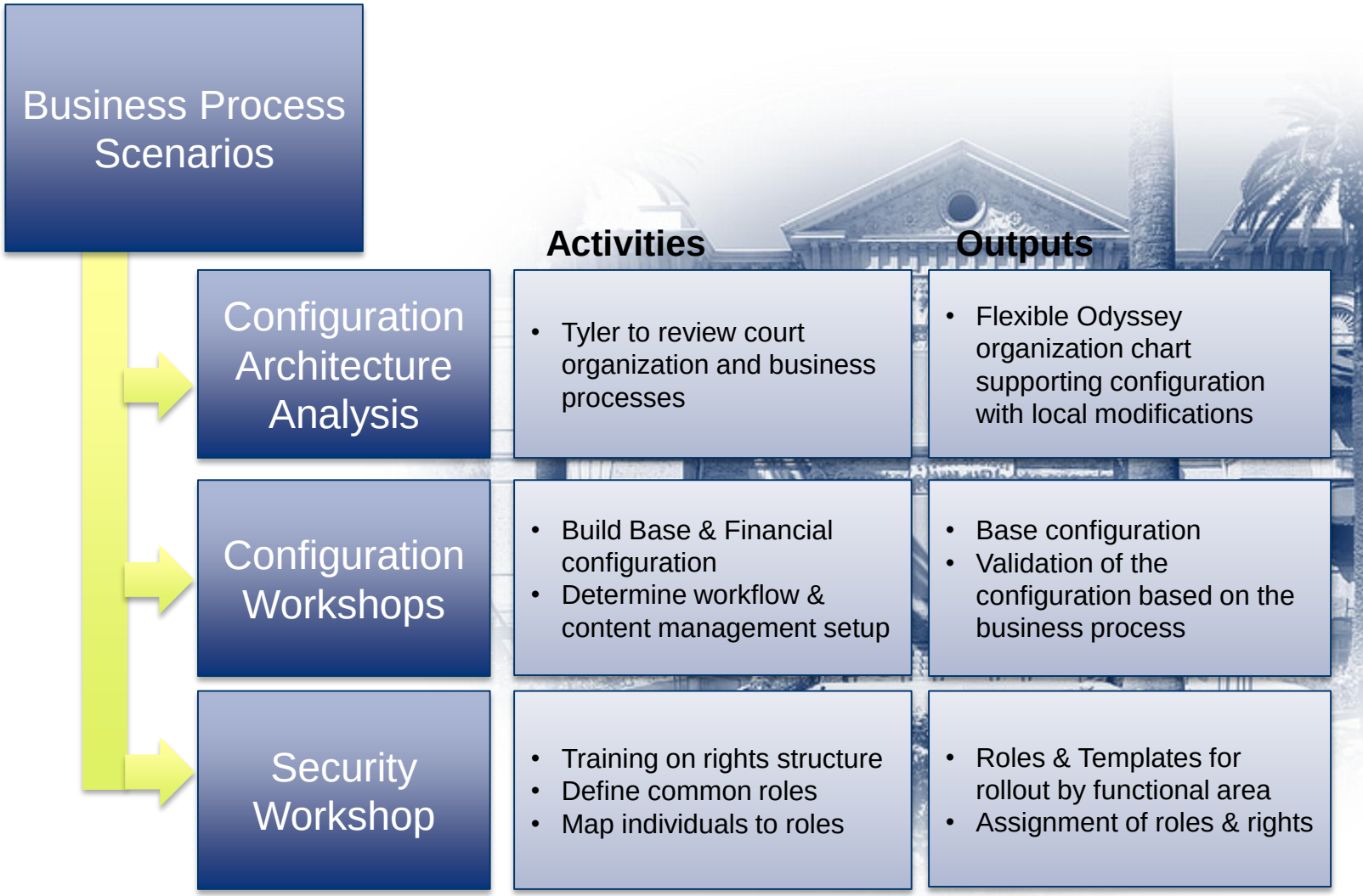
1. Integration questionnaires completed for each data exchange
2. Tyler will review questionnaires and prepare for the integration workshop
3. Tyler will lead a collaborative integration workshop with WA
4. Tyler will prepare recommendations for the state and local integrations
5. Tyler and the State will review and agree on the Development Plan for the integrations

Implementing the Pilot



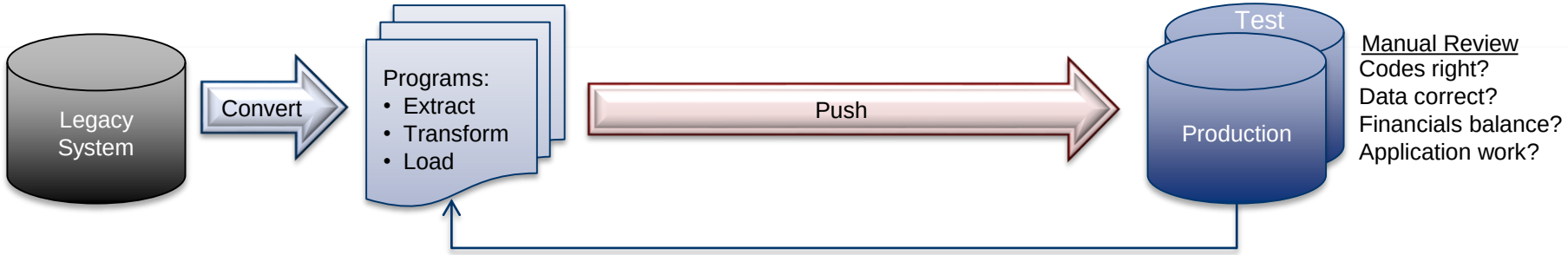
**** Concurrent Activities**

Configuration Workshops

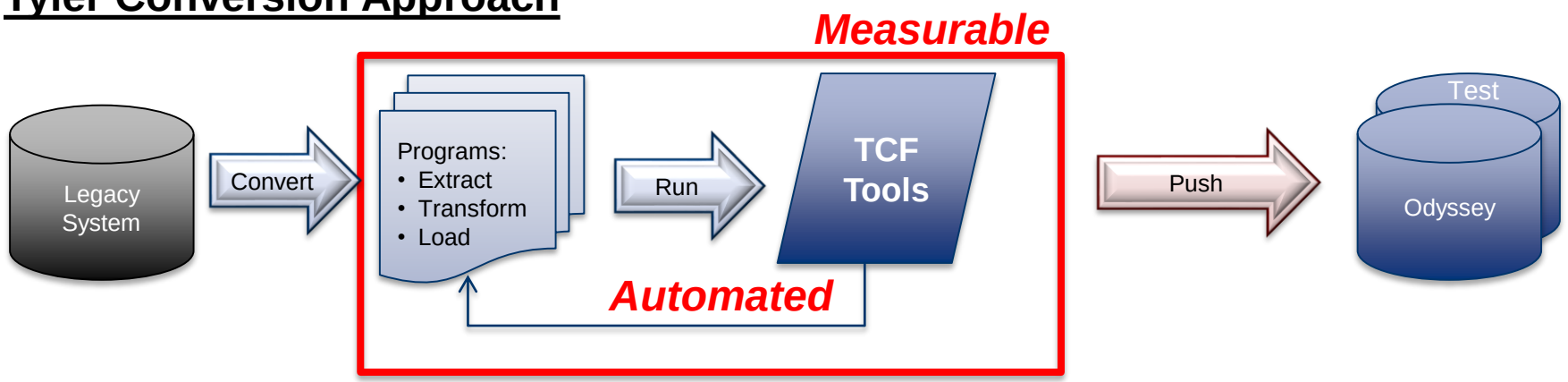


Tyler Conversion Framework

Typical Conversion Approach



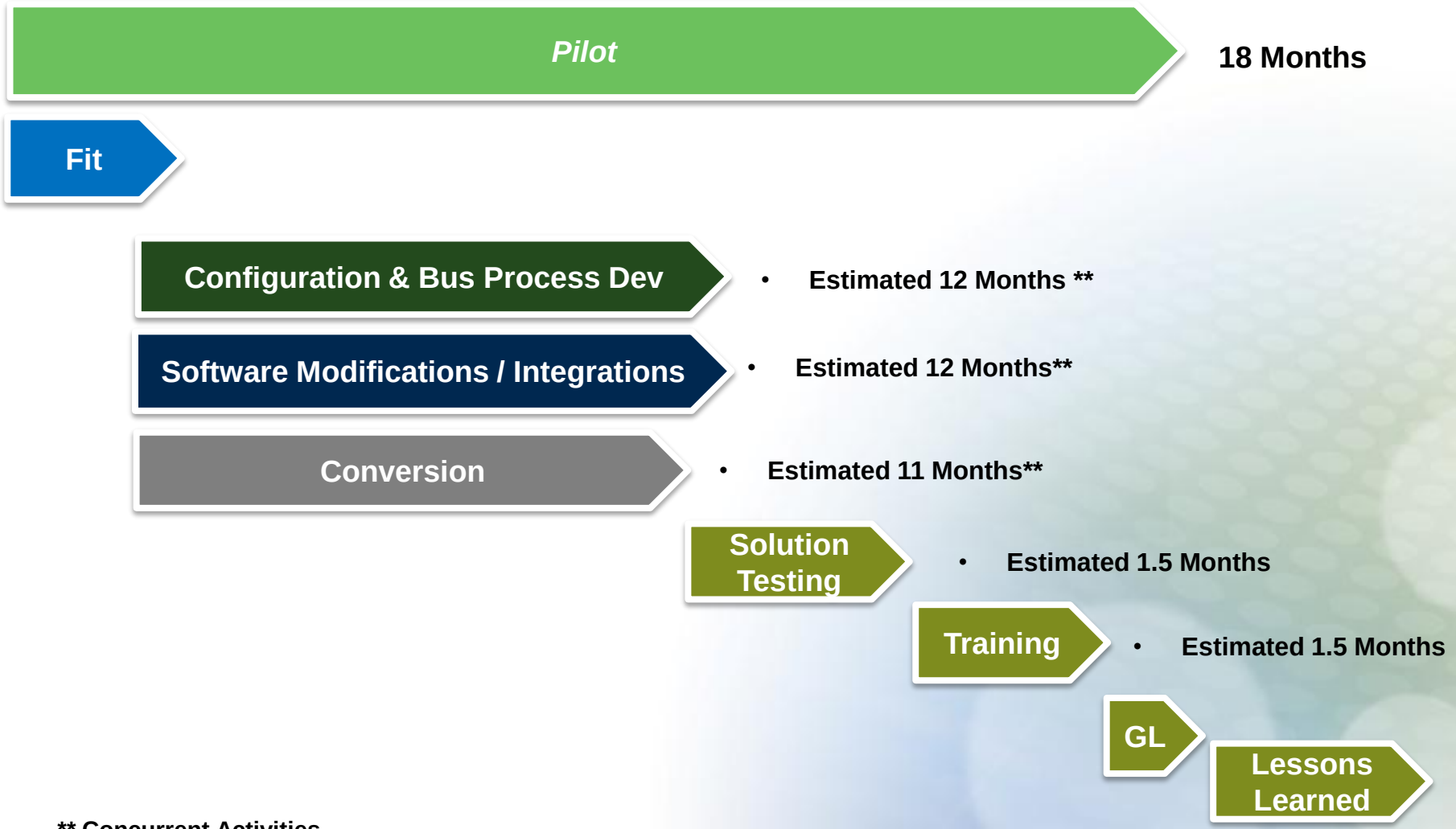
Tyler Conversion Approach



- Disciplined version control
- Baseline conversion, will improve with each implementation
- TCF / IFL is a supported product
- Web based tool for mapping codes

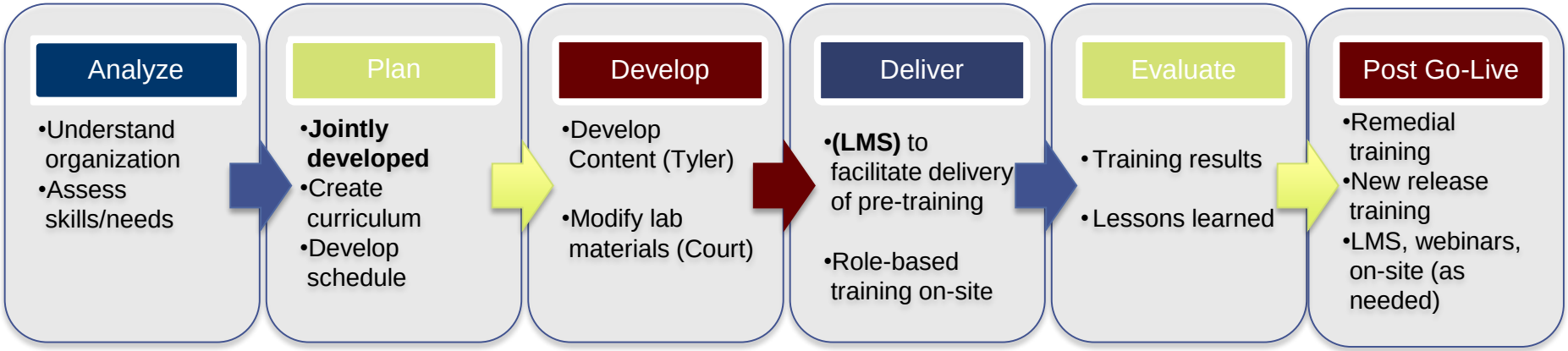
- Automates
  - Record count verification
  - Financial totals reconciliation
  - Merges duplicate party data (reversible, with audit trail)

Solution Testing proves the solution



**** Concurrent Activities**

Role Based Training



	Payments Clerk	Docket Clerk	Judge	Court Admin	Attorney
Case Basics	✓	✓	✓	✓	
Case Entry	✓			✓	
Parties	✓	✓	✓		
Payment Processing	✓				
Registry Entries		✓		✓	
Calendars				✓	
e-Filing		✓		✓	✓

Go-Live

Prepare

- Jointly prepare an hour by hour Go-Live transition plan
- Define Go-Live roles and responsibilities

Communicate

- Insure all stakeholders understand the plan
- Share typical challenges and anticipated risks along with mitigation plan

Staff

- Multiple Tyler SMEs will be on site for Cutover and Go-Live assistance

Cutover

- Migrate data and data setup activities
- Work with live transactions over weekend prior to go-live.

Go-Live

- Open for business with new system
- Tyler SMEs on site to assist users
- Daily / Weekly Status Reports

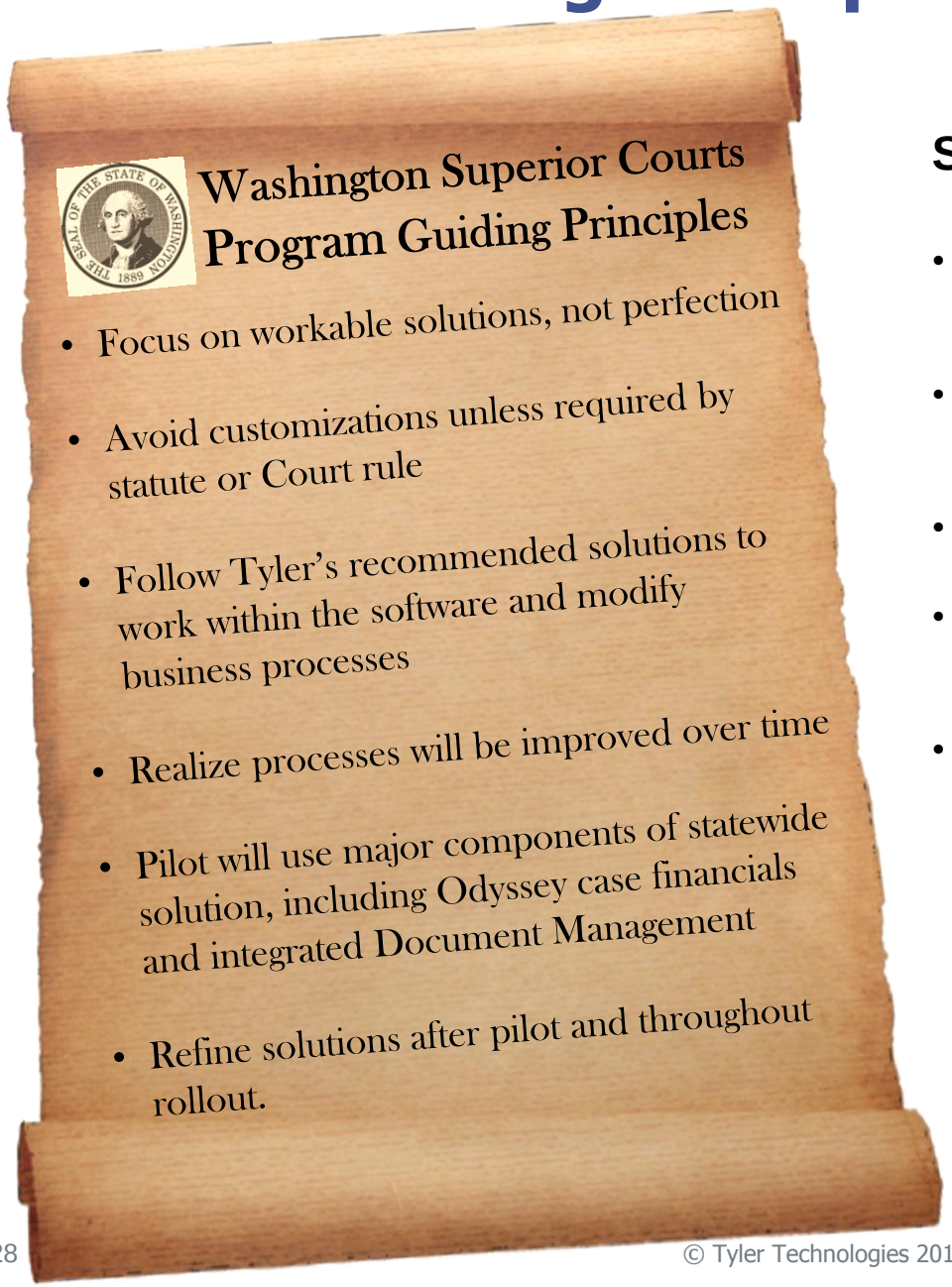
Agenda

	Tyler Background & Experience
	Contract Highlights
	Key Business Drivers
	Governance and Project Execution
	Critical Success Factors
	Next Steps
	Q&A
	Appendix

Critical Success Factors

Activity	Key Points
Pilot Selection	• *Choose a pilot court of medium size & complexity, to help with setting the baseline for the statewide rollout* • *Choose a pilot with the desire, willingness and ability to fully participate in project activities* • *Pilot leaders will be influential spokespersons for the project*
Project Governance	• *Consider adopting "Guiding Principles"* • *Encourage users to embrace change versus modifications* • *Prioritize modifications for Pilot, Rollout releases* • *Keep pressure on the project time line, avoid pursuit of perfection* • *Monitor and support project participant's morale*
Business Process Review / Fit Analysis	• *Select the right business processes to surface* • *Be conscious that an "integrated" system's changes and benefits may not reside in the same departments* • *Understand nothing is permanent*
Configuration / Conversion	• *Enable people to attend workshops and subsequent iterations* • *Assign top performers* • *Users must feel they "own" the converted data*
Go Live	• *Implement some variation of a "ride-along" strategy*

Establish Guiding Principles



Set Project Team Expectations

- Example, should be set by Steering Committee
- Signed and endorsed by Steering Committee and pilot leaders
- Publish, post, make highly visible.
- Project Team given the authority to push back based on principles
- Quick escalation and resolution process when impasses occur – start with Project Management team, then escalate to Steering Committee

Next Steps

Over the following weeks the project will begin to move forward. The following critical areas will be addressed first:

Fit Analysis

- ☑ Schedule Fit Assessment Pre-training, Application Fit Analysis and Integration Fit Analysis
- ☑ Washington to provide existing scenarios for Fit Analysis
- ☑ Washington to complete Integration Questionnaires
- ☑ Tyler to review scenarios and create agenda for Fit Assessment

Infrastructure Preparation

In progress

- Washington to purchase Odyssey hardware
- Tyler to schedule Odyssey Software install and validate

Conversion Preparation

In progress

- ☑ Schedule Conversion meeting, to define logistics of data retrieval
- Prepare data extracts for transmission to Tyler
- Tyler will acquire data extract from Washington AOC

Discussion

	Tyler Background & Experience
	Contract Highlights
	Key Business Drivers
	Governance and Project Execution
	Critical Success Factors
	Next Steps
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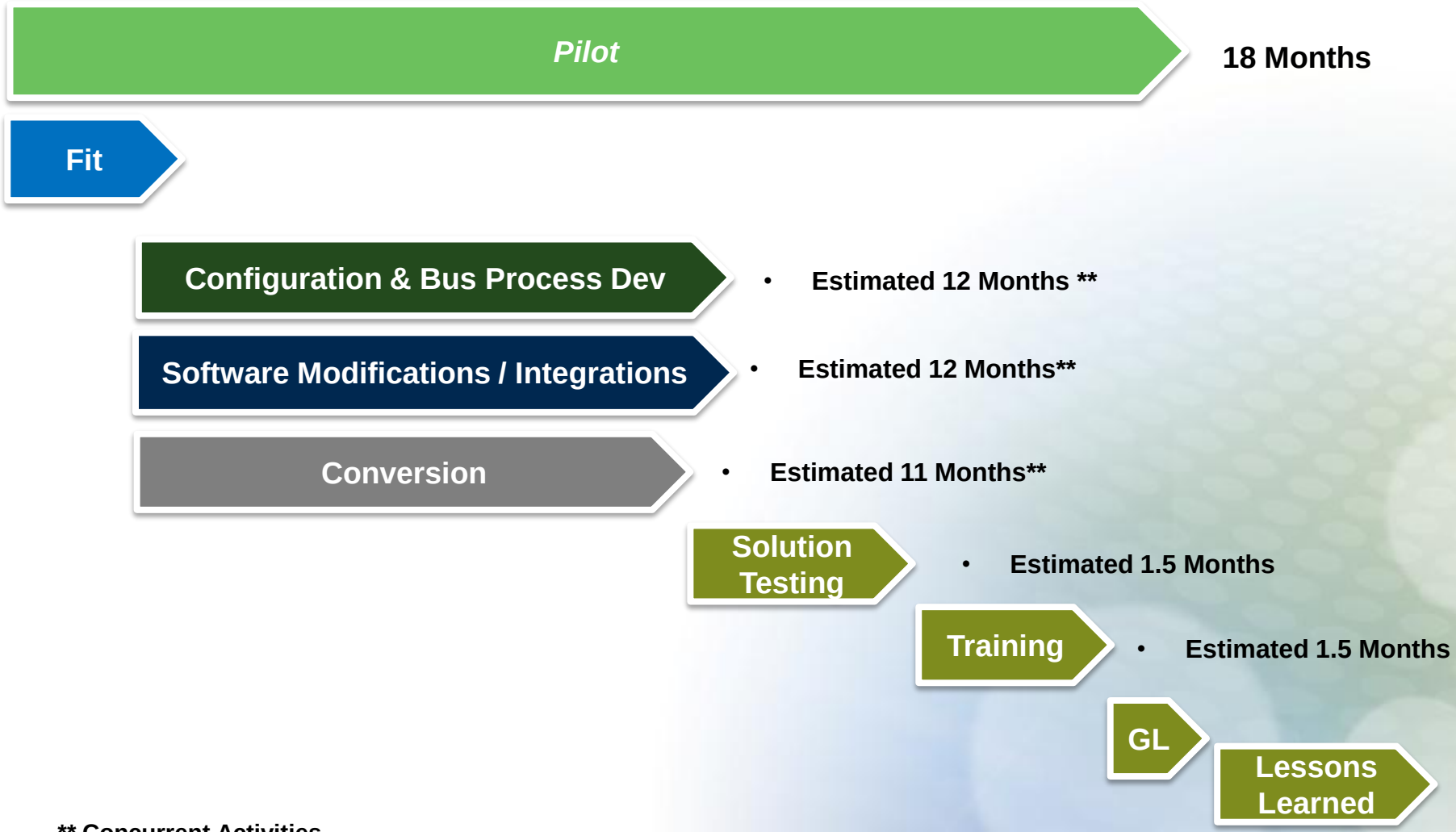
	Appendix

Appendix

Implementing the Pilot



**** Concurrent Activities**

Fit Analysis

SME Training

Fit Preparation

- Washington AOC Creates Walkthrough Scenarios
- Tyler Reviews for Missing Scenarios
- Tyler Prepares Fit Schedule
- Tyler & Washington Schedules Resources
- Tyler prepares Odyssey System for Walkthrough
- Tyler will align RPF requirements with appropriate scenarios

Conduct Fit Analysis

- Conduct On-Site Fit Analysis
- Walk through Scenarios for Fit to Odyssey
- Populate Fit Analysis Document, noting:
  - Closed scenarios
  - RFP requirement status
  - Open scenarios needing further review

Fit Outputs

- **New Processes**: start to document new "to be" processes
- **Process Changes:** start to identify potential process changes
- **Potential Enhancements**: document open application scenarios, seek process solutions, prioritize potential solutions for sizing and development, prioritize development plan into releases

Open Scenario Breakdown

Department	July 26th Open Scenarios	August 28th Open Scenarios	Cost to Modify Odyssey
State Attorney	3	1	$ 36,000
Circuit Clerk	11	1	$ 25,800
Court Admin	7	0	0
Financial (Accounting, and Collections)	7	1	$ 18,600
Jail	19	6	$165,600
Law Enforcement	2	0	0
Supervision	4	3	$135,000
Total	53	12	**$381,000**

$381,000 closes all scenarios by modifying Odyssey and implementing new business processes

Open Scenario Breakdown

Department	July 26th Open Scenarios	August 28th Open Scenarios	Cost to Modify Odyssey	Project Team Estimate
State Attorney	3	1 to 0	$ 36,000	0
Circuit Clerk	11	1 to 0	$ 25,800	0
Court Admin	7	0	0	0
Financial (Accounting, and Collections)	7	1 to 0	$ 18,600	0
Jail	19	6 to 4	$165,600	$95,400
Law Enforcement	2	0	0	0
Supervision	4	3 to 2	$135,000	$117,000
Total	53	12 to 6	$381,000	**$212,400**

- $381k closes all scenario's through Odyssey modification
- $381k *could* be further reduced by $169k through reasonable business process changes
- Validation with the departments required to confirm the $169k reduction

Scenario Cost Analysis

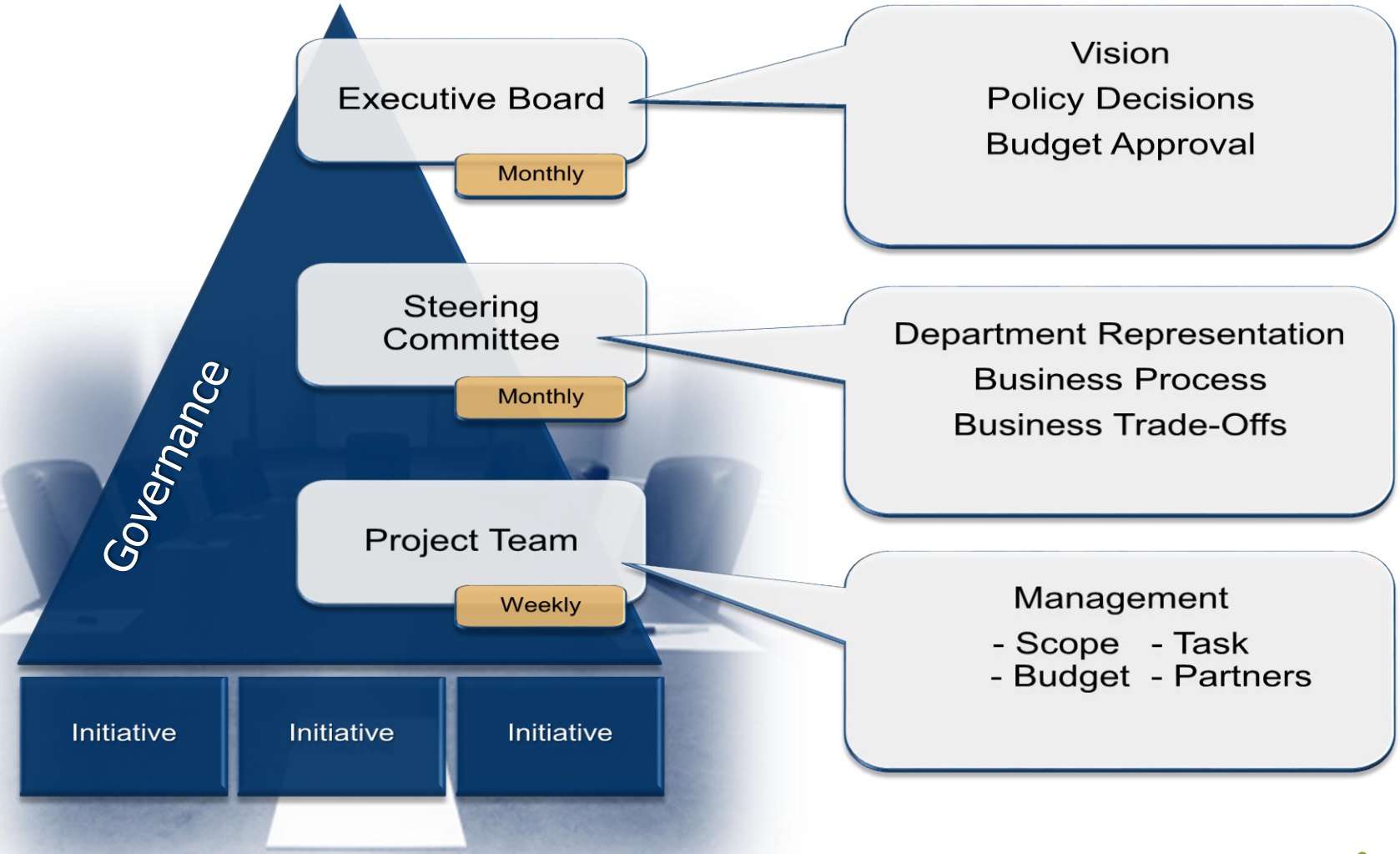
Department	Cnt	Estimate to modify Odyssey	Approach with Modification	Approach without Modification
State Attorney	1	~~$36,000~~	~~Fit-094 The county needs to be able to enter the hearing information from a ticket despite no court session. (SAO and Clerk Request).~~ ~~A project would be developed to detect if a citations' appearance date and time is not a valid available court session and note it as an exception.~~	***The clerk entering information would be able to view the original scanned citation, decide on the correct appearance date and time and update if needed.***
Circuit Clerk	1	~~$25,800~~	~~Fit-004The county will need to validate an Illinois DL (check digit).~~ ~~A custom business rule would be developed to monitor correct input of the DL number upon input.~~	***For part of training the first option would include teaching the clerks to enter the DL information correctly. As a backup, the Peoria IT group to run a report against the database for daily updates to the DL table. With this report, they could generate an error report for items that are formatted differently than the accepted format.***
Accounting	1	~~$18,600~~	~~Fit-018 The county needs the payment plan due date options to be a specific Friday of the month.~~	***As part of a process change, the Peoria County Collections group could change process to process payments on the system calculated due date. Supervisors could manage load balancing using existing list manager reports.***
Jail	6	$165,600	See Next Slide	
Supervision	1	$105,000	Fit-095 The county, based on a state statute, cannot share any of their data with the rest of the county. A project would be developed to allow the Probation office to enter private data on the probationer party record.	***Depending on what information needed to be private, the supervision department has the option of updating information in notes fields.***
Supervision	1	$12,000	Fit-104 The county needs to be able to filter by the reason on Conditions tab. A project would be created to add additional filter to this tab.	***With a process modification, the probation office could view the judges conditions and the required case plans separately.***
Supervision	3	~~$18,000~~	~~Fit-094.1 The county needs the ability to add exceptions from citation hearing scheduling to the Task Manager queue (Activity).~~	***With a process modification data entry personnel entering/reviewing the citation would be able to select appropriate appearance date/time.***
	Depending on recommendations accepted the range for modifications to Odyssey is $212,400 to $381,000			

Fit Analysis

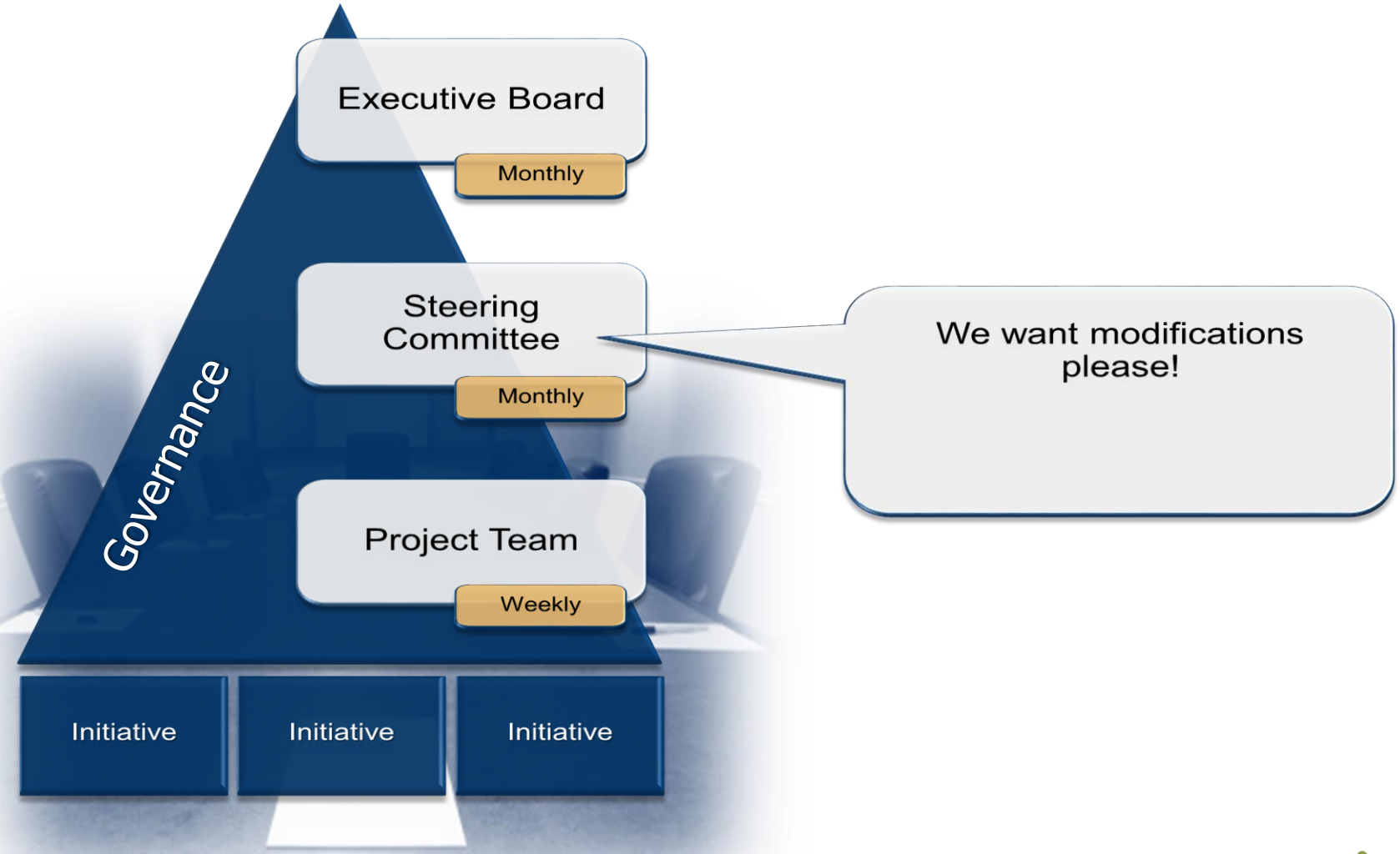
Activities	Tyler Role	Washington Role
Business Scenario Preparation	Lead	Own
Conduct Odyssey Basics Overview	Own	Participate
Identify Case Examples Supporting Business Scenario	Participate	Own
Conduct Process Review	Own	Participate
Prepare Findings	Own	Participate
Review and Approve Results	Participate	Own

Own = Completes the task
Lead = Provides prescriptive direction
Participate = Provides expertise or preference

Governance



Active Governance Is The Key To Keeping Modifications To A Minimum



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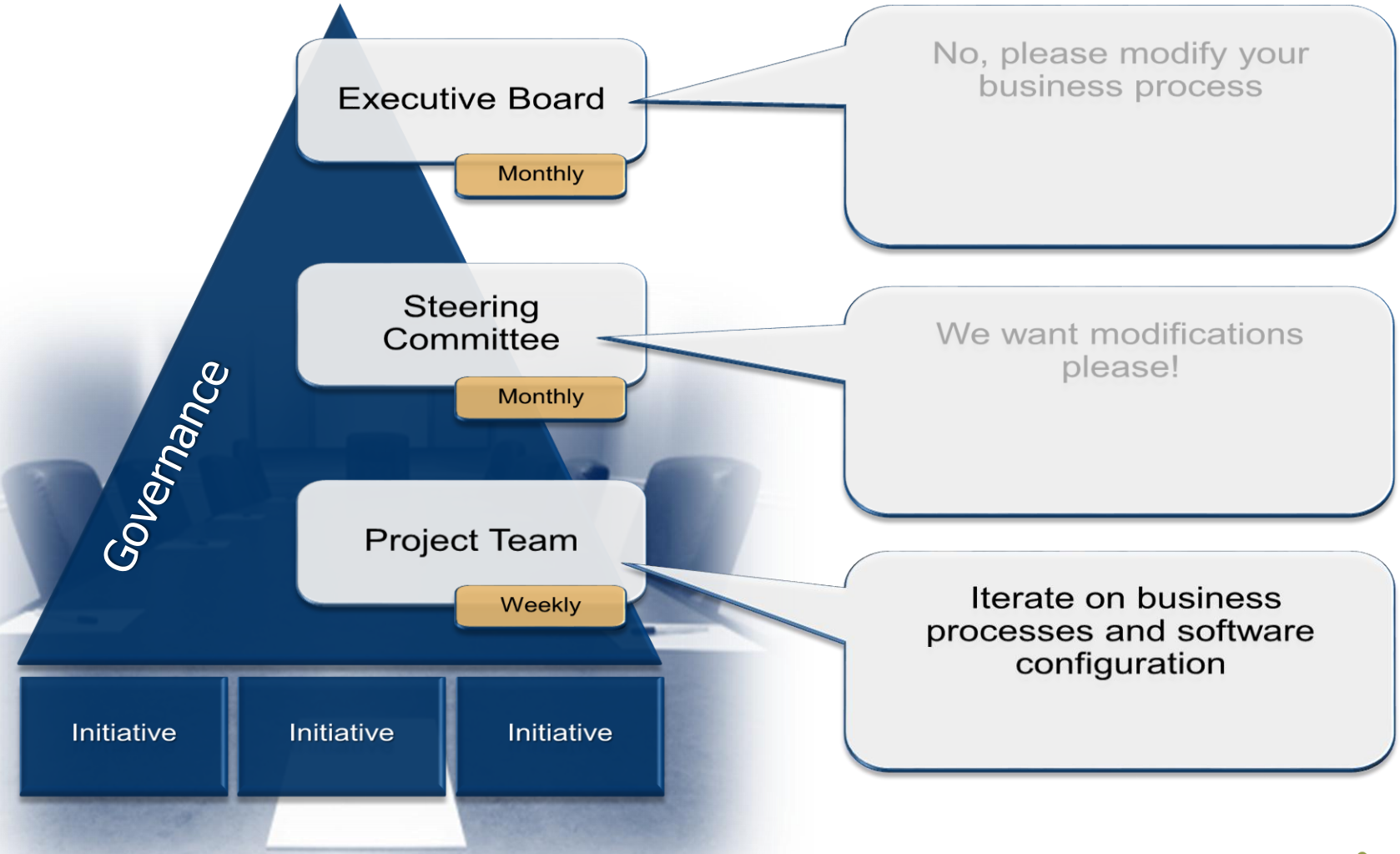
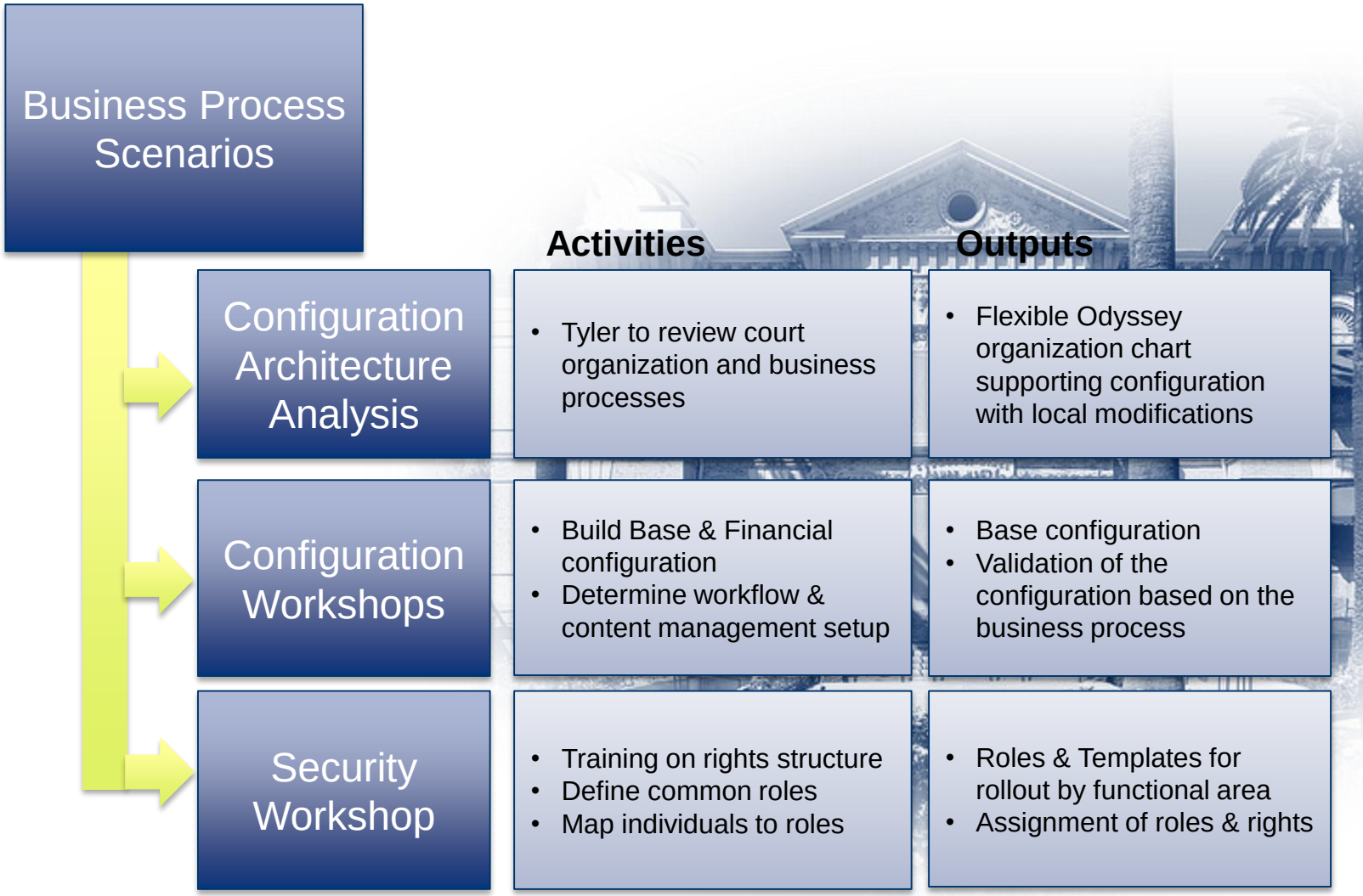


Configuration Workshops



Configuration Activities

	Project Teams	
Activities	**Tyler Role**	**Washington Role**
Configuration Plan (developed in Phase 1)	Own	Participate
Complete Configuration Workshops	Own	Participate
Complete Security Workshop	Own	Participate
Complete Forms Workshop	Own	Participate
Complete Configuration	Participate	Own
Configuration Acceptance Criteria	Participate	Own
Stage solution set for Go-Live	Lead	Own

Own = Completes the task
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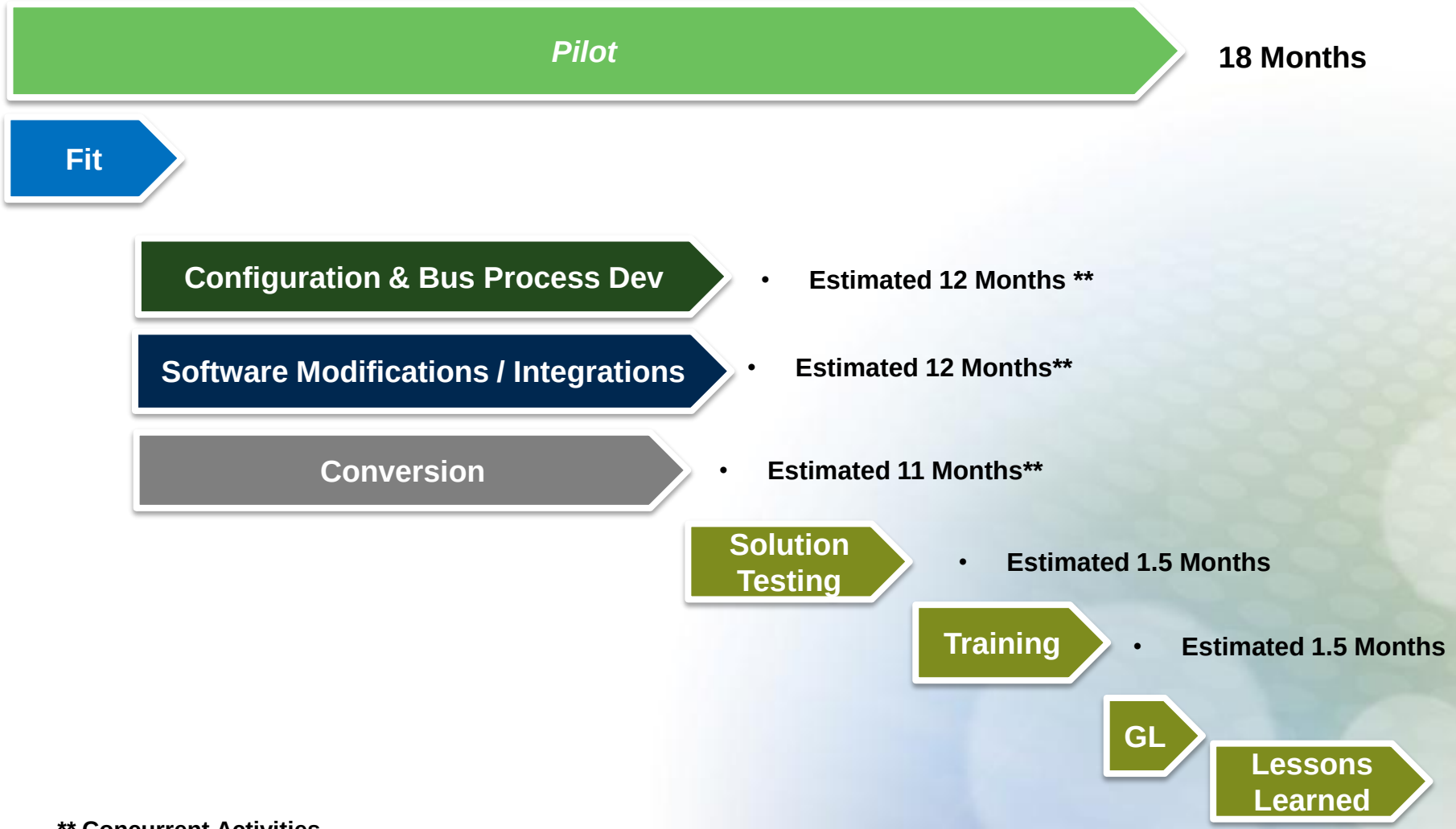
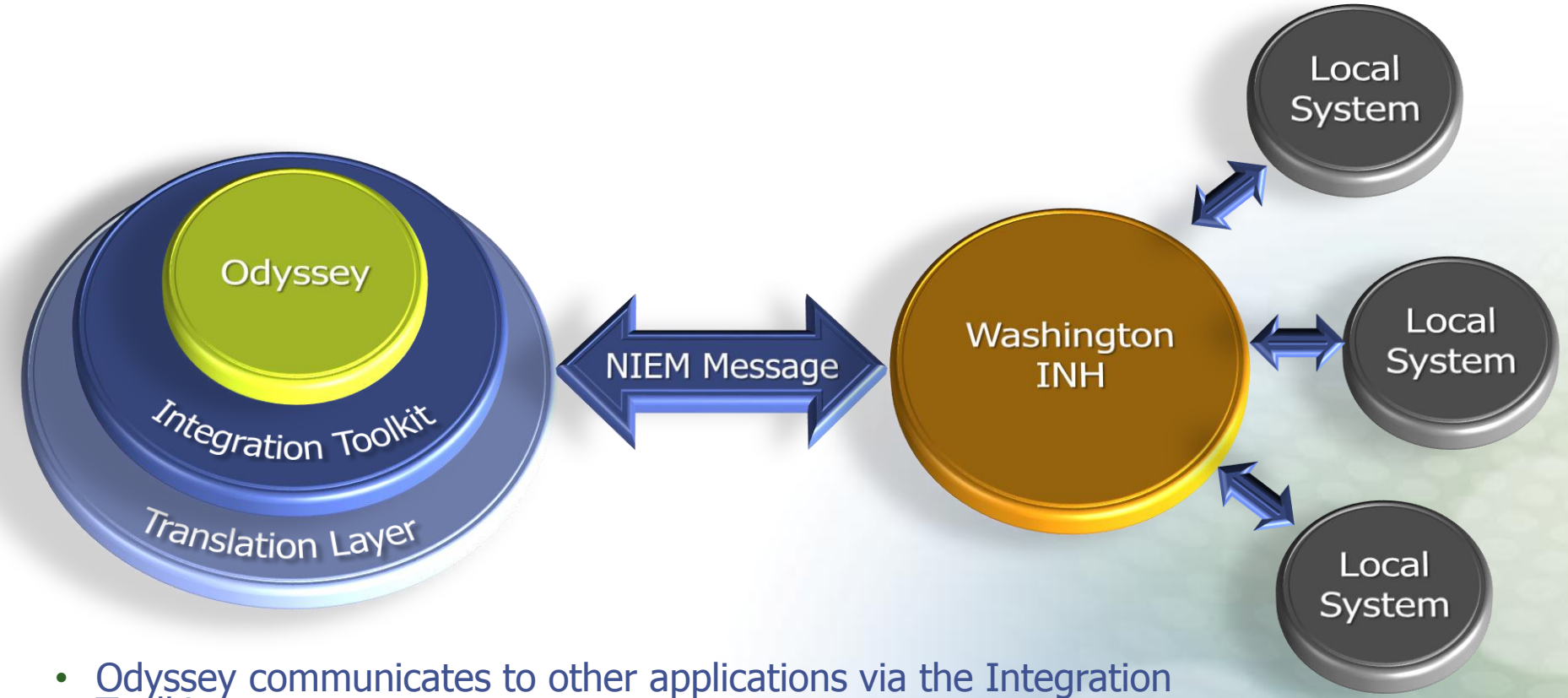
Implementing the Pilot



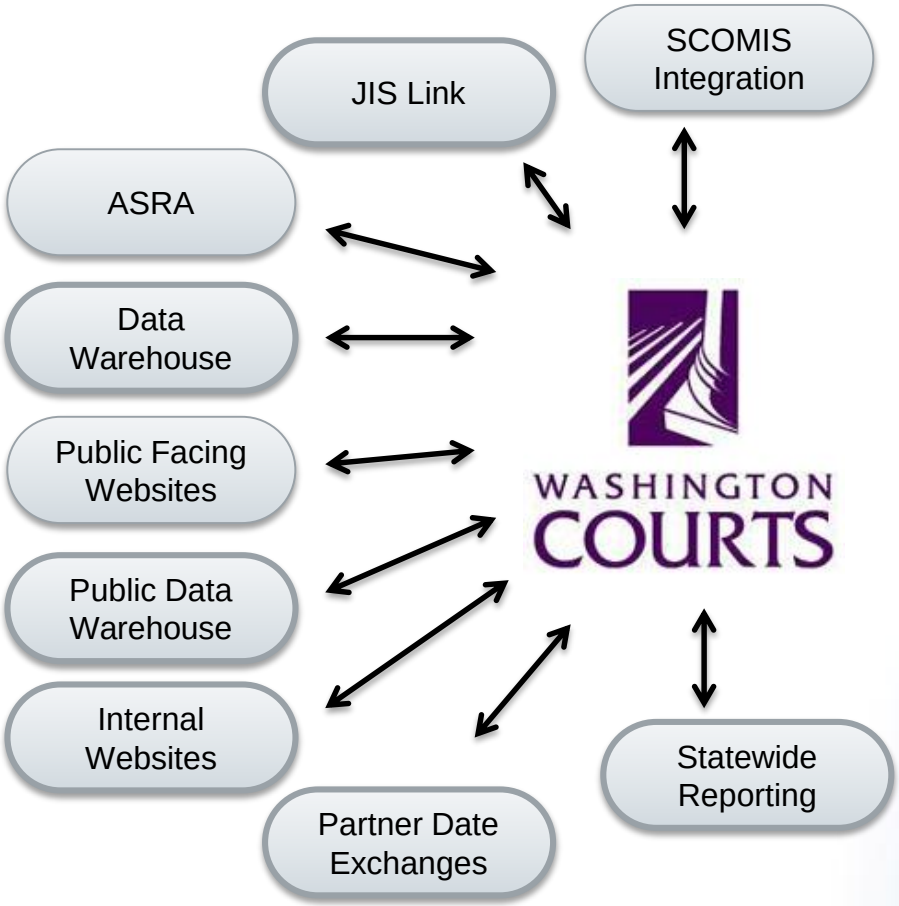
**** Concurrent Activities**

State and Local Integrations



- Odyssey communicates to other applications via the Integration Toolkit
- Tyler will translate Odyssey's native XML to Washington NIEM standard for publishing on the INH
- Washington will support the integration from the INH to other agencies

Integration Approach



Integration Process

1. Integration questionnaires completed for each data exchange
2. Tyler will review questionnaires and prepare for the integration workshop
3. Tyler will lead a collaborative integration workshop with WA
4. Tyler will prepare recommendations for the state and local integrations
5. Tyler and the State will review and agree on the Development Plan for the integrations

Integration Activities

	Project Teams	
Activities	**Tyler Role**	**Washington Role**
Complete Integration Questionnaires	Participate	Own
Complete Integration Fit Assessment	Own	Participate
Define Approach for Integrations	Own	Participate
Prioritize Integrations	Participate	Own
Create Integration Development Plan	Own	Participate

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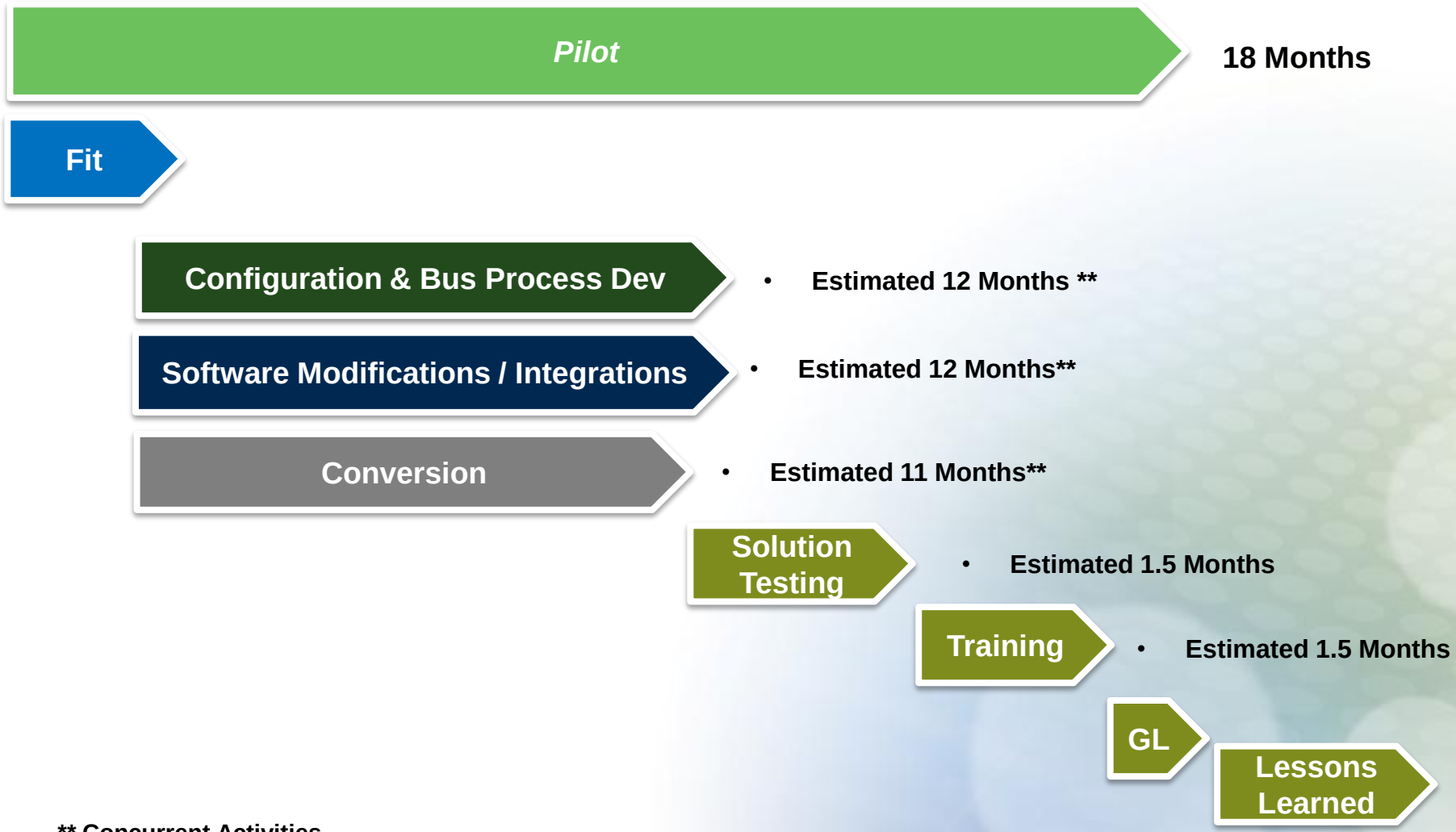
Implementing the Pilot



**** Concurrent Activities**

Tyler Conversion Framework

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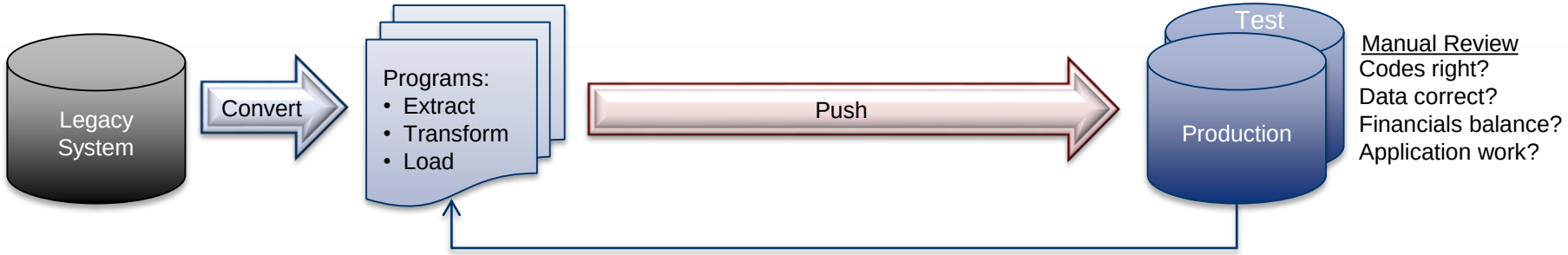
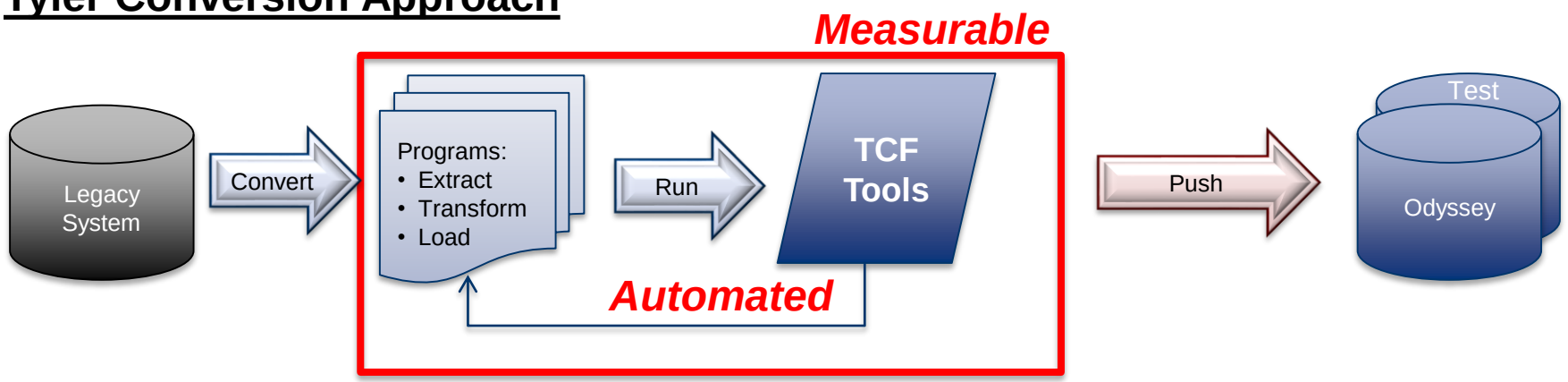


Tyler Conversion Approach



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- TCF / IFL is a supported product
- Web based tool for mapping codes

- Automates
  - Record count verification
  - Financial totals reconciliation
  - Merges duplicate party data (reversible, with audit trail)

Conversion Activities

	Project Teams	
Activities	**Tyler Role**	**Washington Role**
Data Conversion Plan	Own	Participate
Code Mapping	Participate	Own
Data Mapping	Own	Participate
Court Data Imported into IFL Database	Own	Participate
Testing of Conversion Iterations	Lead	Own
Final Push to Conversion Environment	Own	Participate
Go Live Push to Production	Own	Participate
Acceptance Criteria	Participate	Own

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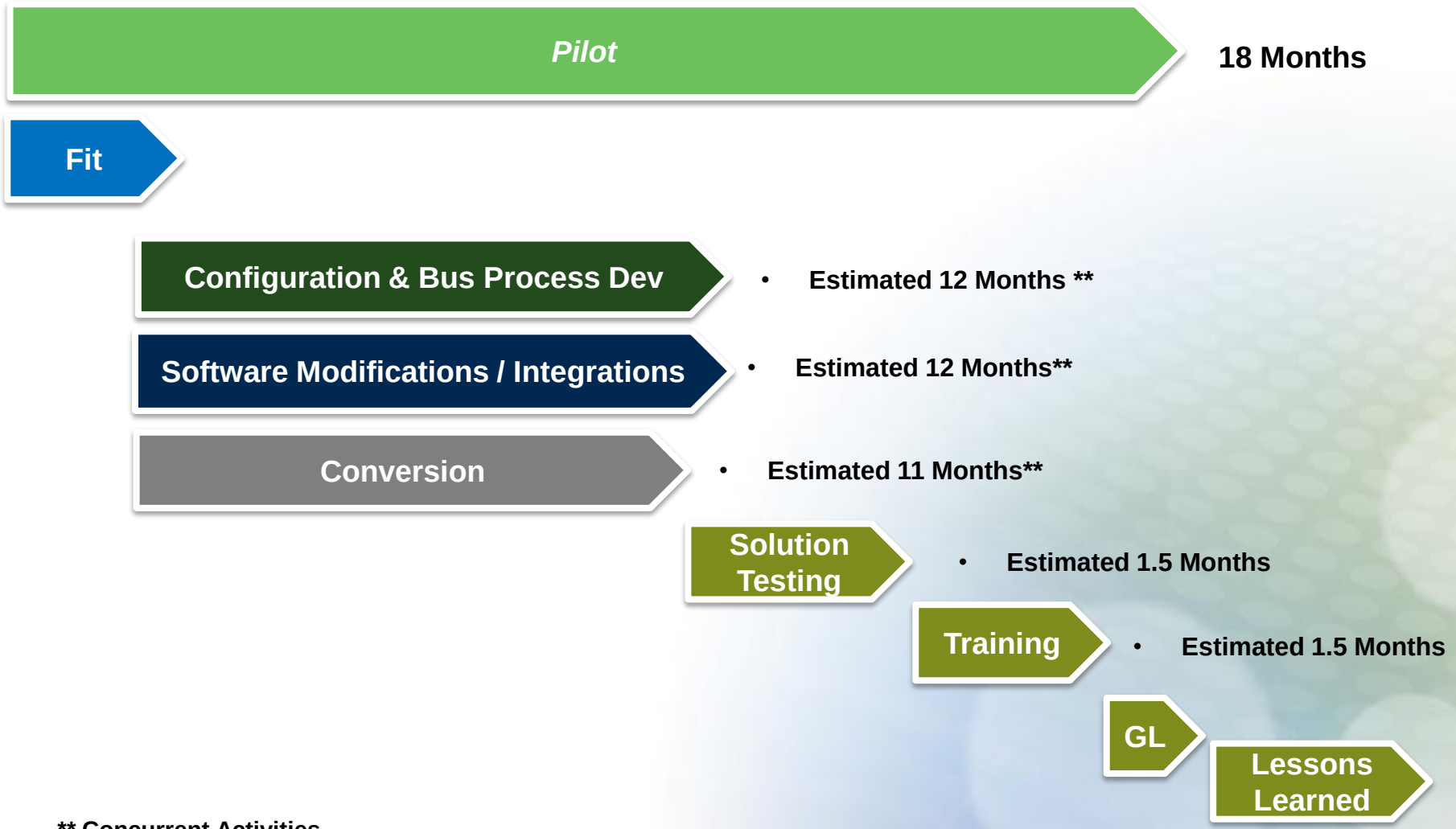
Solution Testing proves the solution



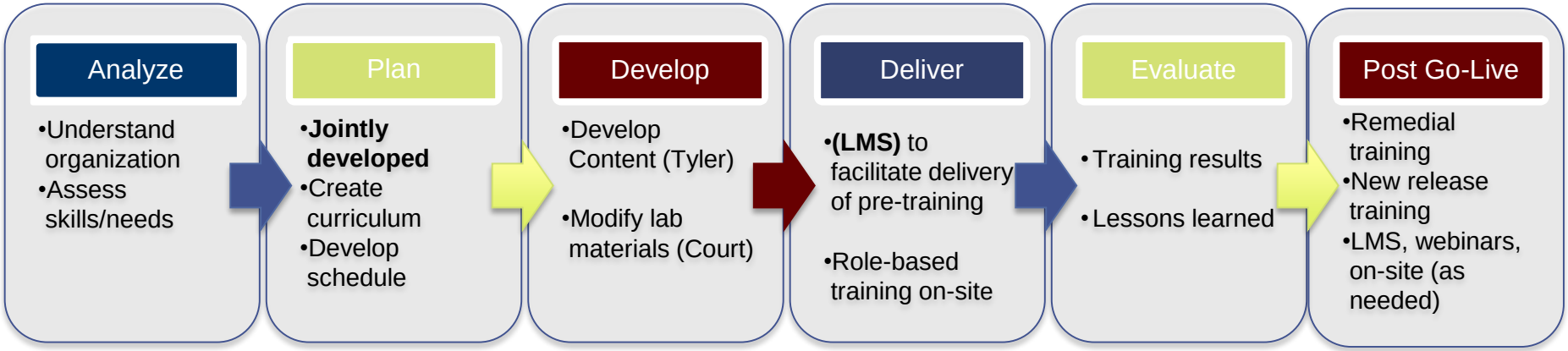
**** Concurrent Activities**

System Testing

During the Odyssey Implementation, unit and system testing confirms the solution

- Unit Testing
  - Begins following the baseline configuration of the Odyssey environment
  - Unit testing of system configuration, business processes, integration, converted data, and enhancements occurs with each project element
- User Acceptance Testing
  - Exercise new business processes against converted data in a fully configured environment
  - Validate the cutover plan
  - Perform final testing of the application configuration, data conversion, integrations, enhancements, and training materials against the new business processes
  - Identify and appropriately manage issues that would otherwise arise during the actual cutover and go-live
  - Adapt as needed to ensure a smooth go-live experience
- Performance Testing
  - Occurs prior to Pilot implementation

Role Based Training



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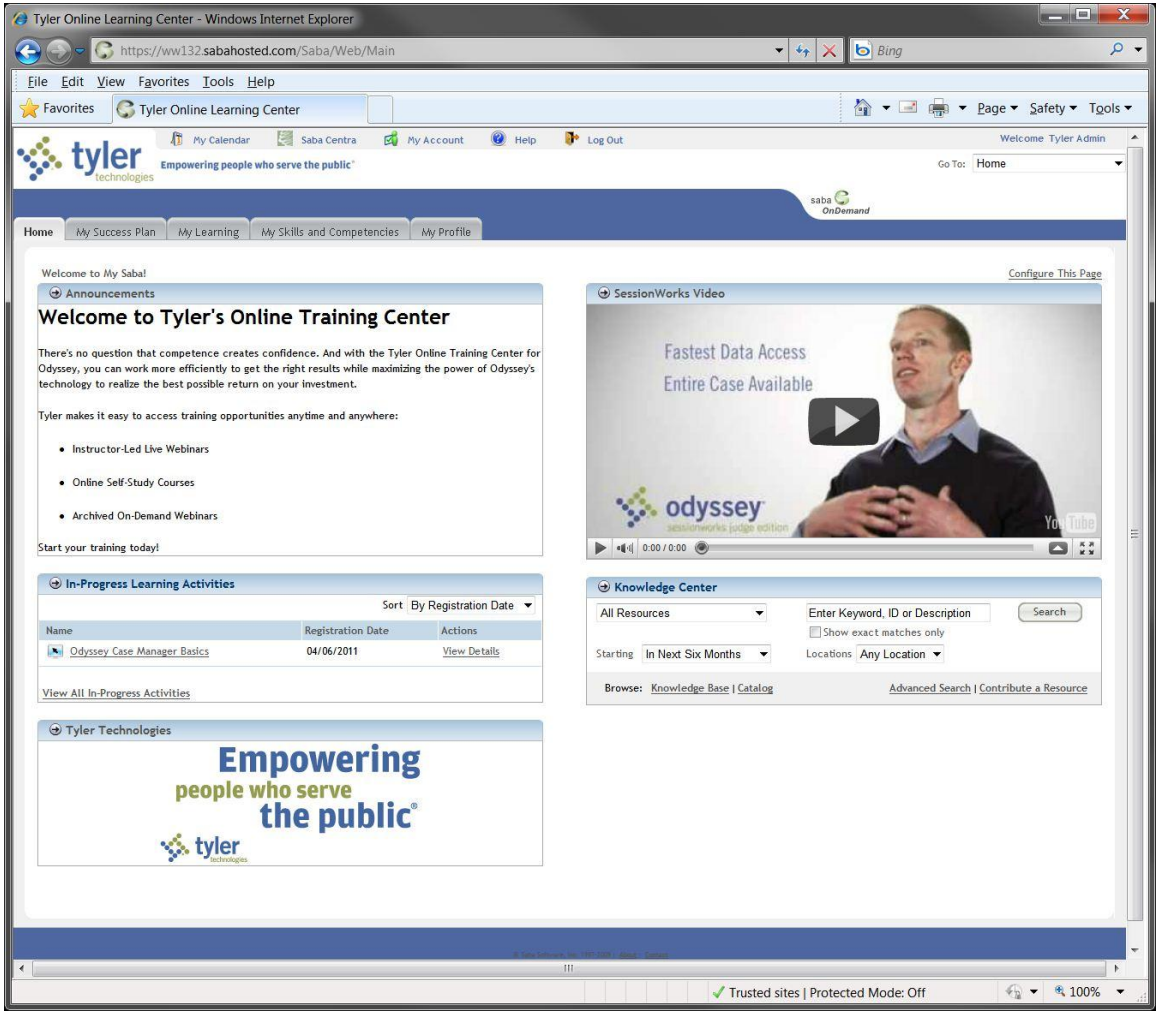
Registry Entries		✓		✓	
Calendars				✓	
e-Filing		✓		✓	✓

Tyler Learning Management System (LMS)

- **Features**
  - Online, remote courses on Odyssey functionality
  - Certification, reviews, and testing per employee
  - New Employee and release training tracks
- **Benefit**
  - Ability to train anytime
  - Improves effectiveness of stand up training
  - Support on-going training needs



Training Activities

	Project Teams	
Activities	**Tyler Role**	**Washington Role**
Gather information on training needs – roles / users	Participate	Own
Develop Training Plan	Lead	Participate
Deliver core training materials	Own	
Develop lab training materials	Participate	Own
Test training materials	Participate	Own
Deliver end-user training - core	Lead	Participate
Deliver end-user training – lab	Participate	Lead

Own = Completes the task
Lead = Provides prescriptive direction
Participate = Provides expertise or preference

Go-Live

Prepare

- Jointly prepare an hour by hour Go-Live transition plan
- Define Go-Live roles and responsibilities

Communicate

- Insure all stakeholders understand the plan
- Share typical challenges and anticipated risks along with mitigation plan

Staff

- Multiple Tyler SMEs will be on site for Cutover and Go-Live assistance

Cutover

- Migrate data and data setup activities
- Work with live transactions over weekend prior to go-live.

Go-Live

- Open for business with new system
- Tyler SMEs on site to assist users
- Daily / Weekly Status Reports

Hour by Hour Go-Live Plan

ID	Task Name	Duration	Start	Finish	Resource Names
1	Begin Manual Process for Civil, Family, Probate Cases	15 mins	3/30/2012 12:00	3/30/2012 12:15	County Clerk,District Clerk
2	Court Administrators - Print Court Dockets for 2 weeks	1 hr	3/30/2012 12:15	3/30/2012 13:15	Court Administrators
3	Disburse Civil, Family, Probate escrow	1 hr	3/30/2012 12:15	3/30/2012 13:15	CC and DC Bookkeepers
4	Run Month end reports	2 hrs	3/30/2012 13:15	3/30/2012 15:15	County and District Clerk
5	Final case adjustments (no financial transactions)	45 mins	3/30/2012 15:15	3/30/2012 16:00	County and District Clerk
6	Check-point, confirm taking legacy to Read only	15 mins	3/30/2012 16:00	3/30/2012 16:15	All
7	Turn Civil, Family, Probate legacy to "Read" Only	15 mins	3/30/2012 16:15	3/30/2012 16:30	Tyler
8	Confirm Go, notify DBA to begin conversion process	15 mins	3/30/2012 16:30	3/30/2012 16:45	
9	Gather starting numbers (Case Number by case type)	2 hrs	3/30/2012 16:45	3/30/2012 18:45	County and District Clerk
10	Data Extract	4 hrs	3/30/2012 16:45	3/30/2012 20:45	Tyler DBA
11	Check point Conference Call	15 mins	3/30/2012 20:00	3/30/2012 20:15	
12	Load to SQL	4 hrs	3/30/2012 20:45	3/31/2012 0:45	Tyler DBA
13	Check point Conference Call	15 mins	3/31/2012 0:00	3/31/2012 0:15	Optional
14	Load to IFL	12 hrs	3/31/2012 0:45	3/31/2012 12:45	Tyler DBA
15	Check point Conference Call	15 mins	3/31/2012 4:00	3/31/2012 4:15	Optional
16	Check point Conference Call	15 mins	3/31/2012 8:00	3/31/2012 8:15	
17	Check point Conference Call	15 mins	3/31/2012 12:00	3/31/2012 12:15	
18	Verification Reports	2 hrs	3/31/2012 12:45	3/31/2012 14:45	Tyler DBA
19	adjust codes if needed	3 hrs	3/31/2012 14:45	3/31/2012 17:45	Tyler DBA
20	Check point Conference Call	15 mins	3/31/2012 16:00	3/31/2012 16:15	
48	**Open Monday Morning Live on Odyssey**	**0 mins**	**4/2/2012 7:30**	**4/2/2012 7:30**	

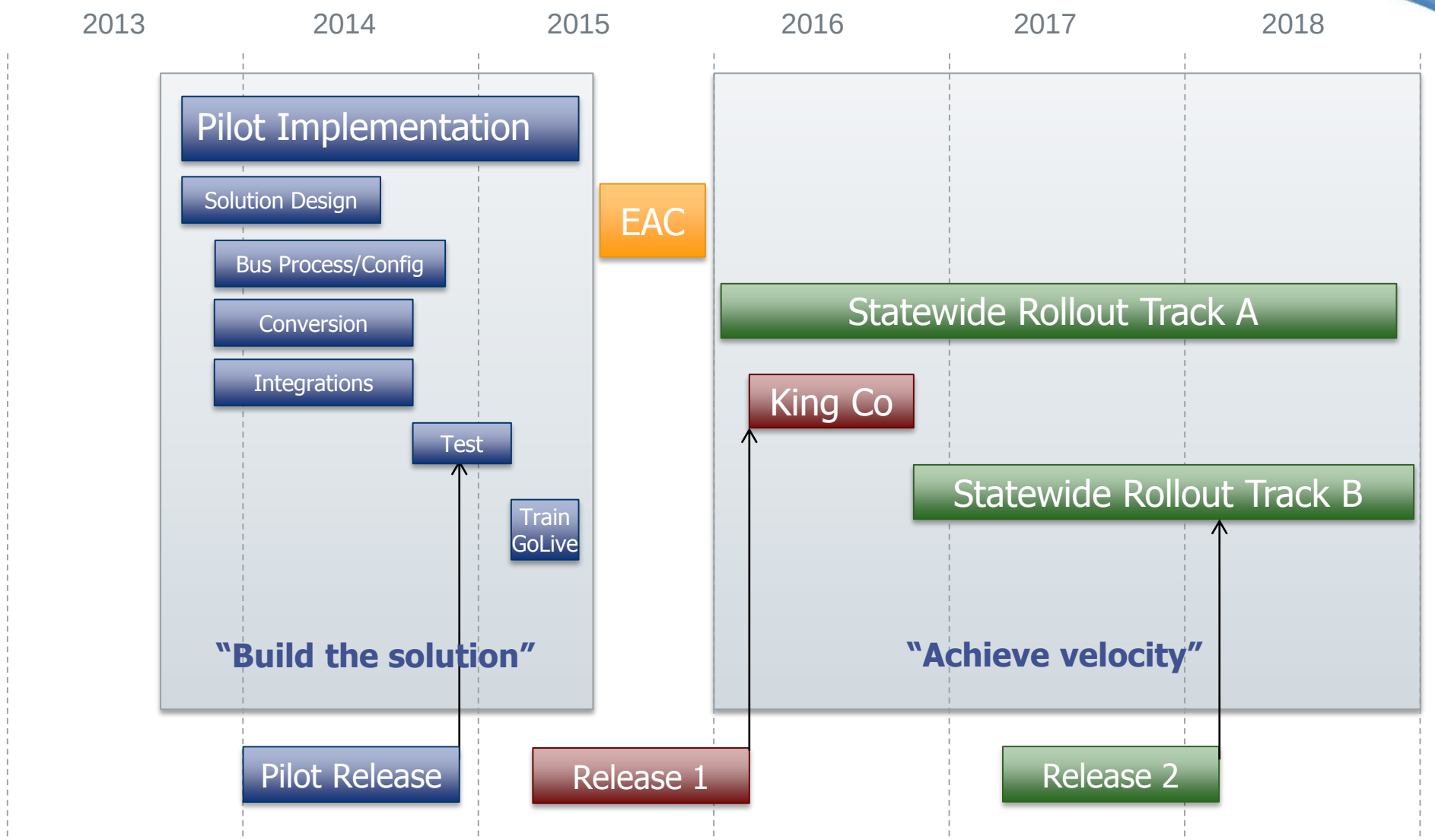
Go-Live Support Strategy

Challenge: how to support Implementation Events for multiple counties, spanning large geographic areas?

- Approach: implement a "ride-along" strategy to build Odyssey capability while supporting the Implementation Events (IE)
  - **Identify** lead SMEs for upcoming IEs
  - **Prepare** – SMEs for next IE attend the end-user training for the current IE
  - **Pay it forward** – SMEs for next IE help with go-live support on current IE
  - **Repay** – as rollout progresses, SMEs from previous IEs provide go-live support on subsequent go-lives

- Benefits: generates SME enthusiasm, greatly expands go-live coverage, builds Odyssey know-how

Washington Courts Implementation



Superior Court Case Management System (SC-CMS)
Project Update

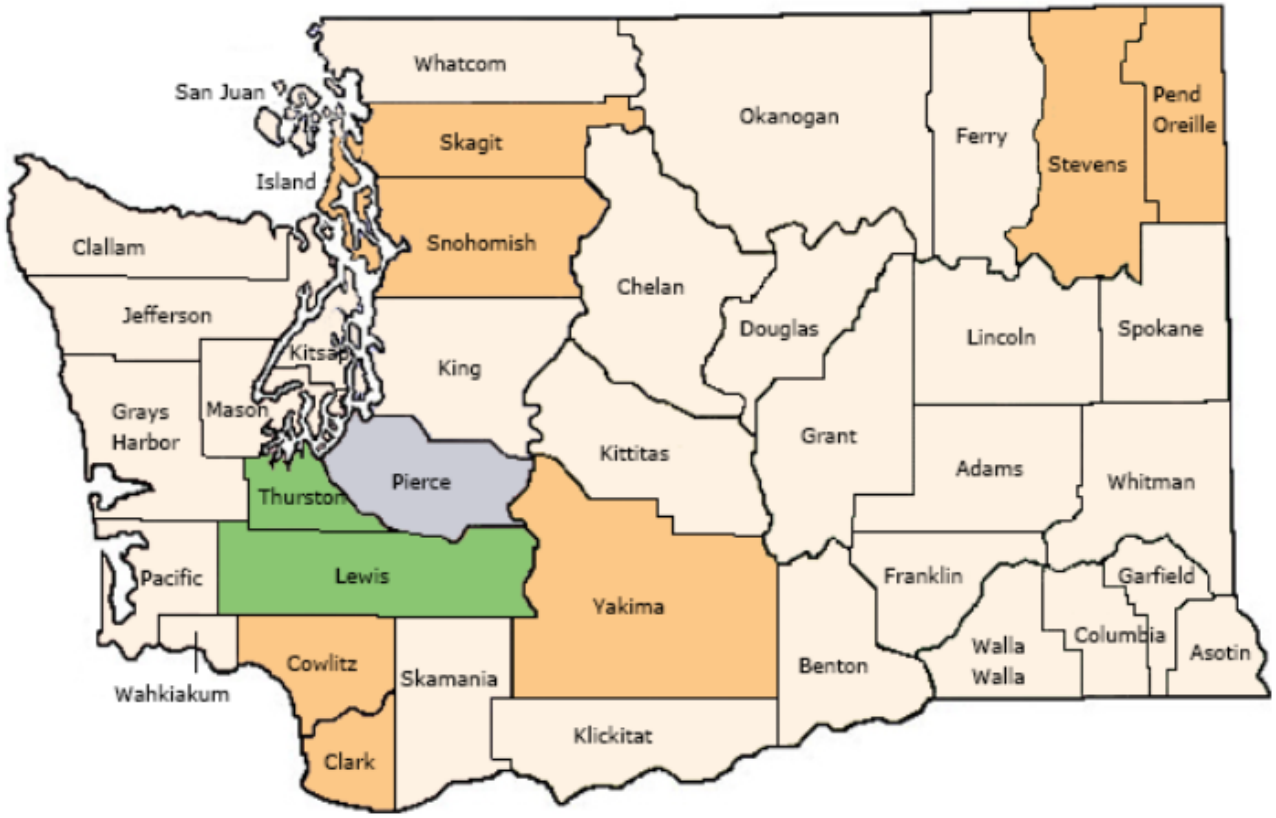
Maribeth Sapinoso, Project Manager
Mike Walsh, Deputy Project Manager

October 25, 2013

Project Kickoff Activities

- ✓ Tyler Project Management Team
  - Tom Bartel, VP of Professional Services
  - Kristen Wheeler, Regional Project Manager
  - Paul Farrow, Project Manager
- ✓ Project Kickoff Meetings with Tyler
  - Project Steering Committee – 9/11/13
  - AOC Management Team and Staff – 9/12/13
  - Court User Workgroup and AOC Project Team – 9/13/13
  - JISC – 10/25/2013

Pilot Sites Selected



Selected Pilot Sites
Interest in being a Pilot Site
Opted to not implement SC-CMS

Recent Activities

- ✓ Project Steering Committee Charter Finalized with Signatures
- ✓ Washington Judicial Conference – September 22-25, 2013
- ✓ AWSCA Fall Conference – September 23 & 24, 2013
- ✓ Pre-Design Training – October 9 & 10, 2013
- ✓ Access to Justice – October 18, 2013
- ✓ Business Fit Analysis – October 14-25, 2013
- ✓ Association of County & City Information Systems (ACCIS)
  - October 23 & 24, 2013
- ▪ Technical Fit Analysis – November 4-15, 2013

Active Project Risks

Total Project Risks			
Low Exposure	**Medium Exposure**	**High Exposure**	**Closed**
0	0	3	0

Significant Risks Status

Risk	Probability/Impact	Mitigation
If counties or courts continue to develop or purchase systems with overlapping functionality to Odyssey the cost, scope and complexity of SC-CMS will increase.	High/High	Adopt a policy regarding the implementation of ancillary systems by counties that provide duplicative functionality of systems being implemented by AOC. Work with Kitsap and other counties to compare and contrast functionality, integration, and cost advantages of using Odyssey components.

Active Project Risks
Continued

Significant Risks Status

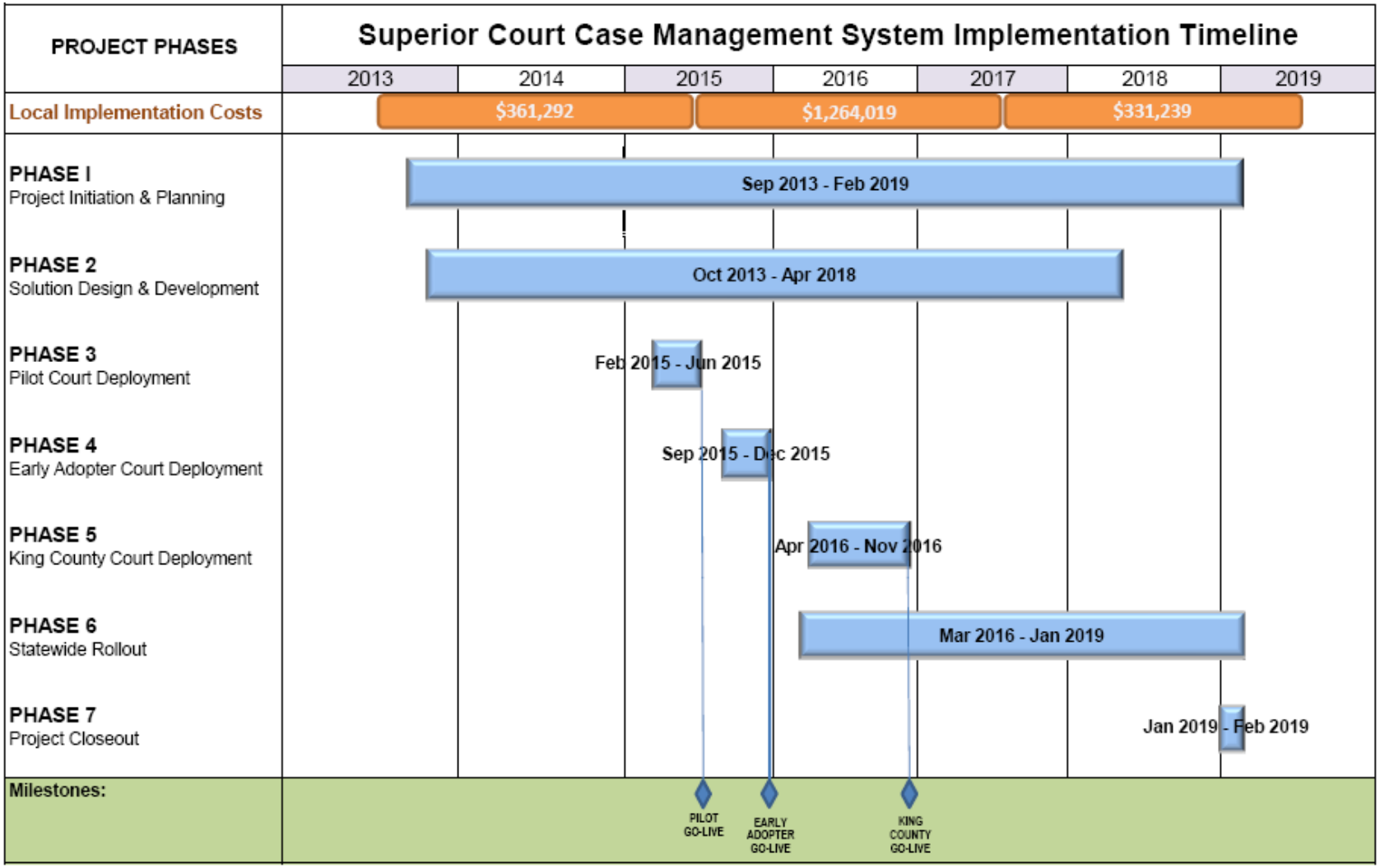
Risk	Probability/Impact	Mitigation
Discussions are underway to determine the level of AOC support for local preparation and implementation costs. Cost could exceed the $1.9 million currently allocated for local implementation.	High/High	Determine alternatives for the resolving the issue. The recommendation along with alternatives for resolving this issue should be documented with an analysis of advantages and disadvantages, impacts, and costs from both a local and statewide perspective.

Active Project Risks
Continued

Significant Risks Status

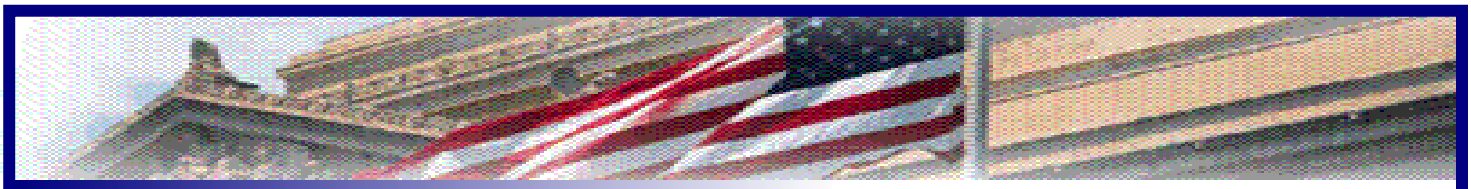
Risk	Probability/Impact	Mitigation
Clerks position on the Odyssey document management functionality is that it doesn't meet their needs for local document storage and control.	High/High	The Clerks Association will be providing a document explaining the reason that the Odyssey document management functionality does not meet their document management requirements.

SC-CMS High Level Implementation Schedule



Phase 1 – Project Initiation and Planning

MILESTONES or PROJECT DELIVERABLES	DATE
✓Project Kickoff	September 2013
✓Project Management Plan	October 2013
✓SC-CMS Core Training Plan	October 2013
✓Review and Certify Equipment Specification	October 2013
✓Complete Fit Analysis Documentation	October 2013
✓Complete Pre-Design Training	October 2013
Complete Fit Analysis Workshops	November 2013
Results of Requirements Fit Analysis	December 2013
SC-CMS Design and Construction Plan	February 2014
Complete Pilot, Early Adopter, and King County Deployment Plan	February 2014
Complete Long Term Deployment Plan	May 2014



MANAGEMENT CONSULTING

FOR

STATE AND LOCAL GOVERNMENTS

QUALITY ASSURANCE (QA)

PROJECT OVERSIGHT

INDEPENDENT VERIFICATION AND VALIDATION (IV&V)

PROJECT MANAGEMENT

RISK REDUCTION

TECHNOLOGY ALIGNMENT

Quality Assurance Assessment

for the

State of Washington

Administrative Office of the Courts (AOC)

SC-CMS Project

September 30, 2013

Prepared by

Bluecrane, Inc.

bluecrane®

Table of Contents

Part 1: Executive Summary and Assessment Dashboard

Executive Summary

This report provides the September 2013 quality assurance (QA) assessment by Bluecrane, Inc. ("*bluecrane*") for the State of Washington Administrative Office of the Courts (AOC) Superior Court – Case Management System (SC-CMS) Project.

Our report is organized by assessments in the project areas of:

- Project Management and Sponsorship
- People
- Application
- Data
- Infrastructure

This month, we have identified risks in four areas as follows:

- We have identified a budget risk regarding the level of AOC funding support for local preparation and implementation costs. If a decision is made to fund the local costs that exceed the $1.9M currently allocated to this local implementation, additional funding will have to be acquired from elsewhere such as reduction of SC-CMS scope, additional appropriation from the legislature, or reduction of funding for other AOC projects.
- We have identified an application architecture risk with the design of document management. The Clerks' representatives on the SC-CMS Steering Committee have said that they are not interested in using the Odyssey document management functionality that is included (at no additional cost) in the standard Odyssey implementation. If counties do not use Odyssey to store copies of documents, then some document management functionality will not be available in Odyssey and counties will have to pay license, implementation, and infrastructure costs for the local implementation of their own non-Odyssey document management systems.

  At the time of this writing, AOC is working with the Clerks to understand their objections to storing documents in a central location with local control of the documents. *bluecrane* encourages AOC to continue its efforts to understand the Clerks' objections and to further explore whether the objections can be alleviated with a more cost-effective approach.

- The purchase of Mentis aiSmartBench by Kitsap County has created risks in both (1) governance and (2) scope that have not yet been resolved. If counties or courts continue to implement custom-developed or purchased systems that have overlapping functionality with SC-CMS, then the scope, complexity, and cost of SC-CMS will increase, adding risk to the project. Counties and courts will bear not only the one-time implementation costs of the one-off, stand-alone software, but will have on-going maintenance costs for the software.

bluecrane QA Assessment Dashboard

Area of Assessment	Urgency	July 2013	Aug 2013	Sept 2013	Summary Status/Recommendations
Project Management and Sponsorship					
Governance	**Urgent Consideration**	No Risk Identified	Risk	Risk	Kitsap County has purchased software, (Mentis aiSmartBench) that duplicates functionality provided by Odyssey (SessionWorks Judges Edition). Currently, AOC does not have a policy regarding the support of county ancillary systems that duplicate the functionality of AOC systems that are in the process of being implemented. If counties or courts continue to implement custom-developed or purchased systems that have overlapping functionality with SC-CMS, then the scope, complexity, and cost of SC-CMS will increase, adding risk to the project. AOC is considering the adoption of a policy regarding the implementation of ancillary systems by counties that provide duplicative functionality of systems being implemented by AOC.
Scope	**Urgent Consideration**	No Risk Identified	Risk	Risk	One of the Odyssey modules negotiated in the Tyler contract is SessionWorks Judge Edition which will provide Washington judges with quick access to case information and other court-related documents. However, as noted above, Kitsap County has purchased a competing product called aiSmartBench from Mentis Technology and has requested that AOC provide an interface to this system. If counties continue to implement custom-developed or purchased systems that have overlapping functionality with SC-CMS, then the scope, complexity, and cost of SC-CMS will increase, adding risk to the project. AOC should communicate Odyssey functionality to all counties so that new systems or enhancements to existing systems that duplicate the functionality of Odyssey are not implemented in the counties.

Area of Assessment	Urgency	July 2013	Aug 2013	Sept 2013	Summary Status/Recommendations
Schedule	N/A	No Risk Identified	No Risk Identified	No Risk Identified	The Tyler contract was executed on schedule in July. Planning meetings continued in September. Fig/gap sessions will be begin in October.
Budget	Urgent Consideration	No Risk Identified	No Risk Identified	Risk	Discussions are underway to determine the level of AOC support for local preparation and implementation costs. A budget of $1.9 million dollars has been allocated for local efforts over the SC-CMS implementation timeframe. Although it is reasonable for counties to receive some assistance in implementation costs, it is also reasonable that counties would incur some of the preparation and implementation costs based on the benefit derived from the implementation. If a decision is made to fund the local costs that exceed the $1.9 million currently allocated for local implementation, then additional funding will have to be transferred from elsewhere such as reduction of SC-CMS scope, additional appropriation from the legislature, or reduction of funding for other AOC projects. The alternatives for resolving this issue should be documented with an analysis of advantages and disadvantages, impacts, and costs from both a local and statewide perspective.
Communication	N/A	No Risk Identified	No Risk Identified	No Risk Identified	Although there are multiple approaches to communicating project status and organizational change management information, it would be advisable for the project to conduct periodic surveys to determine the effectiveness of the various forms of communication being utilized. Effectiveness could be measured by gauging the project-related knowledge of internal and external stakeholders at all levels. Based on the results of surveys, approaches to project communications can be revised. Some approaches may be eliminated if they are found to be ineffective, or supplemental communications may be necessary to augment the current forms of communications.

Area of Assessment	Urgency	July 2013	Aug 2013	Sept 2013	Summary Status/Recommendations
Staffing and Project Facilities	N/A	No Risk Identified	No Risk Identified	No Risk Identified	The staffing plan is being re-evaluated to identify any additional resource requirements due to the increase in project scope through the addition of the Odyssey document management, financial management, and e-filing modules. This will impact not only AOC resources but also will require the involvement of court staff during all phases of implementation. Detailed requirements for these modules will have to be developed and vetted, design and configuration deliverables will have to be reviewed, and the modules will have to be tested. Identification and commitment of subject matter experts (SMEs) from AOC staff, court clerks, judges, and administrators should begin well before the requirements validation and system configuration session that will start soon and last three to four months. Participation in the configuration, design, and user acceptance testing activities by business area representatives with substantial knowledge of their business processes will be critical to the success of the project.
Change Management	N/A	No Risk Identified	No Risk Identified	No Risk Identified	With the execution of the Tyler contract, the scope and budget have been baselined. All changes to scope or budget will be processed through the change management process.
Risk Management	N/A	No Risk Identified	No Risk Identified	No Risk Identified	Consistent with the Risk Management Plan, the project is identifying and managing risks.
Issue Management	N/A	No Risk Identified	No Risk Identified	No Risk Identified	Consistent with the Issue Management Plan, the project team is identifying and tracking issues.
Quality Management	N/A	No Risk Identified	No Risk Identified	No Risk Identified	The project team has developed a Quality Management Plan.

People					
Stakeholder Engagement	**N/A**	No Risk Identified	No Risk Identified	No Risk Identified	Stakeholder engagement and organizational change management activities are underway. Thurston and Lewis counties have been select to participate in the project as “pilot sites.”
Business Processes/ System Functionality	**N/A**	No Risk Identified	No Risk Identified	No Risk Identified	In 2012, the Court Business Office (CBO) began the analysis and validation of the existing court business processes and began developing As-Is process models. Approximately one hundred twenty (120) current state business process flows have been developed, and fifty (50) have been validated and approved by the CUWG. Thirty (30) current state process flows are being reviewed by the CUWG.
Vendor Procurement	**N/A**	No Risk Identified	No Risk Identified	No Risk Identified	The SC-CMS Project Steering Committee contract with Tyler Technologies was executed in July, 2013. No other vendor procurements are planned at this time.
Contract Management / Deliverables Management	**N/A**	No Risk Identified	No Risk Identified	No Risk Identified	The list and schedule of vendor deliverables are confirmed in the executed contract with Tyler. Management of the contract began in September.

Application					
Application Architecture	**Urgent Consideration**	No Risk Identified	No Risk Identified	Risk	The Clerks' representatives on the SC-CMS Steering Committee have said that they are not interested in using the Odyssey document management functionality that is included (at no additional cost) in the standard Odyssey implementation. If counties do not use Odyssey to store copies of documents, then some document management functionality will not be available in Odyssey and counties will have to pay license, implementation, and infrastructure costs for the local implementation of their own non-Odyssey document management systems. At the time of this writing, AOC is working with the Clerks to understand their objections to storing documents in a central location with local control of the documents. *bluecrane* encourages AOC to continue its efforts to understand the Clerks' objections and to further explore whether the objections can be alleviated with a more cost-effective approach.
Requirements Management	**N/A**	No Risk Identified	No Risk Identified	No Risk Identified	The project's business analysts have loaded the SC-CMS requirements into the Rational Requirements Composer (RRC) requirements management tool that is being used to document requirements and for traceability. The CBO and CUWG will document Use Cases for the To-Be processes as needed.
Application Interfaces	**N/A**	No Risk Identified	No Risk Identified	No Risk Identified	The INH and COTS-Prep Application projects are defining and preparing interfaces using the interface information currently available. Additional activities will be planned as further definition of SC-CMS interface requirements are made available with the start of vendor activities in October.

Data					
Data Preparation	**N/A**	No Risk Identified	No Risk Identified	No Risk Identified	The Data Quality Coordinator will coordinate preparation of data in AOC and local court applications. One of the activities is the development of a data profiling report which will identify anomalies in data stored in JIS. The project has hired a System Support Technician who will help prepare and extract SCOMIS data for each superior court and county clerk office in the format that Tyler can import into Odyssey.

Part 2: Review of *bluecrane* Approach

We began our Quality Assurance engagement for the AOC SC-CMS Project by developing an understanding of the project at a macro level. We started by analyzing the following five "Project Areas":

- ***Project Management and Sponsorship***
- ***People***
- ***Application***
- ***Data***
- ***Infrastructure***

It is not our practice to duplicate Project Management activities by following and analyzing each task and each deliverable that our clients are tracking in their project management software (such as Microsoft Project). Rather, we identify those groups of tasks and deliverables that are key "signposts" in the project. While there are numerous tasks that may slip a few days or even weeks, get rescheduled, and not have a major impact on the project, there are always a number of significant "task groups" and deliverables which should be tracked over time because any risk to those items – in terms of schedule, scope, or cost – have a potentially significant impact on project success.

We de-compose the five Project Areas listed above into the next lower level of our assessment taxonomy. We refer to this next lower level as the "area of assessment" level. The list of areas of assessment grows over the life of the project. The following list is provided as an example of typical areas of assessment:

- ***Project Management and Sponsorship***
    - Governance
    - Scope
    - Schedule
    - Budget
    - Communication
    - Staffing and Project Facilities
    - Change Management
    - Risk Management
    - Issue Management
    - Quality Management
- ***People***
    - Stakeholder Engagement

  - Business Processes/System Functionality
  - Vendor Procurement
  - Contract Management/Deliverables Management
  - Training and Training Facilities
  - Local Court Preparation
  - User Support
- ***Application***
  - Application Architecture
  - Requirements Management
  - Implementation
  - Application Interfaces
  - Application Infrastructure
  - Reporting
  - Testing
  - Tools
- ***Data***
  - Data Preparation
  - Data Conversion
  - Data Security
- ***Infrastructure***
  - Headquarters Infrastructure
  - Regional Infrastructure
  - Partner Infrastructure
  - Technical Help Desk

For each area of assessment within a Project Area, we document in our QA Dashboard our observations, any issues and/or risks that we have assessed, and our recommendations. For each area we assess activities in the following three stages of delivery:

- **Planning** – is the project doing an acceptable level of planning?
- **Executing** – assuming adequate planning has been done, is the project performing tasks in alignment with the plans the project has established?
- **Results** – are the expected results being realized? (A project that does a good job of planning and executing those plans, but does not realize the results expected by stakeholders, is a less than successful project. Ultimately, r*esults are what the project is all about!*)

Assessed status is rated at a macro-level using the scale shown in the table below.

Assessed Status	Meaning
Extreme Risk	**Extreme Risk:** a risk that project management must address or the entire project is at risk of failure; these risks are "show-stoppers"
Risk	**Risk:** a risk that is significant enough to merit management attention but not one that is deemed a "show-stopper"
Risk Being Addressed	**Risk Being Addressed:** a risk item in this category is one that was formerly red or yellow, but in our opinion, is now being addressed adequately and should be reviewed at the next assessment with an expectation that this item becomes green at that time
No Identified Risk	**No Risk:** "All Systems Go" for this item
Not Started	**Not Started:** this particular item has not started yet or is not yet assessed
Completed or Not Applicable	**Completed/Not Applicable:** this particular item has been completed or has been deemed "not applicable" but remains a part of the assessment for traceability purposes

We recognize that simultaneously addressing all risk areas identified at any given time is a daunting task – and not advisable. Therefore, we prioritize risk items in our monthly reports as:

1. Very Urgent Consideration
2. Urgent Consideration
3. Serious Consideration

Given the current phase of the SC-CMS Project, these priorities translate to:

1. Very Urgent Consideration – Potential Impact to Configuration of the System
2. Urgent Consideration – Potential Impact to Project's Readiness for Implementation
3. Serious Consideration – Potential Impact to the Successful Management of the Project

Rating risks at the macro-level using the assessed status and urgency scales described above provides a method for creating a snapshot that project personnel and executive management can review quickly, getting an immediate sense of project risks. The macro-level ratings are further refined by describing in detail what the risk/issue is and what remedial actions are being taken/should be taken to address the risk/issue. The result is a framework for AOC SC-CMS management to evaluate project risks – in terms of business objectives and traditional project management tasks.

We summarize the *bluecrane* QA Dashboard in Part 1 of our monthly report for review with client executives and project management. Part 3 of our monthly report provides the detailed QA Dashboard with all of the elements described above.

Part 3: *bluecrane* Detailed Assessment Report for September 2013

bluecrane Quality Assurance Dashboard for the Washington AOC SC-CMS Project	
Project Area Summary	
Project Area	**Highest Level of Assessed Risk**
Project Management and Sponsorship	**Risk**
People	**No Risk Identified**
Application	**Risk**
Data	**No Risk Identified**
Infrastructure	**No Risk Identified**

		July 2013	Aug 2013	Sept 2013
Category:	**Project Management and Sponsorship**	**No Risk Identified**	**Risk**	**Risk**
Area of Assessment:	**Governance**			
Urgency:	**Urgent Consideration**			

Observation 1: Kitsap County has purchased software (Mentis aiSmartBench) that duplicates functionality provided by Odyssey (SessionWorks Judges Edition). Currently, AOC does not have a policy regarding the support of county ancillary systems that duplicate the functionality of AOC systems that are in the process of being implemented.

Risk/Impact: If counties or courts continue to implement custom-developed or purchased systems that have overlapping functionality with SC-CMS, then the scope, complexity, and cost of SC-CMS will increase, adding risk to the project. Counties and courts will bear not only the one-time implementation costs of the one-off, stand-alone software, but will have on-going maintenance costs for the software. Likewise, AOC will incur on-going maintenance costs for custom interfaces if one-off, stand-alone systems are implemented.

Recommendation: AOC should adopt a policy regarding the implementation of ancillary systems by counties that provide duplicative functionality of systems being implemented by AOC. Existing policies should be reviewed to see if modification of a current policy would provide the necessary guidance for counties. If an existing policy cannot be modified, then a new policy should be adopted to outline the AOC support guidelines for county systems.

Status: AOC is considering the adoption of an ancillary system policy that would provide guidance to counties on the implementation of software that provides overlapping functionality.

Observation 2: The Project Charter and Steering Committee Charter are being revised in preparation for starting the next phase of the project.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Scope	No Risk Identified	Risk	Risk
Urgency:	Urgent Consideration			

Observation 1: The scope of the SC-CMS project is established in the SC-CMS RFP requirements and deliverables as established by the SC-CMS contract with Tyler Technologies. One of the Odyssey modules negotiated in the Tyler contract is SessionWorks Judge Edition which will provide Washington judges with quick access to case information and other court-related documents. However, Kitsap County has purchased a competing product called aiSmartBench from Mentis Technology and has requested that AOC provide an interface to this system. In August, a comparison performed by AOC between Odyssey SessionWorks Judge Edition and aiSmartBench found that SessionWorks not only provides all of the capabilities of aiSmartBench but also offers additional features beyond what aiSmartBench provides.

Risk/Impact: Over time, some Washington counties have implemented various ancillary systems to supplement the lack of functionality in the legacy systems that SC-CMS will replace. Replacement of these ancillary systems with SC-CMS functionality is an important aspect of the SC-CMS implementation in order to realize cost savings and improved reliability inherent in an integrated system. If counties or courts continue to implement custom-developed or purchased systems that have overlapping functionality with SC-CMS, then the scope, complexity, and cost of SC-CMS will increase, adding risk to the project. Counties and courts will bear not only the one-time implementation costs of the one-off, stand-alone software, but will have on-going maintenance costs for the software. Likewise, AOC will incur on-going maintenance costs for custom interfaces if one-off, stand-alone systems are implemented.

Recommendation: AOC should work with Kitsap and other counties to help them understand the capabilities of Odyssey SessionWorks and the functionality, integration, and cost advantages of using Odyssey components. The same approach should be used to communicate Odyssey functionality to all counties so that new systems or enhancements to existing systems that duplicate the functionality of Odyssey are not implemented in the counties.

Status: AOC is considering the adoption of an ancillary system policy that would provide guidance to counties on the implementation of software that provides overlapping functionality.

Observation 2: Project scope was increased during contract negotiations with the inclusion of Odyssey document management, financial management, and e-filing modules in the SC-CMS implementation. AOC had planned for resources to implement and support the SC-CMS project based on the scope currently defined in the SC-CMS RFP. These additional modules will increase the resources required to complete the project successfully. The planning for resources to support the additional scope is underway.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Schedule	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: The Tyler contract was executed on schedule in July. Planning meetings with Tyler continued in September. Fig/gap sessions will be begin in October.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Budget	No Risk Identified	No Risk Identified	Risk
Urgency:	Urgent Consideration			

Observation/Risk: Discussions are underway to determine the level of AOC support for local preparation and implementation costs. A list of potential categories of costs has been developed. The SC-CMS Feasibility Study estimated the costs for local preparation and implementation costs to be approximately $1.9 million dollars, and this amount of funding has been allocated to the project budget over the implementation timeframe. Estimating local implementation costs is difficult because of varying county needs. Although it is reasonable for counties to receive some assistance in implementation costs, it is also reasonable that counties would incur some of the preparation and implementation costs based on the benefit that they will derive from the implementation.

Impact: If a decision is made to fund the local costs that exceed the $1.9 million currently allocated for local implementation, then additional funding will have to be transferred from elsewhere such as reduction of SC-CMS scope, additional appropriation from the legislature, or reduction of funding for other AOC projects.

Recommendation: The alternatives for resolving this issue should be documented with an analysis of advantages and disadvantages, impacts,

and costs from both a local and statewide perspective. This analysis should include the likelihood of each alternative being implemented. For example, although reduction of SC-CMS may be an alternative, the likelihood of being able to reduce scope may be low. These alternatives should be processed through the SC-CMS governance process to obtain a decision.

		July 2013	Aug 2013	Sept 2013
Category:	**Project Management and Sponsorship**	**No Risk Identified**	**No Risk Identified**	**No Risk Identified**
Area of Assessment:	**Project Communications**			
Urgency:	**N/A**			

Observation: The project utilizes several approaches to communicate information to project stakeholders. Project status is communicated to AOC management, project team members, and other AOC stakeholders in multiple weekly meetings. Project Steering Committee Meetings are conducted weekly. Information is provided to representatives of the Judges, Clerks, and Administrators associations who pass information to the association members through their normal communication paths.

Status: The Communications Management Plan contains an approach for both internal and external communications activities. Internal communication activities include project status reports, performance reports, and project team meetings. External communications are used to inform stakeholders and end-users, in particular, of project activities that will affect them.

Recommendation: Although there are multiple approaches to communicating project status and organizational change management information, it would be advisable for the project to conduct periodic surveys to determine the effectiveness of the various forms of communication being utilized. Effectiveness could be measured by gauging the project-related knowledge of internal and external stakeholders at all levels. Based on the results of surveys, approaches to project communications can be revised. Some approaches may be eliminated if they are found to be ineffective, or supplemental communications may be necessary to augment the current forms of communications.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Staffing and Project Facilities	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: The staffing plan is being re-evaluated to identify any additional resource requirements due to the increase in project scope through the addition of the Odyssey document management, financial management, and e-filing modules. This will impact not only AOC resources but also will require the involvement of court staff during all phases of implementation. Detailed requirements for these modules will have to be developed and vetted, design and configuration deliverables will have to be reviewed, and the modules will have to be tested.

Identification and commitment of subject matter experts (SMEs) from AOC staff, court clerks, judges, and administrators should begin well before the requirements validation and system configuration session that will start soon now that contract negotiations are complete and will last three to four months. Participation in the configuration, design, and user acceptance testing activities by business area representatives with substantial knowledge of their business processes will be critical to the success of the project. Often the staff with the best knowledge of business processes are also needed to keep the business processes running effectively, and the level of service provided by the business can be degraded if resources are pulled away to perform project work. It may be necessary to provide additional temporary resources to backfill staff utilized for project activities. It may also be necessary for the business to delay work, reduce the level of services, or fill the resource gap with overtime in order to provide the necessary project resources. Management will need to consider and evaluate the impact of resource constraints on operations and project activities, and the risk of implementing a system that does not meet the business needs of the organizations involved (due to overly constrained resources during configuration and implementation). Expectations should be set with management and staff in the business areas and with their customers about the potential impact to business operations by the reallocation of resources during the project timeframe.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Change Management	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: With the execution of the Tyler contract, the scope and budget have been baselined. All changes to scope or budget will be processed through the change management process.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Risk Management	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: Consistent with the Risk Management Plan, the project is identifying and managing risks.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Issue Management	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: Consistent with the Issue Management Plan, the project team is identifying and tracking issues.

Category:	Project Management and Sponsorship	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Quality Management	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: The project team has developed a Quality Management Plan.

Category:	People	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Stakeholder Engagement	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: Stakeholder engagement and organizational change management activities are underway. Thurston and Lewis counties have been select to participate in the project as “pilot sites”.

Category:	People	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Business Processes / System Functionality	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: In 2012, the CBO began the analysis and validation of the existing court business processes and began developing As-Is process models. Approximately one hundred twenty (120) current state business process flows have been developed, and fifty (50) have been validated and approved by the CUWG. Thirty (30) current state process flows are being reviewed by the CUWG.

Category:	People	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Vendor Procurement	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: The SC-CMS Project Steering Committee contract with Tyler Technologies was executed in July, 2013. No other vendor procurements are planned at this time.

Category:	People	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Contract Management / Deliverables Management	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation/Risk: The list and schedule of vendor deliverables are confirmed in the executed contract with Tyler. Management of the contract began in September.

Category:	Application	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Application Architecture	No Risk Identified	No Risk Identified	Risk
Urgency:	Urgent Consideration			

Observation: The Clerks' representatives on the SC-CMS Steering Committee have said that they are not interested in using the Odyssey document management functionality that is included (at no additional costs) in the standard Odyssey implementation.

Impact: If counties do not use Odyssey to store copies of documents, then some document management functionality will not be available in Odyssey and counties will have to pay license, implementation, and infrastructure costs for the local implementation of their document management system.

Status: The Clerks Association will be providing a document explaining the reason that the Odyssey document management functionality does not meet their document management requirements.

Recommendation: *bluecrane* agrees with the AOC approach in understanding the Clerk's objection to storing documents in a central location with local control. In addition, it may be helpful for AOC to provide a detailed assessment that compares the functionality of the local storage/local control and the central storage/local control options, including a description of each with a list of functionality – possibly including screenshots, what is

common between the two, advantages and disadvantages from both a local and statewide view, risks, and costs. This type of comparison can help show that the two approaches to document storage are essentially the same.

Category:	Application	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Requirements Management	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: The project's business analysts have loaded the SC-CMS requirements into the Rational Requirements Composer (RRC) requirements management tool that is being used to document requirements and for traceability. The CBO and CUWG will document Use Cases for the To-Be processes as needed.

Category:	Application	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Application Interfaces	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation/Risk: The INH and COTS-Prep Application projects are defining and preparing interfaces using the interface information currently available. Additional activities will be planned as further definition of SC-CMS interface requirements are made available with the start of vendor activities in October.

Category:	Data	July 2013	Aug 2013	Sept 2013
Area of Assessment:	Data Preparation	No Risk Identified	No Risk Identified	No Risk Identified
Urgency:	N/A			

Observation: The Data Quality Coordinator will coordinate preparation of data in AOC and local court applications. One of the activities is the development of a data profiling report which will identify anomalies in data stored in JIS.

The project has hired a System Support Technician who will help prepare and extract SCOMIS data for each superior court and county clerk office in the format that Tyler can import into Odyssey.

JIS - IT Governance Requests

Above the Water . . .

Court IT Governance Requests:
(What the JISC and Court Community Sees)

SC-Data Exchange	CLJ Revised Computer Records Retention and Destruction Process
SC-Case Management System	Print Bench Warrants on Plain Paper
Information Networking Hub	Court Notifications When Critical Identifiers Changed
COTS Preparation	Allow FTA's to issue when AR is Zero
AC-Electronic Content Management System	Adding Accounting Data to the DW

Below the Surface . . .

- Legislative Mandates
- Infrastructure Maintenance Projects
- Unplanned/Unexpected Activities

ISD IT Project List

Priority	ITG/Project	Name	JISC Guidance	Authorization Date	Stage	Project Type
In-Progress						
	ITG203	MANDATE Limitations on Juvenile Records Access	Mandate	9/6/2013	Execute	Mandate
	DCAssess	MANDATE AOC Data Center Assessment	Mandate		Execute	Mandate
1	Security	Security Upgrades (including BOXI Upgrade)	Maintain Portfolio		Execute	Infrastructure
2	ITG121	Superior Court Data Exchange	Integrate to Inform	6/1/2010	Execute	New product/service
3	ITG2	Superior Courts Case Management System	Modernize Applications	5/6/2011	Execute	New product/service
4	INH	Information Networking Hub	Integrate to Inform	5/19/2011	Execute	New product/service
5	COTSP	COTS Preparation	Maintain Portfolio	5/19/2011	Execute	Infrastructure
6	ITG45	Appellate Court ECMS	Modernize Applications	2/18/2011	Execute	New product/service
7	ITG41	CLJ Revised Computer Records Retention and Destruction Process	Maintain Portfolio	2/18/2011	Execute	Application enchancemer
8	ITG58	Enhance JIS to allow bench warrants to print on plain paper (incl 37 & 79)	Maintain Portfolio	3/23/2011	Execute	Application enchancemer
9	ITG161	Upgrade Natural	Provide Infrastructure	4/2/2013	Execute	Infrastructure
10	ITG162	Upgrade CICS	Provide Infrastructure	4/2/2013	Execute	Infrastructure
11	ITG163	Upgrade Websphere	Provide Infrastructure	4/2/2013	Execute	Infrastructure
12	ITG156	Court Notification when Critical Identifiers changed	Maintain Portfolio	3/28/2013	Execute	Application enchancemer
13	ITG137	Update CA Clarity v13	Modernize Applications	5/9/2012	Execute	Application enchancemer
14	ITG077	Allow FTAs to Issue When AR is Zero	Maintain Portfolio	3/28/2013	Execute	Application enchancemer
15	ITG126	Update Sharepoint v2010	Modernize Applications	5/9/2012	Execute	New product/service

Mandates

- Limitations on Juvenile Records Access
- AOC Data Center Assessment

Infrastructure Maintenance Projects

- Security Upgrades (Unplanned)
- Natural Programming Language Upgrade
- Mainframe CICS Upgrade
- WebSphere Upgrade
- BOXI Upgrade (Data Warehouse)

Projects Planned for this Biennium

- Seattle Muni Data Transfer (ITG 27)
- CLJ Case Management System – Business Requirements (ITG 102)
- Legislation as needed from 2014 Session

Authorized But Unscheduled

- PACT Domain 1 Integration
- DOC Data Exchange Upgrade
- Guardian Application
- DCH and Sealed Juvenile Cases
- New DOL ADR Format
- Event Manager
- Transparent audit trail on CKR for jurisdiction transfers
- Single password for JIS/JABS and Inside Courts
- SCOMIS Field for CPG Number
- Display of charge title without modifier of attempt
- Automate Courts DCXT Table Entries
- Web-based complaint management system
- Add Bond Transferred Disposition Code
- Connect CDT and AKA
- Batch enter attorney's to multiple cases
- Allow Full Print on Docket Public View Rather than Screen Prints
- Prioritize Restitution Recipients
- Combine True Name and Aliases for timepay
- Imaging and Viewing of Court Documents

Primary JIS Applications

Acronym	Application Name	Serving	Support FTE's
ACORDS	Appellate Court Records & Data System	Appellate Courts	.7
CAPS	Court Automated Proceeding System	Superior Court – Yakima County Only	.1
DW	Data Warehouse	All courts & public access	5
ETP / VRV	Electronic Ticketing Process / Vehicle Related Violations	CLJ & Law Enforcement	.6
JABS	Judicial Access Browser System	Superior Courts, CLJ, & Juvenile	.6
JCS	Juvenile & Corrections System	Juvenile	3.1
DISCIS (JIS)	District Court Information System	Superior Courts, CLJ, & Juvenile	4.75
JRS	Judicial Receipting System	Superior Courts	1.7
SCOMIS	Superior Court Management Information System	Superior Courts & Juvenile	2.75

CIO Intent

- Limited staff resources to get the work done.
- Need to avoid wasting valuable staff time analyzing ITG requests that are nonessential to existing workload & capacity limitations.

CIO Recommended Process Change

- New ITG requests need to be “Pre-screened” to weed out requests that:
  - have already been approved in another ITG request;
  - require significant changes to systems that are being replaced or upgraded (e.g., SCOMIS and ACORDS);
  - Have a negative impact on other projects that are underway (e.g., SC-CMS; AC-ECMS)

….. Before ITG Analysis starts

Status of ITG Requests By Court Level

Court Level	Completed	In Process	Scheduled	Authorized
Appellate	3	1	0	0
Superior	6	2	0	4
CLJ	7	4	1	9
Multi-Level	5	1	0	6

ISD IT Project List
Scheduling Priority

Priority	ITG / Project	Name	CLUG Priority	CLUG Importance	JISC Priority	JISC Guidance	JISC Guidance Value	Authorization Date	Stage	Project Type
In-Progress										
	ITG203	MANDATE Limitations on Juvenile Records Access				Mandate	1	9/6/2013	Execute	Mandate
	DCAssess	MANDATE AOC Data Center Assessment				Mandate	1		Execute	Mandate
1	Security	Security Upgrades (including BOXI Upgrade)				Maintain Portfolio	2		Execute	Infrastructure
2	ITG121	Superior Court Data Exchange			1	Integrate to Inform	3	6/1/2010	Execute	New product/service
3	ITG2	Superior Courts Case Management System			2	Modernize Applications	4	5/6/2011	Execute	New product/service
4	INH	Information Networking Hub	1	H		Integrate to Inform	3	5/19/2011	Execute	New product/service
5	COTSP	COTS Preparation	1	H		Maintain Portfolio	2	5/19/2011	Execute	Infrastructure
6	ITG45	Appellate Court ECMS	1	H	3	Modernize Applications	4	2/18/2011	Execute	New product/service
7	ITG41	CLJ Revised Computer Records Retention and Destruction Process	3	H	5	Maintain Portfolio	2	2/18/2011	Execute	Application enchancement
8	ITG58	Enhance JIS to allow bench warrants to print on plain paper (incl 37	4	H		Maintain Portfolio	2	3/23/2011	Execute	Application enchancement
9	ITG161	Upgrade Natural	4	H		Provide Infrastructure	1	4/2/2013	Execute	Infrastructure
10	ITG162	Upgrade CICS	5	H		Provide Infrastructure	1	4/2/2013	Execute	Infrastructure
11	ITG163	Upgrade Websphere	6	H		Provide Infrastructure	1	4/2/2013	Execute	Infrastructure
12	ITG156	Court Notification when Critical Identifiers changed	3	H		Maintain Portfolio	2	3/28/2013	Execute	Application enchancement
13	ITG137	Update CA Clarity v13	8	H		Modernize Applications	4	5/9/2012	Execute	Application enchancement
14	ITG077	Allow FTAs to Issue When AR is Zero	10	M		Maintain Portfolio	2	3/28/2013	Execute	Application enchancement
15	ITG126	Update Sharepoint v2010	4	H		Modernize Applications	4	5/9/2012	Execute	New product/service
Scheduled										
Planned (Not Started)										
16	ITG27	Expanded Seattle Municipal Court Case Data Transfer	1	H	6	Integrate to Inform	3	5/6/2011	Authorized	New product/service
17	ITG102	Request for new case management system to replace JIS	2	H	7	Modernize Applications	4	12/2/2011	Authorized	New product/service
18	ITG107	PACT Domain 1 Integration	1	H		Integrate to Inform	3	1/24/2012	Authorized	New product/service
19	ITG144	DOC Data Exchange Upgrade	1	H		Integrate to Inform	3	9/6/2012	On hold	Application enchancement
20	ITG94	Guardian Application	1	H		Modernize Applications	4	5/9/2012	On hold	Application enchancement
21	ITG152	DCH and Sealed Juvenile Cases	2	H		Maintain Portfolio	2	3/28/2013	Authorized	Application enchancement
22	ITG108	New DOL ADR Format	2	H		Integrate to Inform	3	5/9/2012	On hold	Application enchancement
23	ITG122	Event Manager	2	H		Modernize Applications	4	5/9/2012	Authorized	New product/service
24	ITG138	Transparent audit trail on CKR for jurisdiction transfers	3	H		Maintain Portfolio	2	12/17/2012	Authorized	Application enchancement
25	ITG87	Single password for JIS/JABS and Inside Courts	3	M		Maintain Portfolio	2	12/15/2011	Authorized	Application enchancement
26	ITG7	SCOMIS Field for CPG Number	4	H	10	Maintain Portfolio	2	2/18/2011	Authorized	Application enchancement
27	ITG116	Display of charge title without modifier of attempt	4	M		Maintain Portfolio	2	12/17/2012	Authorized	Application enchancement
28	ITG62	Automate Courts DCXT Table Entries	5	M	9	Maintain Portfolio	2	5/4/2012	Authorized	Application enchancement
29	ITG143	Web-based complaint management system	5	M		Modernize Applications	4	12/17/2012	Authorized	New product/service
30	ITG141	Add Bond Transferred Disposition Code	6	M		Maintain Portfolio	2	3/28/2013	Authorized	Application enchancement
31	ITG171	Connect CDT and AKA	8	M		Maintain Portfolio	2	3/28/2013	Authorized	Application enchancement
32	ITG32	Batch enter attorney's to multiple cases	9	M		Maintain Portfolio	2	2/3/2011	Authorized	Application enchancement
33	ITG68	Allow Full Print on Docket Public View Rather than Screen Prints	11	M		Maintain Portfolio	2	4/12/2011	Authorized	Application enchancement
34	ITG26	Prioritize Restitution Recipients	12	M	11	Maintain Portfolio	2	2/18/2011	Authorized	Application enchancement
35	ITG31	Combine True Name and Aliases for timepay	13	M	12	Maintain Portfolio	2	2/18/2011	Authorized	Application enchancement
36	ITG3	Imaging and Viewing of Court Documents				Integrate to Inform	3	8/9/2011	Authorized	New product/service

Ranking Methodology:
Active Projects are prioritized by ISD Leadership Team.
Planned Projects are sorted by: CLUG Priority, CLUG Importance, JISC Priority, JISC Guidance Value, Authorization Date.

Judicial Information System Committee Meeting October 25, 2013

Workgroup on Retention of Records by Courts of Limited Jurisdiction

REQUEST FOR JISC DIRECTION

I. BACKGROUND

The Data Dissemination Committee (DDC) was established by Article 7 of the JISC Bylaws and acts on the behalf of the JISC in addressing issues regarding the access to the JIS and the dissemination of information from the database. The Data Dissemination Committee also recommends to the JISC changes to the JIS policy and to statutes or court rules regarding access to court records.

In 2008, a work group was organized at the direction of the Data Dissemination Committee and chaired by Pierce County District Court Judge James Heller to review the retention schedules of courts of limited jurisdiction.

Based on the work group's recommendations, the DDC and the JISC voted in 2008 to enact a retention schedule for electronic case records. However, the schedule was never implemented. In 2011, AOC began work on IT Governance (ITG) Request 41 to implement the destruction rules decided by the JISC in 2008. In the course of the project, the Data Dissemination Committee made a number of policy decisions further refining the original retention decisions.

In 2012, the DDC proposed an amendment to the JIS Data Dissemination Policy to formalize the details of the retention schedule further defined during the work on ITG Request 41. The Data Dissemination Committee received a number of comments from the court community regarding the proposed policy, summarized below.

On May 31, 2013, the Data Dissemination Committee voted unanimously to amend the Data Dissemination Policy and forward it to the JISC for approval. The Committee also provided a comment period for interested parties to submit their commentary about the proposed change.

As of July 3, 2013, staff for the Data Dissemination Committee received four comments that are attached to this memo and are summarized as follows:

1. The District and Municipal Court Judges' Association (DMCJA) submitted a letter expressing:
   A. Concern from DMCJA members that non-conviction data for domestic violence offenses be kept longer than the proposed retention schedule allowed.

B. Concern about purging cases that have case types with no disposition after three years when the Judicial Needs Estimate uses five years of data to make necessary calculations.

C. Concern over the Policy's new subsection V.D that allows a judge to order a specific record not to be purged and to enter findings on the record supporting the decision. DMCJA requested that the JISC not adopt this provision unless a corresponding policy or set of criteria for such retention be established.

2. Douglas County District Court Administrator Marcella Presler requested language be added to the Data Dissemination Policy amendment so that the new subsection V.D stated:

> "A judge may order or have in place a policy that a specific record shall not be purged. The court shall enter specific findings on the record supporting its decision or follow the policy as set forth and signed by the judge."

3. Washington Defender Association Executive Director Christie Hedman commented that all "not guilty" and "not committed" cases should be kept in perpetuity instead of being purged at ten years. Her reasoning is that those who are found not guilty should have the same ability to prove their verdicts as those who are convicted.

4. Linda Callahan of Callahan Law, P.S., Inc. also submitted concerns that "guilty" findings are kept in perpetuity, whereas "not guilty" findings are purged after ten years. Ms. Callahan also expressed frustration over the limited JIS access to attorneys who are not prosecutors and public defenders.

Considering the comments received, the JISC established another workgroup to review the proposed policy in light of the comments and make a recommendation to the JISC.

II. DISCUSSION -

The workgroup has met several times and is unable to unanimously agree on a policy that would satisfy all concerns. There are a number of facts that influenced the discussion.

The original policy draft calls for civil cases with domestic violence, harassment, or sexual assault protection orders to be retained forever, but not criminal cases that are flagged as domestic violence related. In stakeholder comments, concerns were raised about retaining civil domestic violence cases, but not criminal domestic violence cases. The workgroup discussed the possibility of retaining cases that have been "flagged" as domestic violence (DV) related. One issue that was raised is that the DV flag can be put on or removed from a case record at any time.

The original policy draft contained a provision allowing a judge to flag individual cases to be retained forever, regardless of the rules for cases of that type and finding/judgment code. There were concerns raised about the subjectivity of individual judges using a flag on a case-by-case basis.

To address concerns about the case-by-case retention, the workgroup proposed retaining records forever for certain classes of charges, such as sexual offenses. However, the workgroup members received information from the ITG 41 project team that the coding required to differentiate case records on that basis would be much more complex. It would require a much longer period to complete, likely at least a year of effort, and would require re-working the coding that was already done in the first phase of the project. Resources for ITG 41 are not currently allocated for that larger scope of work.

The workgroup members are requesting direction from the JISC on which of the following alternatives would be preferable.

1. **Retain all cases except infractions** (see attached Chart 1). Does not accomplish the original intent of the JISC to delete non-conviction records that serve "no public purpose and may be a disservice to the public and the subject of the records." (2008 memo from Judge Heller, CLJ Records Retention Workgroup Chair, to Justice Mary Fairhurst, JISC Chair).

   Project Impact: The project will be closed at the end of Phase 1 in February 2014

2. **Destroy records as originally proposed by the Data Dissemination Committee, including the ability for a judge to flag an individual case for permanent retention.** (see attached Chart 2)

   Project Impact: Resources permitting, the project can be completed within the currently planned schedule.

3. **Destroy records as originally proposed**, **but without the ability for a judge to flag an individual case for permanent retention.** This addresses DMCJA Comment B, and the comment from Douglas County District Court Administrator Marcella Presler.

   Project Impact: Resources permitting, the project can be completed within the currently planned schedule.

4. **Destroy records as originally proposed, with or without the individual case flag, but permanently retain all criminal cases with a DV flag.** This addresses DMCJA Comment A regarding criminal domestic violence cases.

   Project Impact: This would probably add a small amount of work to the project. It is unknown whether this additional work would delay the project.

5. **Only destroy dismissed cases with certain dismissal reason codes.** Examples are: clerical error, defendant deceased, duplicate filing, bound over, change of venue, filed directly, court lacks jurisdiction. (see attached Chart 3) This would result in far fewer dismissed case records being deleted, only partially accomplishing the original intent of the JISC.

   Project Impact: Resources permitting, the project can be completed within the currently planned schedule.

6. **Retain records permanently for certain classes of charges.** This addresses concerns of workgroup members about deleting dismissed cases for certain classes of charges, such as sexual offenses.

   Project Impact: This would require reworking of the entire coding framework of Phase 1 and be much more complex to implement in the system. It would require a longer period much more work than is currently allocated for the ITG 41 project.

Note: The DMCJA has asked the Washington State Center for Court Research to look at changing the way the Judicial Needs Estimates (JNE) are produced. The JNE needs five years of data. Revisions to the JNE might require some of the infraction data that is deleted after three years under current retention rules. DMCJA Comment B addresses this issue.

Currently, no infraction data is being deleted from JIS. However, until archiving was halted in 2013 as part of the ITG 41 project, infraction case records *other than* e-tickets and vehicle-related violations were deleted after three years. In February 2014, at the end of Phase 1 of the ITG 41 project, *all* infraction case data will be deleted after three years. AOC is currently looking into ways to preserve the data necessary to produce the JNE without altering the current retention schedule.

Chart 1 – Retention Schedule to be Implemented February 2014

The following policy/rules are scheduled for implementation in February 2014

Retention of Records Summary

Casetype = CV, SC, or PR
The system will determine retention based on overall casetype & cause code

Casetype	Cause Code	Retention
CV-Civil	DVP, HAR, SXP	Never Purge
CV-Civil	Any other	10 years & 4 months
SC-Small Claims PR - Parking (Will inc elect. Parking - VRV)	Any	3 years

Notes:

- **All retention periods begin after case is closed**
- **Case is retained based on the longest retention period for any charge on the case**
- **See Plea / Sentencing codes at Inside Courts website for code descriptions**

Casetype = IT, IN, CT, CN, PC, CF
The system will determine retention based on casetype and disposition of each charge

Finding / Judgment	Casetype of Charge (will include all eTickets)			Finding / Judgment Codes Included
	CT, CN	PC, CF	IT, IN	
Guilty / Committed	Never purged	Never purged	3 yrs	AS, BF, C, P, G, GO, GS, GV, GR, PI, RP, GY, GZ
Not Guilty / Not Committed	Phase 1 - Not purged Future - TBD	Phase 1 - Not purged Future - TBD	3 yrs	NG, NC
46.63.070 Deferred Finding (IT	NA	NA	7 yrs	CD, DD
Dismissed - Incompetency, or Not Guilty - Insanity	Never purged	Never purged	3 yrs	D, DO, DW with reason code of IC; or NS
10.05 Deferred Prosecution	Never purged	Never purged	3 yrs	GO, GD; or D, DO, DW with dismissal reason code of
Dismissed for all other reasons	Phase 1 - Not purged Future - TBD	Phase 1 - Not purged Future - TBD	3 yrs	D, DO, DW, DS, or OD, with a dismissal reason code of blank or anything other than IC, DP, or FD
Vacated	Never purged	Never purged	N/A	V
Case Transferred	Phase 1 - Not purged Future - TBD	Phase 1 - Not purged Future - TBD	3 yrs	BO, CV; or D with a reason of FD
Amended	Retention not based on AM finding Retention is based solely on issues with findings other than AM			AM

Chart 2 – Retention Schedule as Originally Proposed by the Data Dissemination Committee

These were the original rules/policy

Retention of Records Summary

Casetype = CV, SC, or PR. The system will determine retention based on overall casetype & cause code

Casetype	Cause Code	Retention
CV-Civil	DVP, HAR, SXP	Never Purge
CV-Civil	Any other	10 years & 4 months
SC-Small Claims PR - Parking (VRV)	Any	3 years

Notes:

- **All retention periods begin after case is closed**
- **Case is retained based on the longest retention period for any charge on the case**
- **See Plea / Sentencing codes at Inside Courts website for code descriptions**

Casetype = IT, IN, CT, CN, PC, CF. The system will determine retention based on casetype and disposition of each charge

Finding / Judgment Types	Casetype of Charge			Finding / Judgment Codes Included
	CT, CN	PC, CF	IT, IN	
Guilty / Committed	Never purged	Never purged	3 yrs	AS, BF, C, P, G, GO, GS, GV, GR, PI, RP, GY, GZ
Not Guilty / Not Committed	10 yrs	10 yrs	3 yrs	NG, NC
46.63.070 Deferred Finding (IT only)	NA	NA	7 yrs	CD, DD
Dismissed - Incompetency, or Not Guilty - Insanity	Never purged	Never purged	3 yrs	D, DO, DW with reason code of IC; or NS
10.05 Deferred Prosecution	Never purged	Never purged	3 yrs	GO, GD; or D, DO, DW with dismissal reason code of DP
Dismissed for all other reasons	10 yrs	3 yrs	3 yrs	D, DO, DW, or OD, with a dismissal reason code of blank or anything other than IC, DP, or FD
Vacated	Never purged	Never purged	N/A	V
Case Transferred	3 yrs	3 yrs	3 yrs	BO, CV; or D with a reason of FD
Amended	Retention not based on AM finding Retention is based solely on issues with findings other than AM			AM

Chart 3 – Retention Schedule with Limited Dismissed Criminal Cases Purged

The following could be easily implemented within the framework that has been set up

Retention of Records Summary

Casetype = CV, SC, or PR
The system will determine retention based on overall casetype & cause code

Casetype	Cause Code	Retention
CV–Civil	DVP, HAR, SXP	Never Purge
CV–Civil	Any other	10 years & 4 months
SC–Small Claims PR – Parking (Will inc elect. Parking – VRV)	Any	3 years

Notes:

- **All retention periods begin after case is closed**
- **Case is retained based on the longest retention period for any charge on the case**
- **See Plea / Sentencing codes at Inside Courts website for code descriptions**

Casetype = IT, IN, CT, CN, PC, CF
The system will determine retention based on casetype and disposition of each charge

Finding / Judgment Types	Casetype of Charge (will include all eTickets)			Finding / Judgment Codes Included
	CT, CN	PC, CF	IT, IN	
Guilty / Committed	Never purged	Never purged	3 yrs	AS, BF, C, P, G, GO, GS, GV, GR, PI, RP, GY, GZ
Not Guilty / Not Committed	Not purged	Not purged	3 yrs	NG, NC
46.63.070 Deferred Finding (IT only)	NA	NA	7 yrs	CD, DD
Dismissed – Incompetency, or Not Guilty – Insanity	Never purged	Never purged	3 yrs	D, DO, DW with reason code of IC; or NS
10.05 Deferred Prosecution	Never purged	Never purged	3 yrs	GO, GD; or D, DO, DW with dismissal reason code of DP
Dismissed for all other reasons	Only specified dismissal reason codes purged	Only specified dismissal reason codes purged	3 yrs	D, DO, DS, DW, or OD, with a dismissal reason code of blank or anything other than IC, DP, or FD *Determine some dismissal reason codes that could be purged for any charge
Vacated	Never purged	Never purged	N/A	V
Case Transferred	3 yrs	3 yrs	3 yrs	BO, CV; or D with a reason of FD
Amended	Retention not based on AM finding Retention is based solely on issues with findings other than AM			AM

ITG Request 45 – Appellate Courts Enterprise Content Management System (AC-ECMS)

Project Update

Martin Kravik, Project Manager

October 25, 2013

Recent Activities

- ✓ JISC approved project Executive Steering Committee (ESC) recommendation to execute a contract with ImageSoft Inc. on September 6, 2013
- ✓ Contract was executed on September 13, 2013
- Resumed analyzing changes to JIS Link and the web portal into ACORDS information
- Began designing a post-project support model for the system with the appellate courts

Active Project Risks

Total Project Risks		
Low Exposure	Medium Exposure	High Exposure
1	0	0

Significant Risk Status

Risk	Probability/Impact	Mitigation
0	0	0

Active Project Issues

Total Project Issues			
Low Urgency	Medium Urgency	High Urgency	Closed
1	0	0	5

Significant Issues Status

Issue	Urgency/Impact	Action
None		

Next Steps

Milestone	Date
✓ Initial project planning meeting with ImageSoft	October, 2013
Project kickoff	October, 2013
Develop the project implementation schedule	November 2013
Begin analysis and design	November 2013
Functional Specification Document delivered	March 2014
System development complete	November 2014
Document Mapping Chart delivered	December 2014
User training (train-the-trainer) provided	January 2015
Technical training provided	January 2015
System testing complete	February 2015
Document conversion complete	March 2015
Production (Go Live) complete	May 2015

Superior Court Data Exchange

Project Update

Mike Walsh - Project Manager

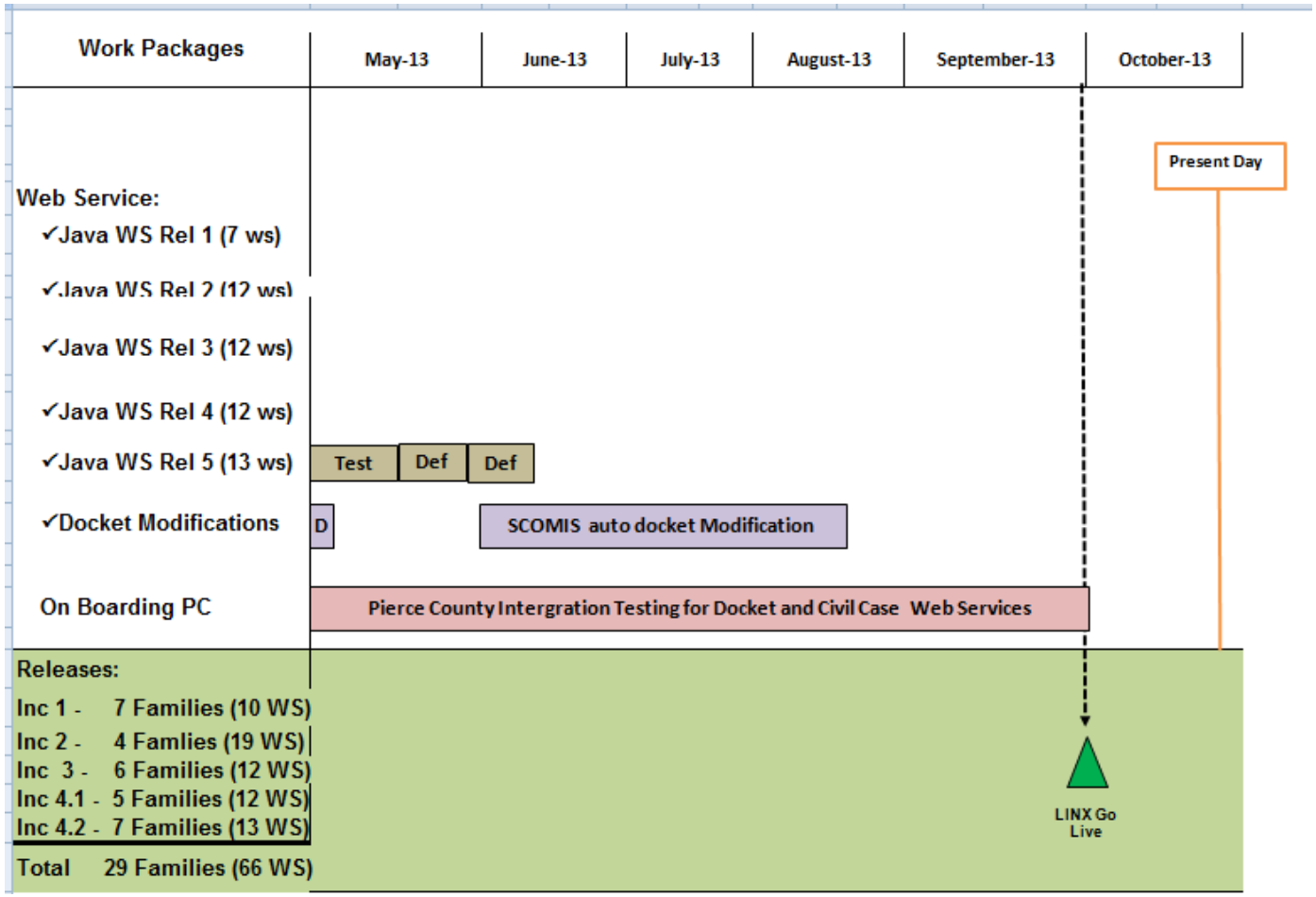
October 25, 2013

Recent Activities

Pierce County data exchange on-boarding:

- ✓ Pierce County started submitting docket and civil case web services on September 30th.
- ❑ Transition support of docket and civil case web services to Data Exchange Operations
- ❑ INH will manage the remaining web services.

Schedule


Work Packages
May-13
June-13
July-13
August-13
September-13
October-13
Present Day
Web Service:
✓Java WS Rel 1 (7 ws)
✓Java WS Rel 2 (12 ws)
✓Java WS Rel 3 (12 ws)
✓Java WS Rel 4 (12 ws)
✓Java WS Rel 5 (13 ws)
Test
Def
Def
✓Docket Modifications
D
SCOMIS auto docket Modification
On Boarding PC
Pierce County Intergration Testing for Docket and Civil Case Web Services
Releases:
Inc 1 - 7 Families (10 WS)
Inc 2 - 4 Famlies (19 WS)
Inc 3 - 6 Families (12 WS)
Inc 4.1 - 5 Families (12 WS)
Inc 4.2 - 7 Families (13 WS)
Total 29 Families (66 WS)
LINX Go Live

Next Steps

Milestone	Date
AOC supports Pierce County, King County and any other customers as they start consuming services	On-going
Produce a lessons learned document	Nov. 2013
Check back with Pierce County, following 2-3 months of web service activity, to determine if plans have changed for using additional data exchanges	Feb. 2014
Evaluate the work effort reduction realized with the elimination of docket and civil cases dual entry in LINX and SCOMIS	Feb. 2014

Information Networking Hub (INH)

Project Update

Dan Belles, PMP - Project Manager

October 25, 2013

INH Strategic Alignment With Odyssey

Integration Strategic Planning With Tyler

- ✓ Technical Discussion With Tyler's Integration Team Sept 9-10
- ✓ Integration Meeting With Tyler – Plano, TX - Oct 3-5
- • Integration Fit Analysis – November 4-15

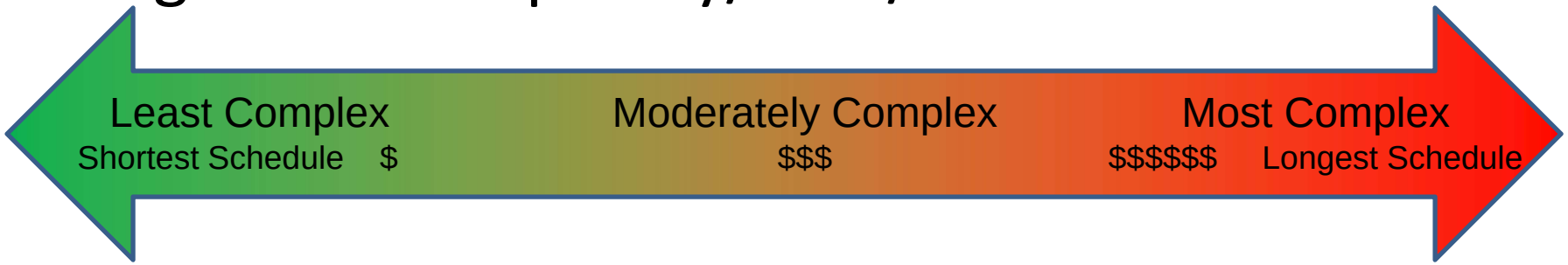
INH Middleware Data Exchanges – Release 1

- ✓ Developed 6 Data Exchanges
- ✓ Deployed 6 Data Exchanges To User Acceptance Testing
- ✓ Tested 9 Data Exchanges
- ✓ Resolved 35+ Defects

Enterprise Data Repository (EDR) – Release 2

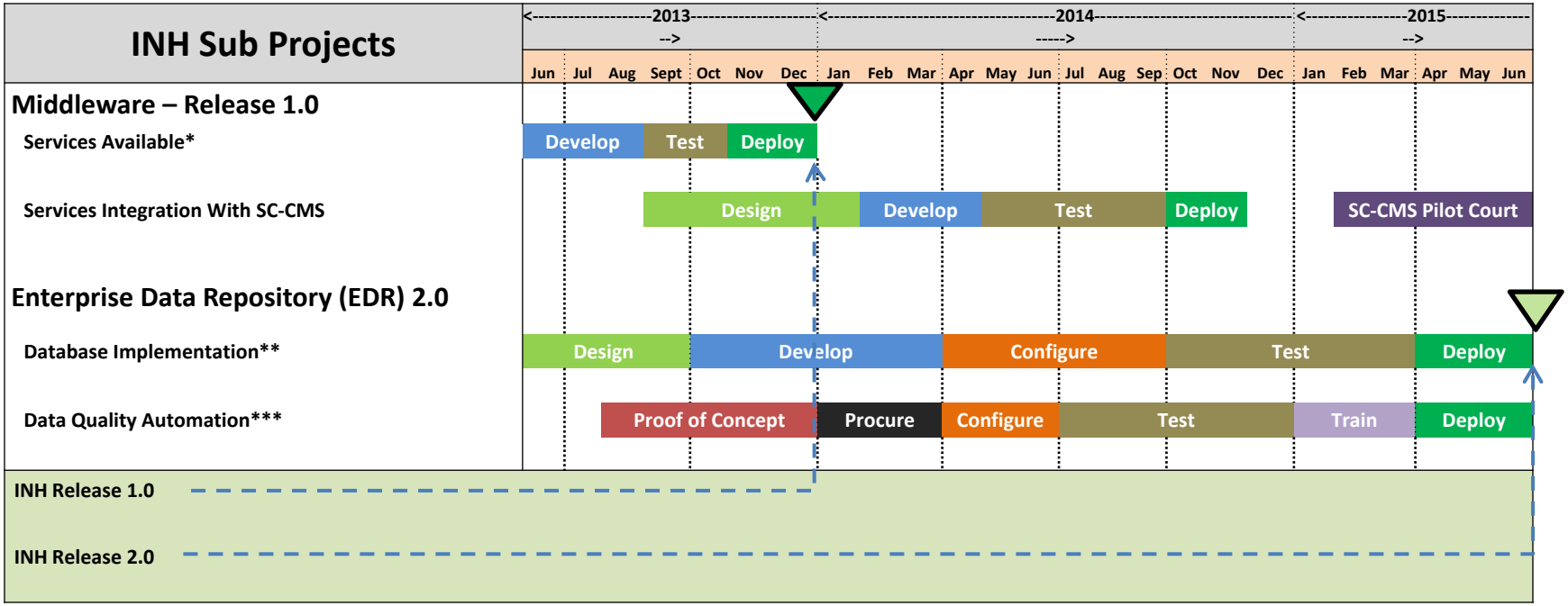
- • Design decisions pending strategic discussion with Tyler

Preliminary Discussion With Tyler: Integration Complexity/Cost/Schedule Continuum



Least Complex	Moderately Complex	Most Complex
No integration between existing systems and Odyssey	Partial integration between existing systems and Odyssey	Full integration between all systems
For Example:		
Case History – Courts use both Odyssey and SCOMIS to separately view case history	Case History – Courts use a portal for a consolidated view of case history from both Odyssey and SCOMIS	Case History – Courts can use either Odyssey or SCOMIS to view all case history no matter what system
Person Data – Odyssey and SCOMIS rely on their own person records for person management with no integration	Person Data – Changes to person data are synchronized between Odyssey and SCOMIS, but not in real time	Person Data – Both Odyssey and SCOMIS have access to the same person data at the same time with changes being synchronized in both systems immediately

Schedule



* Services are available for analysis, testing and integration with the SC-CMS application.
** SC-CMS project pilot court rollout not dependent on EDR deployment.
*** Proposed timeline subject to sponsor/stakeholder approval.

Active Project Risks

Total Project Risks		
Low Exposure	**Medium Exposure**	**High Exposure**
0	**0**	**2**

Significant Risks Status

Risk	Probability/Impact	Mitigation
Critical Project Inter-dependencies	High/High	• Inter-dependent Project Coordination Team (IPCT)
Services Integration with SC-CMS Application	High/High	• Collaborate with SC-CMS technical team and vendor to develop an interface integration strategy

Active Project Issues

Total Project Issues			
Active	Monitor	Deferred	Closed
0	0	0	0

Significant Issues Status

Issue		Urgency/Impact	Action

Next Steps

INH Strategic Planning	
Milestone	Date
✓ Integration Presentation	September 2013
✓ Integration Meeting With Tyler – Plano TX	October 2013
Integration Fit Analysis	November 2013
Begin Integration Testing With SC-CMS	November 2014

Middleware Sub Project	
Milestone	Date
Data Exchanges and BizTalk Enhancements	November 2013
Test INH Services/Resolve Defects	December 2013

Enterprise Data Repository Sub Project	
Milestone	Date
Develop Database Solution*	TBD

***EDR development pending outcome of INH integration strategy discussions with Tyler.**

ITG Request 41 - CLJ Revised Computer Records Retention and Destruction

Project Update

Kate Kruller, PMP - Project Manager

October 25, 2013

Project Objectives

- Eliminate all Courts of Limited Jurisdiction computer record archiving in JIS applications

- Revise destruction of case records processes in JIS, based upon the records retention policy from the Data Dissemination Committee

Recent Activity

- ✓ Provided Project consultation as needed for policy update:
  - ➢ Providing project information needed for JISC – CLJ Work Group policy deliberations
- ✓ Development underway:
  - ➢ Preparing JIS to accommodate current and preliminary rules (administrative tables, selection criteria, destruction criteria, reporting process)
  - ➢ First pass of the code set is written. Submitted for Code Review (limited staff to review).

Active Project Risks

Total Project Risks		
Low Exposure	Medium Exposure	High Exposure
0	0	0

Significant Risk Status

Risk	Probability/Impact	Mitigation

Active Project Issues

Total Project Issues			
Active	Monitor	Deferred	Closed
0	0	0	0

Significant Issues Status

Issue	Urgency/Impact	Action

Next Steps

- Develop Preliminary Rules, July – October, 2013
  - Coding of preliminary destruction rules underway
  - No additional cases are being archived
  - No cases are being destroyed during this process
- Test /Implementation Planning, November – December, 2013
  - System testing prior to deployment
  - Steering Committee approves implementation process
- JIS CLJ Archiving is Decommissioned, January, 2014
  - Updated Destruction of Records Report (DORR)
  - Preliminary rules applied to cases in active tables (current rules, plus eTicket and VRV compliance rules)
- Apply Revised Rules - June, 2014:
  - New records retention and destruction rules applied to active tables

Monthly Status

Report will be

Updated

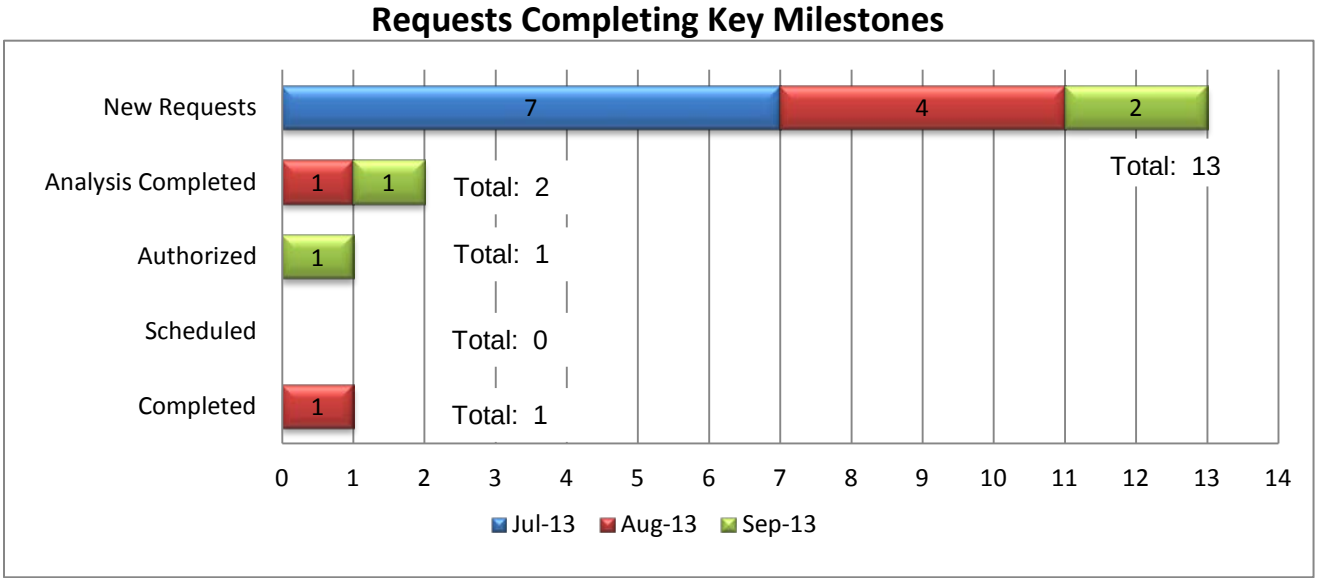
ON

FRIDAY ~ 10/18

Completed JIS IT Governance Requests

No requests were completed during the month of September.

Status Charts



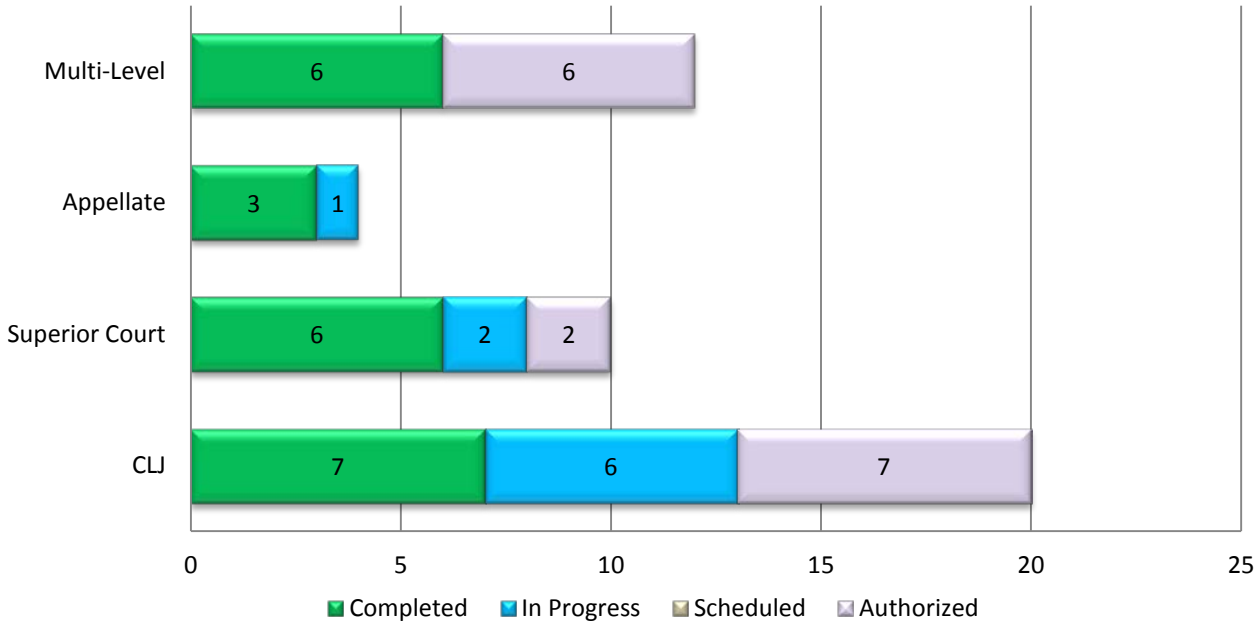
Current Active Requests by:

Endorsing Group			
Court of Appeals Executive Committee	1	**District & Municipal Court Management Association**	26
Superior Court Judges Association	5	**Data Management Steering Committee**	0
Washington State Association of County Clerks	7	**Data Dissemination Committee**	2
Washington State Association of Juvenile Court Administrators	3	**Codes Committee**	3
District & Municipal Court Judges Association	5	**Administrative Office of the Courts**	5
Misdemeanant Corrections Association	1		

Court Level User Group	
Appellate Court	1
Superior Court	9
Courts of Limited Jurisdiction	17
Multi Court Level	8

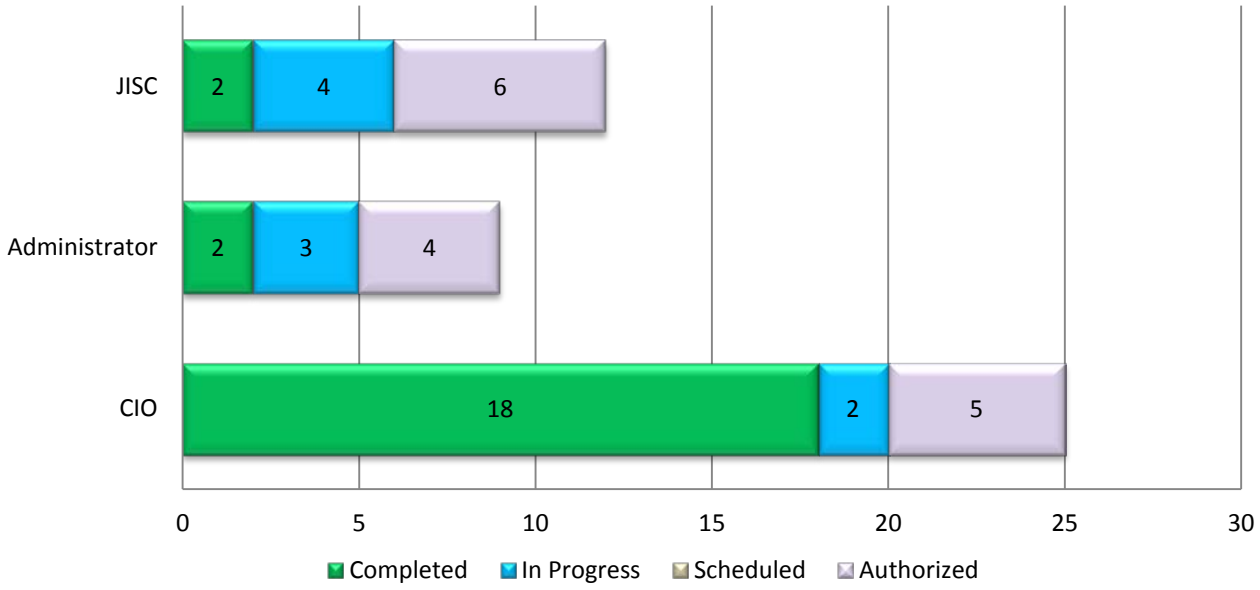
Status of Requests by CLUG

Since ITG Inception



Status of Requests by Authorizing Authority

Since ITG Inception



JISC Priorities

Priority	ITG #	Request Name	Status	Approving Authority	CLUG Importance
1	121	Superior Court Data Exchange	In Progress	JISC	High
2	002	Superior Court Case Management System	In Progress	JISC	High
3	045	Appellate Court ECMS	In Progress	JISC	High
4	041	CLJ Revised Computer Records and Destruction Process	In Progress	JISC	High
5	027	Expanded Seattle Municipal Court Case Data Transfer	Authorized	JISC	High
6	102	Request for new Case Management System to replace JIS	Authorized	JISC	High
7	062	Automate Courts DCXT Table Entries	Authorized	JISC	Medium
8	007	SCOMIS Field for CPG Number	Authorized	JISC	High
9	026	Prioritize Restitution recipients	Authorized	JISC	Medium
10	031	Combine True Name and Aliases for Timepay	Authorized	JISC	Medium

Current as of September 30, 2013

Appellate CLUG Priorities					
Priority	**ITG #**	**Request Name**	**Status**	**Approving Authority**	**CLUG Importance**
1	045	Appellate Courts ECMS	In Progress	JISC	High

Superior CLUG Priorities					
Priority	**ITG #**	**Request Name**	**Status**	**Approving Authority**	**CLUG Importance**
1	107	PACT Domain 1 Integration	Authorized	Administrator	High
2	007	SCOMIS Field for CPG Number	Authorized	JISC	High
Non-Prioritized Requests					
N/A	002	Superior Court Case Management System	In Progress	JISC	High

Courts of Limited Jurisdiction CLUG Priorities

Priority	ITG #	Request Name	Status	Approving Authority	CLUG Importance
1	027	Expanded Seattle Muni Case Data Transfer	Authorized	JISC	High
2	102	New Case Management System to Replace JIS	Authorized	JISC	High
3	174	CLJ Probation Case Management System	Awaiting Auth.		Medium
4	156	Court Notification when Critical Identifiers changed	In Progress	Administrator	High
5	041	CLJ Revised Computer Records Retention and Destruction Process	In Progress	JISC	High
6	058	CLJ Warrant – Print Page	In Progress	CIO	High
7	037	CLJ Warrant – Comment Line	In Progress	Administrator	Medium
8	079	WRO Screen Change under Bail Options	In Progress	Administrator	High
9	032	Batch Enter Attorneys to Multiple Cases	Authorized	CIO	Medium
10	068	Full Print on Docket Public View	Authorized	Administrator	Medium
11	046	CAR Screen in JIS	Awaiting Auth.	CIO	Medium
12	171	Connect CDT and AKA	Authorized	CIO	Medium
13	077	Allow FTAs to Issue When AR is Zero	Authorized	CIO	Medium
14	031	Combine True Name & Aliases for Time Pay	Authorized	JISC	Medium
15	026	Prioritize Restitution Recipients	Authorized	JISC	Medium

Current as of September 30, 2013

Multi Court Level CLUG Priorities					
Priority	**ITG #**	**Request Name**	**Status**	**Approving Authority**	**CLUG Importance**
1	152	DCH and Sealed Juvenile Cases	Authorized	CIO	High
2	087	Allow JIS Password to be Changed in JABS	Authorized	CIO	Medium
3	116	Display of Charge Title Without Modifier of Attempt	Authorized	Administrator	Medium
4	062	Automate Courts DCXT Table Entries	Authorized	JISC	Medium
5	141	Add Bond Transferred Disposition Code	Authorized	CIO	Medium
Non-Prioritized Requests					
N/A	003	Imaging and Viewing of Court Documents	Authorized	Administrator	Not Specified