



# MINORITY AND JUSTICE COMMISSION

ADMINISTRATIVE OFFICE OF THE COURTS, SEATAC OFFICE

FRIDAY, FEBRUARY 13, 2015 (8:45 A.M. - NOON)

JUSTICE MARY YU, CO-CHAIR

JUSTICE CHARLES W. JOHNSON, CO-CHAIR

## AGENDA

### CALL TO ORDER

- Call to Order and Introductions
- Approval of November 14, 2014, Meeting Minutes

### CO-CHAIR REPORTS

- New Commission Member – Welcome Steve Clem
- Supreme Court Symposium on Reentry, May 28 (*Justice Yu*)
- JDAI and Bellingham City Club (*Justice Johnson*)

### PRESENTATIONS

- YEAR Act – Columbia Legal Services & UW Youth Clinic – HB 1481/SB 5564

### STAFF REPORT

- **MJC Legislative Watch List**
  - Certificates of Restoration of Opportunity (CROP) – HB 1553
  - Legal Financial Obligations (LFOs) – HB 1390 / SB 5713
  - Racial Impact Statements – SB 5754
  - Fair Chance Act – HB 1701
- **Access to Justice Conference** – June 13, Wenatchee
  - Commission meeting – June 12, Wenatchee
- **Tribal State Court Consortium** – February 25, Suquamish Tribe
- **Youth and Justice Forums**
  - UW Law Academy and King County Youth and Law Forum – March 13
  - Chelan Diversity Justice Day for Youth – March 25
  - Spokane Youth and Justice Forum – April 3
- **Revitalizing MJC Committees**
  - Outreach
    - New Commission Artwork – Judge Dennis Yule, Ret.
  - Education
  - Workforce Diversity
  - Research

### MEMBER & LIAISON REPORTS

- **Update: Civil Legal Needs Study** – David Keenan
- **DISCUSSION** – What can the Commission do in response to the issues raised by Ferguson?

### ADJOURNMENT

#### NEXT MEETING

Friday, April 10, 2014

Seattle University School of Law



**Washington State Minority and  
Justice Commission (WSMJC)**  
Friday, November 14, 2014  
8:45 a.m. – 12:00 p.m.  
Tukwila Community Center, Tukwila, WA



## MEETING NOTES

### Commission Members Present

Justice Mary Yu, Co-Chair  
Justice Charles Johnson, Co-Chair  
Judge Veronica Alicea-Galvan  
Judge Lisa Atkinson  
Prof. Lori Bannai  
Jeffrey Beaver  
Prof. Robert Boruchowitz  
Prof. William Covington  
Judge Theresa Doyle  
Bonnie Glenn  
Russell Hauge  
Uriel Iñiguez  
Carla Lee  
Judge LeRoy McCullough  
P. Diane Schneider  
Judge Lori Smith  
Travis Stearns  
Justice Debra Stephens  
Judge Vicki Toyohara

### Members Not Present

Ann Benson  
Marie Eggart  
Judge Deborah Fleck  
Prof. Jason Gillmer  
Yemi Jackson  
Commissioner Joyce McCown  
Karen Murray  
Judge Mariane Spearman  
Judge Gregory Sypolt  
Judge Dennis Yule, Ret.

### AOC Staff Present

Cynthia Delostrinos

## APPROVAL OF MINUTES

The meeting minutes from the July 18, 2014, meeting were approved.

## CO-CHAIRS REPORT

### MEMBERSHIP

#### **New Commission Members – Judge Lisa Dickinson and Sgt. Adrian Diaz**

Lisa Dickinson was chosen to be the next representative from the Minority Bar Associations (MBAs). The Commission has set up a two-year rotation for representation from the MBAs, Jennifer Sheffield was the prior MBA representative. Judge Dickinson is the incoming president for the Asian Bar Association of Washington and is also a board member for the Washington State Commission on Asian Pacific American Affairs. She is a Pro Tem Administrative Law and Tribal Court judge, and currently has her own private law practice in Spokane.

The Commission has been looking to strengthen the presence of law enforcement representation on the Commission, and has identified Sgt. Adrian Diaz from the Seattle Police Department as a good candidate to fill that role. Sgt. Diaz is well known for being very active in the community. He recently served as one of the law enforcement panelists at the Commission's October 10, 2014, Courts Igniting Change Conference at Seattle University.

Both candidates were unanimously voted onto the Commission.

As member terms elapse, the Co-chairs will be having conversations with those members whose terms are ending, and also checking in with Commission members who do not regularly attend meetings. It is important that we continue to think about who needs to be at the table in order to make it an operative Commission.

### **SUPREME COURT SYMPOSIUMS**

On May 20, 2014, the Commission hosted a symposium to the State Supreme Court. The topic of the symposium was on Juvenile Justice, looking at adolescent brain development, and providing an update to the court on disproportionality in our juvenile justice system. The 2014 symposium was very well received and its impact can be felt around the state. It is important that the Commission continue to bring key issues to the Supreme Court's attention through the holding of annual symposiums.

The date for the 2015 symposium is set for May 28, 2015. The topic will be on reentry. The symposium will explore the issues that prevent successful reentry from incarceration, and also highlight the positive work and programs that are happening all over our state. A subcommittee was convened at the meeting, which includes: Jeffrey Beaver, Judge Theresa Doyle, Bonnie Glenn, Carla Lee, Judge LeRoy McCullough, Judge Lori Smith, and Travis Stearns.

## **COMMITTEE REPORTS**

### **JUVENILE JUSTICE SUBCOMMITTEE**

#### **Courts Igniting Change - Recap**

Over 150 attendees packed Seattle University on October 10, 2014, for the Minority and Justice Commission's Courts Igniting Change Conference. The intent of the Conference was to bring together a group of multi-disciplinary stakeholders to examine the interrelationship between schools and courts, establish new connections among the two systems, and to have a courageous discussion about how courts, schools, and law enforcement can address the forces that push and pull students out of school and into the justice system.

The Conference would not have been a success without its many partners. The Planning Committee wanted to thank the Seattle Journal for Social Justice whose spring 2015 journal will feature articles on the same topics presented at the Conference. The Committee also wanted to thank the youth participants from YouthVoice who moved the crowd to a standing ovation after the youth shared their personal stories. Lastly, the Committee wanted to thank the youth from Youth Undoing Institutionalized Racism for helping facilitate the breakout discussions at the end of the Conference. It is very important that we continue to involve the young people in our discussions around juvenile justice. They are the upcoming leaders and are in a position to help us rethink the systems that are currently in place. Youth active leadership in this conversation is such an important component of the work going forward.

A set of recommendations was developed by the Juvenile Justice Subcommittee based on the conversation and feedback we received from the Conference attendees. The greatest concern and interest from participants was to shift from punitive practices to restorative practices both in

the classroom and in the courts. Annie Lee, Executive Director of Team Child, presented the recommendations of the Juvenile Justice Subcommittee.

### **Recommendations**

- (1) Conduct a follow-up meeting to explore restorative justice models and to talk about the shift from punitive to restorative, and what that would look like in both schools and courts.
- (2) Provide more support to students and families by connecting them with community resources.
- (3) Address immediate needs interventions:
  - Give youth the ability to re-enroll in school on their own or allow courts to order enrollment;
  - Education should be provided at the moment when a student is suspended or expelled.
- (4) Hire a consultant to manage all of the Committee's projects and help move the recommendations forward.
- (5) Develop a statement from the Minority and Justice Commission supporting the end of school suspensions and expulsions.

A question arose about involvement of the Office of the Superintendent of Public Instruction's Discipline Task Force. It was mentioned that they are more focused on looking at school discipline data as it relates to the "other" discipline category. Justice Johnson will work with staff on making a statement on behalf of the Commission. It was suggested that the statement be submitted as an op-ed jointly between the OSPI Discipline Task Force and the Commission.

### **The specific ask to the Commission was:**

- To support the efforts of the Juvenile Justice Subcommittee to move the recommendations forward;
- For more staffing resources, including the hiring of a consultant to help with the upcoming projects;
- Make a public statement professing the Commission's values and principles as they relate to school discipline, disproportionality, and the court's role.

The Commission should expect to get a request from the Juvenile Justice Sub-Committee that will require it to take further action on the above recommendations.

### **Legal Financial Obligations**

The Commission's legal financial obligations (LFOs) resource guide was presented at the Annual Judicial Conference in Spokane this past September. The presentation and resource guide were well received by the majority of judges in attendance, however there was a strong minority of judges that were offended by it. One of the alarming takeaways from the presentation was the push back from some of the judges and their indifference to people who receive enormous LFO debts that they are not able to pay.

The Commission submitted proposals to both the District and Municipal Court Judges Association (DMCJA) and Superior Court Judges Association (SCJA) education committees to present on LFOs, and will be on the agenda for the DMCJA conference. It was recommended that the Commission look into doing smaller meetings with courts around the state to encourage

judges to have conversations amongst their own bench about this issue. With smaller groups there is more accountability. It was recommended that the LFO discussion can also be worked into the Perceptions of Justice presentation.

There are many intricacies when dealing with LFOs that many judges, public defenders, and prosecutors do not know a lot about. In order to continue to help educate the legal community around LFOs, Judge Alicea-Galvan and Judge Doyle will be participating in the Washington Defender Association's Conference in December, and will be distributing the LFO resource guide to all attendees. The presentation is open to the public. It is important that prosecutors are also included in the conversation. It was recommended that the LFO resource guide be shared with the Washington Association of Prosecuting Attorneys (WAPA). Another group that should be included in the discussion of LFOs are the clerks of the courts.

It was noted that the Commission needs to involve itself in LFO legislation this upcoming 2015 legislative session.

### **Racial Impact Statements**

There were two racial justice initiatives that were presented at the joint meeting that morning with the Sentencing Guidelines Commission. The first was on racial impact statements. The Commission voted to support racial impact statements moving forward. The second was the Sentencing Guidelines Commission's study proposal. The Commission agreed to also support the study proposal and agreed to write a letter of support to the Governor to include the study in his 2015 budget. *The notes from the joint meeting are attached as Appendix A.*

### **Possible New Issues**

Law Enforcement Use of Body Cameras—one issue that was brought up is whether or not officers should be required to wear body cameras.

## **STAFF REPORTS**

### **Perceptions of Justice**

Staff submitted proposals to each of the judicial associations' spring conferences and each of the proposals for the "Perceptions of Justice" program have been accepted. The task force that is working on this project will meet on December 19, to come up with the presentation objectives. The meeting will be held at the Administrative Office of the Courts in SeaTac and will be an in-person meeting.

The Study points out the differing perceptions that Washington residents have of our criminal justice system. This is an important thing for judges to understand because when there is community distrust it calls into question the legitimacy of the decisions that judges make. Also, when there is community distrust, we have situations that are more volatile, such as the recent events that took place in Ferguson and other places around the country. Judges need to understand the perceived interconnectedness of law enforcement and the courts. If individuals have bad experiences with the police it gets transferred to the court.

It is important that we address our own complicity in having similar situations continue. Judge Alicea-Galvan wrote an article in her local news reporter encouraging the residents to come and view her court, explaining to them that this is their court. Those are the kinds of discussions that we need to be having within our local communities.

The following are suggestions for the task force:

- First, one segment of the session should include a panel of people who feel there is no justice in our courts, who can represent the opinion that people don't think they have a fair shot at justice, or why they never feel they can get justice in the current system. One of the elements of our past presentations that has been very persuasive is actually hearing from people who have experienced injustice in the system, and having them explain why they believe there will never be justice in our system. It is important that we also include the youth's voice.
- Secondly, it needs to be pointed out that the distrust of the system by the groups identified in the study is important for judges to understand and to address because those negative perceptions can lead to a lack of participation in juries, not showing up to court, not following courts orders, and much more.
- Lastly, the presentation should also address the reasons why judges should care about how people perceive the police--because the police are directly tied to the courts.

The recent events in Ferguson have shown us that the public is tired and frustrated with our criminal justice system. What we are seeing in the news is the distrust of law enforcement, and courts are not insulated from that. It is going to take individuals who are actively and intentionally engaged in the community to try to move things forward.

It was also mentioned that we should not wait any longer before presenting the findings of the study to the community. Originally, the plan was to first engage the judges in the report and to give them enough time to respond. We do not want the study to become old and outdated. There is no reason why we can't engage the community sooner—the issues are ripe right now. We should maybe consider an op-ed on what the results of the Study mean for us as a Commission. Judge Doyle will be in charge of heading up the efforts on the community presentations.

**NEXT COMMISSION MEETING: February 13, 2015**

It was recommended that the Commission continue to reach out to and invite the community to our meetings and make a conscious effort to engage the community in our work.

The next meeting is scheduled for February 13, 2015, at the Administrative Office of the Courts, SeaTac Office.



**Minority and Justice Commission and Sentencing Guidelines Commission  
Joint Meeting  
Friday, November 14<sup>th</sup>, 2014  
Racial Impact Statements**

**NEXT STEPS**

- The Minority and Justice Commission is fully supportive of racial impact statements.
  - In a recent letter to Governor Jay Inslee, the Commission expressed its support for racial impact statements and the Sentencing Guidelines' study proposal looking at racial disproportionality.
- **Senator Bob Hasegawa will be holding a meeting to discuss racial impact statement proposed legislation:**
  - **December 10, 2:30 p.m.**  
Pacific Medical Building, 8<sup>th</sup> Floor  
1200 12<sup>th</sup> Ave. S  
Seattle, WA 98144
    - **Please RSVP to [Cynthia.Delostrinos@courts.wa.gov](mailto:Cynthia.Delostrinos@courts.wa.gov).**

**Notes from Facilitated Discussion**

**1. Should Washington have racial impact statements (RIS)?**

- Overwhelming support in favor of racial impact statements.
- The statements need to be more inclusive and should look at wider community impacts.
- RIS cannot be focused primarily on the criminal arena; they must be able to be tied to other issues in order to be more useful.
- RIS should be easy to request and customer friendly.
- RIS are a tool to help further discussions on race and racial impact.
- Washington Association of Prosecuting Attorneys (WAPA) supports RIS because it will allow us to look at areas where there might be unjustified disproportionality.

**2. What agency/ organization should be responsible for conducting racial impact statements?**

- The Caseload Forecast Council was the organization proposed in last year's RIS legislative draft because they have access to many of the criminal data sources.
- One recommendation was the Washington State Institute of Public Policy – they are a non-partisan, highly respected agency. Their ownership of RIS would make it front and center.
- Whoever is doing the RIS should understand racial equity or be willing to undergo training.
- The Sentencing Guidelines Commission would not be a good entity to do the RIS because they have no staff who can conduct the RIS reports

**3. What needs to happen to help pass racial impact statement legislation?**

- The communities who can benefit from RIS must be engaged in the whole process to help pass RIS legislation.

- We must have discussions with the communities who are most impacted and bring together those communities with leaders and decision makers.
- Education is integral to successfully implementing racial impact statements. There needs to be an education component for the communities to really understand how racial impact statements can be requested and used as a tool for advocacy.
- Commission on Hispanic Affairs was offered as one commission who might be able to help facilitate outreach on RIS
- A resource that can be viewed as setting precedent in our State is the Board of Health, who passed health impact reviews similar to RIS in 2006. There are currently eight (8) members on the Board of Health and one (1) full time analyst who works on the health impact review statements. A representative attending the meeting offered to provide further insight into their successes and challenges of their experience.

#### **4. What topics should RIS cover?**

- Should not be limited to just criminal.
- Education—particularly looking at the issue of school discipline
- Foster care
- Economics

#### **5. Other comments**

- Emphasis on focusing more on institutional and structural racism as part of the discussion
  - There should be a definition in statute of institutional racism that can help as a guiding principle.
- Racial Impact Statements are just for presenting data. We have to distinguish between collecting data and making actual changes. We need to have values and principles that help guide the data. We need to move from just an intellectual practice to an actual practice.
- We must acknowledge that there are different racial experiences; how we experience race is different for each and every individual
- When collecting/using/analyzing data, the “Asian” category must be disaggregated
- What we really need to do is look beyond the numbers and understand how systems connect and relate.





November 18, 2014

**COMMISSION MEMBERS**

Justice Charles W. Johnson  
Co-Chairperson  
Washington State Supreme Court

Justice Mary I. Yu  
Co-Chairperson  
Washington State Supreme Court

Judge Veronica Allicea-Galvan  
Des Moines Municipal Court

Professor Lori Bannai  
Seattle University School of Law

Mr. Jeffrey A. Beaver  
Attorney at Law

Ms. Ann Benson  
Washington Defender Association

Professor Robert C. Boruchowitz  
Seattle University School of Law

Professor William Covington  
University of Washington School of Law

Ms. Jennifer Davis-Sheffield  
Lane Powell PC

Judge Theresa Doyle  
King County Superior Court

Ms. Marie Eggart  
Asotin County Clerk's Office

Judge Deborah D. Fleck, Retired  
King County Superior Court

Professor Jason Gillmer  
Gonzaga University School of Law

Ms. Bonnie J. Glenn  
Juvenile Justice & Rehabilitation Adm

Mr. Russell Hauge  
Kitsap County Prosecuting Attorney

Mr. Uriel Iniguez  
Commission on Hispanic Affairs

Ms. Yemi Fleming-Jackson  
Microsoft Corporation

Ms. Carla C. Lee  
King County Prosecuting Attorney's Office

Commissioner Joyce McCown  
Court of Appeals, Division III

Judge LeRoy McCullough  
King County Superior Court

Ms. Karen Murray  
Associated Counsel for the Accused

Ms. P. Diane Schneider  
National Latino Peace Officers Association

Judge Lori-Kay Smith  
King County Superior Court

Judge Mariane C. Spearman  
King County Superior Court

Mr. Travis Stearns  
Washington Defender Association

Justice Debra L. Stephens  
Washington State Supreme Court

Judge Greg D. Sypolt  
Spokane County Superior Court

Judge Vicki J. Toyohara  
Judge Pro Tem

Judge Dennis D. Yule, Retired  
Benton-Franklin County Superior Court

Governor Jay Inslee  
Office of the Governor  
P.O. Box 40002  
Olympia, WA 98504-0002

Dear Governor Inslee,

On Friday, November 14<sup>th</sup>, 2014, the Minority and Justice Commission and the Sentencing Guidelines Commission held a joint meeting inviting legislators, advocacy organizations, and community members to discuss potential proposals to address current racial disparities in Washington's criminal justice system. At the meeting, the Minority and Justice Commission was asked to support a particular proposal of the Sentencing Guideline Commission that would examine existing data to explore factors that lead to racial and ethnic disproportionality in Washington's criminal justice system. It is our understanding that this study would be conducted by the Washington Institute for Public Policy and would cost approximately \$103,000.

Since our establishment, the Minority and Justice Commission has continuously worked toward eliminating bias in our courts and throughout our criminal justice system. We remain committed to doing all that we can to continue addressing the challenge of reducing racial disproportionality and to welcome any new information that will shed further light on our practices.

Thus, we write to express our support of the Sentencing Guidelines Commission proposal and strongly encourage its inclusion in the Governor's budget.

We also wish to take this opportunity to express our support of the use of racial impact statements in evaluating various legislative changes affecting the criminal justice system. Racial impact statements, similar to fiscal or environmental impact statements, are informational tools for policy makers that provide a statistical analysis of the projected impact of proposed initiatives. These statements allow policy makers to have the information they need to make decisions that do not produce unintended racial disparities.

Our joint meeting, which included the wider community, produced an excellent opportunity for our Commissions to work together and to find new ways to collaborate. We believe that both of the tools mentioned above will be useful in our common mission to reduce racial disproportionality and to maintain a criminal justice system that is fair for all citizens of Washington State.

Very truly yours,



Justice Charles W. Johnson  
Co-Chair



Justice Mary I. Yu  
Co-Chair

cc: Sandy Mullins

HIGHER EDUCATION

Agency 376

The Evergreen State College

Recommendation Summary

Dollars in Thousands

	Annual FTEs	General Fund State	Other Funds	Total Funds
<b>2013-15 Expenditure Authority</b>	658.2	35,722	94,486	130,208
<b>Total Maintenance Level</b>	638.6	37,709	95,602	133,311
Difference	(19.6)	1,987	1,116	3,103
Percent Change from Current Biennium	(3.0)%	5.6%	1.2%	2.4%
<b>Performance Changes</b>				
Math and Science Graduates	4.0	2,000		2,000
WSIPP Study on Racial Disparity		103		103
Agreement with WFSE		439	738	1,177
Legal Services		1	2	3
Office of Chief Information Officer		1	2	3
DES Central Services		(1)	(1)	(2)
Core Financial Systems Replacement		1	2	3
Time, Leave and Attendance System		2	3	5
Self-Insurance Liability Premium		(7)	(11)	(18)
State Public Employee Benefits Rate		113	232	345
Shift Education Legacy Trust to General Fund		5,450	(5,450)	
General Wage Increase for State Employees		746	1,439	2,185
<b>Subtotal</b>	4.0	8,848	(3,044)	5,804
<b>Total Proposed Budget</b>	642.6	46,557	92,558	139,115
Difference	(15.6)	10,835	(1,928)	8,907
Percent Change from Current Biennium	(2.4)%	30.3%	(2.0)%	6.8%
<b>Total Proposed Budget by Activity</b>				
Agency Overhead	20.5	1,268	4,386	5,654
Instruction	537.5	43,122	72,252	115,374
Public Service	13.3	1,692	3,130	4,822
Research	71.3	475	12,790	13,265
<b>Total Proposed Budget</b>	642.6	46,557	92,558	139,115

PERFORMANCE LEVEL CHANGE DESCRIPTIONS

**Math and Science Graduates**

Funding is provided to The Evergreen State College to increase the number of graduates in science, technology, engineering and math.

## **HIGHER EDUCATION**

### **WSIPP Study on Racial Disparity**

Funding is provided for the Washington State Institute for Public Policy (WSIPP) to complete a comprehensive assessment of racial and ethnic disproportionality in Washington's criminal justice system. The study will examine multiple stages of the criminal justice system, including criminal behavior; reporting of crime; decisions to investigate and arrest; victim cooperation; prosecutorial screening and charging decisions; prosecutorial charge reviews and plea bargaining; available defense resources; criminal and sentencing laws; sentencing practices; and post-sentencing policies and practices.

### **Agreement with WFSE**

Funding is provided for the collective bargaining agreement between The Evergreen State College and the Washington Federation of State Employees (WFSE). The agreement includes a general wage increase of 3 percent, effective July 1, 2015; a general wage increase of 1 percent and an additional 0.8 percent or \$20 a month, whichever is greater, effective July 1, 2016; a 2.5 percent salary adjustment for eight targeted classifications; assignment pay for law enforcement officers while engaged in training activities; added steps to vacation accrual schedules; and a rate re-opener if specified conditions exist. (General Fund-State, Institutions of Higher Education-Dedicated Local Account-Nonappropriated, Institutions of Higher Education-Grant and Contracts Account-Nonappropriated, Institutions of Higher Education-Operating Fees Account-Nonappropriated)

### **Legal Services**

Agency budgets are adjusted to update each agency's allocated share of charges and to reflect a reduction in legal service charges. The Attorney General's Office (AGO) will work with client agencies to implement stricter policies and best practices regarding utilization of its services to achieve lower legal bills.

### **Office of Chief Information Officer**

Agency budgets are adjusted to update each agency's allocated share of charges and to reflect increased billing levels for software subscriptions and office relocation.

### **DES Central Services**

Agency budgets are adjusted to update each agency's allocated share of charges and to align with anticipated billing levels from the Department of Enterprise Services (DES) in the 2015-17 biennium, including changes to the enterprise systems fee, personnel services, and small agency financial services.

### **Core Financial Systems Replacement**

Agency budgets are adjusted to align with anticipated billings from the Office of Financial Management in the 2015-17 biennium for core financial systems replacement planning through the One Washington project.

### **Time, Leave and Attendance System**

Agency budgets are adjusted to align with anticipated billings for the Time, Leave and Attendance system, including debt service and project completion costs.

### **Self-Insurance Liability Premium**

Agency budgets are adjusted to reflect updated premium rates and a reduction in billings for the 2015-17 biennium.



**Steven M. Clem**  
Douglas County Prosecuting Attorney  
P.O. Box 360  
Waterville, WA 98858-0360  
509.745.8535 ▪ sclem@co.douglas.wa.us

**Education:**

University of Puget Sound, B.A. Political Science (1974)  
University of Puget Sound (Seattle University) School of Law, J.D., Cum Laude (1976)

**Bar Membership:**

Washington State Bar Association (1977 - )  
Washington Committee of Law Examiners (1989 - 2013)  
United States District Court, Western District of Washington (1977 - )  
United States District Court, Eastern District of Washington (1980 - )

**National and State Associations:**

Washington Association of Prosecuting Attorneys (1995 - )  
Trustee (2004 - 2005)  
Treasurer (2008), Secretary (2009), President (2010)  
Best Practices Committee, Co-Chair  
Senior Prosecuting Attorney (2015)  
National District Attorneys Association (1995 - )  
Washington Counties Risk Pool (2003 - )  
Board Member (2003 - )  
Executive Committee (2004 - 2013)  
Secretary (2005 - 2006), President (2006 - 2007)  
Underwriting Committee, Co-Chair (2005 - 2010)  
Finance Committee, Co-Chair (2009 - 2011)  
Washington Association of County Officials  
Board Member (2010 -2011)

**State Boards and Commissions:**

Law & Justice Council (2003 - 2006)  
Justice Information Committee (1998 - 2003)  
Justice Information Act Executive Committee (1998 - 2003)  
Integrated Justice Information Board (2003 - 2005)  
Co-Chair (2003 - 2005)

Mr. Clem was in the private practice of law in the Wenatchee Valley from 1978 – 1994, during which he served as Judge Pro Tem in Douglas County District Court, as a member of the City of East Wenatchee Board of Adjustment and the City of Wenatchee Arts Commission, and as a board member of United Cerebral Palsy and the Central Washington Hospital Foundation.



# THE YOUTH EQUALITY AND REINTEGRATION ACT (THE YEAR ACT)

THIS IS THE YEAR FOR EQUALITY IN JUVENILE RECORDS REFORM

In 2014, the Legislature passed SHB1651, the Youth Opportunities Act (YOA), to create automatic record sealing in a vote of 145-1. Allowing youth to move on from past mistakes and have a second chance through juvenile record sealing reflects our core values:

**fairness, equality, and opportunity.**

## The YOA Was A Victory For Many, But Left Low-Income Youth Behind:

- ◆ One barrier remains to making record sealing equally accessible to all youth: legal financial obligations (LFOs).
- ◆ Courts must hold hearings for automatic record sealing once the youth completes all community supervision, is released from confinement or parole, and pays all LFOs.
- ◆ High-income youth can pay their LFOs and seal their records, but low-income youth cannot.

## The YEAR Act Will Help Low-income Youth Seal Their Records By:

- ◆ Refocusing efforts on **compensating victims** by eliminating non-restitution LFOs.
- ◆ Giving judges discretion to consider the youth's **ability to pay** when ordering restitution and offering the possibility of **community service**.
- ◆ Affording youth the opportunity to get a record sealed after making a **good faith effort** to pay restitution and after fulfilling all other probation requirements.
- ◆ **Holding youth accountable** through civil judgments after a juvenile record is sealed.

*"The fines, as imposed now, are a heavier burden for lower-income people. The burden gets even heavier when, because they can't pay the fines — plus 12 percent interest — that they must wear a juvenile record around their neck for potential employers, landlords and others to use as a reason to reject them."*  
-The Everett Herald

**YOUTH CARE**  
Homeless youth · Off the streets · Preparing for life

**WA RHYA**  
WA Coalition for Homeless Youth Advocacy

**CENTER FOR JUSTICE**  
EMPOWERING PEOPLE · CHANGING LIVES

**Columbia Legal Services**  
Working for Justice Since 1967



**treehouse™**  
giving foster kids a childhood and a future



**The Mockingbird Society**  
Improving foster care | Ending youth homelessness

University of Washington School of Law  
Children and Youth Legislative Advocacy Clinic  
uwyouthlegislativeclinic@gmail.com  
www.theyearact.com

# THE YOUTH EQUALITY AND REINTEGRATION ACT (THE YEAR ACT)



*Young people can be denied jobs, housing, college admission, and various state licenses because their juvenile court records remain open to the public – even when they have outgrown youthful misbehavior and learned from past mistakes.*

## WHAT DOES THE YEAR ACT DO?

- **Focuses LFO requirements on compensating victims.** Paying restitution to victims is important. Victims should be made whole, and youth must take accountability for the harm caused by their offense. The YEAR Act eliminates all non-restitution LFOs, like court fines and fees, and enables youth to focus on compensating victims.
- **Gives judges discretion when ordering the amount of restitution owed to victims.** At the sentencing hearing, judges may consider a youth's ability to pay when ordering the amount of restitution a youth must contribute to a victim. Judges may also award community restitution (community service) for part or all of the restitution requirement.
- **Gives judges discretion to seal a criminal record after the youth has made a good faith effort to pay restitution to the victims.** Once a youth has made a good faith effort to pay restitution to a victim, and has fulfilled all other requirements of sentencing and probation—like counseling, community service, and no new law violations—a judge may seal the criminal record and convert any remaining restitution to a civil judgment, which will not appear in a criminal record search conducted by landlords or future employers. This holds youth accountable for repaying victims while giving them better access to good jobs, equal education, and affordable housing.
- **Eliminates interest on restitution owed by youth.** Currently, a youth's legal financial obligations accrue 12% interest until they are paid. Many youth with a criminal record struggle find a job that will allow them to complete restitution payments, a problem that this high interest rate only compounds.
- **Makes technical fixes requested by Washington State Superior Court Judges.** Washington Superior Court Judges have advised several technical fixes to the Youth Opportunity Act, which the YEAR Act will incorporate.

**The YEAR Act allows all youth, regardless of their socio-economic status, to pursue gainful employment, obtain affordable housing, and access equal education.**

# HeraldNet

Everett, Washington

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Published: Thursday, January 8, 2015, 12:01 a.m.  
In Our View / 2015 legislative agenda

## Act would help juvenile offenders make good

The simple existence of a juvenile justice system demonstrates that society recognizes a difference between juvenile and adult offenders; that juveniles in most instances deserve a greater opportunity to learn from mistakes and become productive members of their communities.

That was why the Legislature last year passed — with only one dissenting vote in the House — the Youth Opportunities Act, which seals the juvenile court records for those who have completed the requirements of sentencing and probation, such as counseling, community service, have had no further criminal arrests and have paid all legal fees and restitution. The ability to seal records, the Legislature found, would remove a potential barrier caused by release of the records in getting a job, an education or housing, all crucial steps in turning one's life around.

And it works, at least for those who have the financial ability (or whose parents have the ability) to pay their court fines, fees and restitution. Those who can't pay are stuck having to answer for the mistakes of their youth when seeking a job, a student loan or an apartment.

Rep. Ruth Kagi, D-Shoreline, and Sen. Steve O'Ban, R-University Place, are expecting to propose legislation in the House and Senate early in the session that begins next week that would remove that barrier for those who struggle to pay court fines and fees. While the Youth Equality and Reintegration Act would prevent court fines and fees from being imposed on juvenile offenders, the responsibility for paying restitution would remain. Provided former juvenile offenders can show a good-faith effort to pay restitution, judges would have the discretion to convert the restitution to a civil penalty that would remain an obligation for the former offender.

Only about 12 percent of court-imposed financial obligations, including restitution, are paid by adult and juvenile offenders. Removing the hinderance of court fines and sealing juvenile records, Kagi said, would, by improving the odds of finding work, make it more likely that restitution to victims will be paid.

“So little money is collected now,” Kagi said, “all we're doing is keeping it difficult for the poor to find a job and pay restitution to the victim.”

It's important to note that about 96 percent of crimes committed by juveniles in Washington state are nonviolent offenses, such as theft, underage drinking and vandalism.

Washington state's courts, undeniably cash-strapped, are likely to object to the loss of court fees and fines for juvenile offenders, but they're seeing little actual revenue from juvenile cases. And the fines, as imposed now, are a heavier burden for lower-income people. The burden gets even heavier when,

because they can't pay the fines — plus 12 percent interest — that they must wear a juvenile record around their neck for potential employers, landlords and others to use as a reason to reject them.

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**Early Learning & Human Services  
Committee**

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**HB 1481**

**Brief Description:** Concerning the sealing of juvenile records and fines imposed in juvenile cases.

**Sponsors:** Representatives Kagi, Zeiger, Senn, Walsh, Peterson, Stambaugh, Walkinshaw, Goodman, Muri, Pettigrew, Jinkins, Hudgins, Appleton, Robinson, Gregerson, Fitzgibbon, Ormsby, Clibborn, S. Hunt, Ryu, McBride, Sawyer, Stokesbary, Rodne, Young, Farrell and Kilduff.

**Brief Summary of Bill**

- Allows courts to seal juvenile records when restitution remains if the individual made a good faith effort to pay the full amount of restitution.
- Eliminates various legal financial obligations and other fees for juveniles, including the juvenile penalty assessment and interest on legal financial obligations.
- Allows courts to order community service in lieu of restitution for juveniles if the juvenile has insufficient funds to pay the restitution.

**Hearing Date:** 1/30/15

**Staff:** Luke Wickham (786-7146).

**Background:**

Sealing Juvenile Records.

Since 1977, juvenile offender records have been public unless sealed. Records of non-offender juvenile cases, such as dependency or adoption records, are not open to public inspection.

There are two methods by which individuals may seal their juvenile records:

1. an individual may make a motion to seal the official juvenile court record, the social file, and records of the court and any other agency in the case; or

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

2. may have their record sealed during regularly held sealing hearings.

Once a juvenile record is sealed, the proceedings in the case must be treated as if they never occurred. Any subsequent criminal adjudication or adult felony charge unseals the case.

#### *Regular Sealing Hearings.*

At the disposition hearing of a juvenile offender, courts must schedule an administrative sealing hearing after that offender turns 18 years old and is anticipated to have completed any probation and confinement. Courts shall seal the individual's juvenile court record if none of the offenses for which the court is entering disposition are a most serious offense, a sex offense under chapter 9A.44, or a felony drug offense. Respondents must also have completed the terms and conditions of disposition, including financial obligations, to seal a record during a regular sealing hearing.

#### *Motions to Seal Juvenile Records.*

An individual may also file a motion requesting that the court seal his or her juvenile record. An individual is eligible to have his or her record sealed under this process after remaining in the community without further conviction for a period of time and paying any restitution associated with the case. For class A felonies, an individual must remain in the community without conviction for five years. For class B felonies, class C felonies, and all misdemeanors, an individual must remain in the community without conviction for two years.

Individuals convicted of Rape in the first degree, Rape in the second degree, and indecent liberties with forcible compulsion are not eligible for record sealing. Other sex offenses are eligible for sealing, but an individual must be relieved of the obligation to register as a sex offender.

#### Legal Financial Obligations.

When an individual is adjudicated as a juvenile offender, the court may impose Legal Financial Obligations (LFOs) as part of the disposition. The LFOs include victim restitution, crime victims' compensation fees, costs associated with the offender's prosecution and sentence, fines, penalties, and assessments.

#### Interest Rate on Legal Financial Obligations.

Legal Financial Obligation (LFO) judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the interest rate on LFOs for over two decades.

Interest that accrues on restitution is paid to the victim of the offense. All other accrued interest is split between the state and county as follows: 25 percent goes to the General Fund, 25 percent goes to the Judicial Information System Account, and 50 percent goes to the county, 25 percent of which must be used to fund local courts.

#### **Summary of Bill:**

##### Restitution.

Courts are allowed to modify juvenile restitution amounts at any time, including the time of a contested record sealing hearing for good cause shown, including ability to pay. Respondents may also petition for relief from restitution.

Courts shall seal the juvenile records of individuals who meet the existing criteria for sealing records and if either the individual has paid the full amount of restitution or made a good faith effort to pay. "Good faith effort to pay" is defined as paying the principal amount in full, having made at least 80 percent of the value of full monthly payments within the period from disposition until the time the restitution is under review, or a showing of good cause as to why less than 80 percent has been paid. If a court seals a juvenile record with restitution still owing, the court shall issue a civil order in the amount of the remaining restitution.

#### Information Sharing.

Sealed juvenile social files are still available to juvenile justice and care agencies when an investigation or case involving the juvenile is being prosecuted or when an agency is responsible for supervising the juvenile. Juvenile records, whether sealed or not, may be provided without personal identifiers to researchers conducting legitimate research so long as the information is not used to identify an individual with a juvenile record.

#### Juvenile LFOs or Other Fees Modified or Eliminated.

The following LFOs or other fees are eliminated for juveniles:

- juvenile penalty assessments;
- fines for gross misdemeanors related to pet animals;
- fines for the crime of selling a pet animal to a research institution;
- penalties for cheating crimes;
- deferred prosecution or sentence fees;
- fees for the crime of commercial sexual abuse of a minor involving an internet advertisement;
- general fines for felonies and misdemeanors;
- fines for interference with a health care facility;
- fines for the crime of unlawful issuance of a bank check;
- fines for the crime of theft of livestock;
- fines for the crimes of indecent exposure and prostitution;
- fines after impoundment of a vehicle upon arrest for prostitution related and commercial sexual abuse of a minor crimes;
- appellate costs;
- interest on financial obligations;
- penalty assessments for crimes involving domestic violence;
- juvenile diversion fines;
- clerk's collection fees;
- conviction fees;
- sheriff's fees;
- crime lab analysis fees;
- fees for crimes including driving under the influence, physical control of a vehicle under the influence, and vehicular homicide or assault;
- fees for crimes listed in the Uniform Controlled Substances Act;
- fines for the crime of intent to manufacture controlled substances;
- criminal wildlife penalty assessments for the crime of unlawful hunting of big game; and

- public defense costs.

In addition to the elimination of those LFOs, cities, towns, and counties may not impose any LFOs for juveniles without express statutory authority.

Other Provisions.

Records of a juvenile offense maintained by the Department of Licensing shall be sealed when the court enters an order sealing a juvenile court record.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2015.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.



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**Public Safety Committee**

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**HB 1553**

**Brief Description:** Encouraging certificates of restoration of opportunity.

**Sponsors:** Representatives Walkinshaw, MacEwen, Ryu, Appleton, Moscoso, Holy, Gregerson, Zeiger, Peterson, Farrell, Walsh, Reykdal, Orwall, Pettigrew, Tharinger, Fitzgibbon and Kagi.

**Brief Summary of Bill**

- Creates a process by which a person with a criminal record can be granted a certificate of restoration of opportunity, which removes any professional bar imposed solely as a result of the conviction.

**Hearing Date:** 2/3/15

**Staff:** Cassie Jones (786-7303).

**Background:**

Any state, city, county, or other municipal entity is prohibited from disqualifying a person from employment, or any occupation, trade, vocation, or business for which a state or local license, permit, certificate or registration is required solely because of a prior conviction of a felony. However, a prior conviction may be considered in conjunction with other factors. The following exemptions also apply:

1. If the felony is directly related to the employment or profession sought and it has been fewer than 10 years since conviction, the conviction can be the sole reason for a denial.
2. If the position is in the county treasurer's office and the felony was for embezzlement or theft, a person may be disqualified from employment even if more than 10 years have passed since the conviction or guilty plea.
3. If the position is an education position which requires certification or a position with (or contracted with) a school district or educational service district which requires regularly scheduled unsupervised access to children, conviction of a felony against a child, as specified in RCW 28A.400.322, disqualifies a person even if more than 10 years have passed since the conviction or guilty plea.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

4. Health professions are exempt from the prohibition on disqualification.

### **Summary of Bill:**

If a person holds a certificate of restoration of opportunity (CROP), no state, county, or municipal department, board, officer, or agency authorized to assess the qualifications of any applicant for a license, certificate of authority, qualification to engage in the practice of a profession or business, or for admission to an examination to qualify for such a license or certificate may disqualify a qualified applicant, solely based on the applicant's criminal history, if the applicant meets all other statutory or regulatory requirements.

A CROP may be granted to a person by a superior court if the person meets the following eligibility requirements:

- one year has passed from sentencing for those sentenced by a Washington court to probation, or receiving a deferred sentence or other noncustodial sentencing for a misdemeanor or gross misdemeanor offense or an equivalent juvenile adjudication;
- eighteen months has passed from release from total or partial confinement from a Washington prison or jail or juvenile facility for those sentenced by a Washington court to incarceration for a misdemeanor or gross misdemeanor or an equivalent juvenile adjudication;
- two years have passed from sentencing for those sentenced by a Washington court to probation, or receiving a deferred sentence or other non custodial sentence for a class B or C felony or an equivalent juvenile adjudication;
- two years have passed from release from total confinement from a Washington prison or jail or juvenile facility for those sentenced by a Washington court for a class B or C felony or an equivalent juvenile adjudication;
- three years have passed from sentencing for those sentenced by a Washington court to probation, or receiving a deferred sentence or other noncustodial sentencing for a class A felony or an equivalent juvenile adjudication; or
- three years have passed from release from total or partial confinement from a Washington prison or jail or juvenile facility for those sentenced by a Washington court for a class A felony or an equivalent juvenile adjudication.

All applicants in the above six categories must also meet the following additional requirements:

- is in compliance with or has completed all sentencing requirements except for legal financial obligations (the person must have a payment plan in place and have made at least nine payments in the last 12 months, or have good cause for missing payments);
- was never convicted of a sex offense or a crime with sexual motivation and is not required to register as a sex offender; and
- has not been arrested for nor convicted of a new crime and has no pending criminal charges or known imminent charges.

Exemptions:

1. Criminal justice agencies are exempt and may disqualify an individual who holds a CROP based solely on criminal history.
2. The Washington State Bar Association is exempt and may disqualify an individual who holds a CROP based solely on criminal history.

3. The Department of Social and Health Services has discretion to disqualify an individual who holds a CROP based solely on criminal history if the employment involves unsupervised access to vulnerable adults, children, or individuals with mental illness or developmental disabilities.
4. The Department of Health has discretion to disqualify an individual who holds a CROP based solely on criminal history if practice of the profession involves unsupervised contact with vulnerable adults, children, or individuals with mental illness or developmental disabilities.

**Appropriation:** None.

**Fiscal Note:** Requested on January 28, 2015.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

## **CERTIFICATE OF RESTORATION OF OPPORTUNITY (CROP) FAQ**

### **Why do we need CROP?**

- Occupational licensing and employment laws regulate many professions as well as unskilled and semi-skilled occupations. Individuals with criminal records are often blocked from obtaining these licenses or jobs, regardless of how old their convictions are or how qualified they are for the job.
- CROP would provide greater access to jobs for people with criminal records, which is essential to reintegration into society. This is key to public safety because employment is an important factor in reducing recidivism.

### **What would CROP do?**

- Provide the opportunity for qualified Washington residents with a criminal history to demonstrate rehabilitation and overcome statutory disqualifications to available benefits and opportunities (employment, licensing, etc.).
- Offer reliable evidence of rehabilitation for employers, housing providers or licensing agencies.

### **Would the criminal history still be accessible to the public?**

- CROP would not remove any criminal record from either the court's or the Washington State Patrol's database. This would not seal or vacate the applicant's criminal record.

### **How would the process work?**

- The applicant would apply for a CROP to the court that issued the judgment and sentence, showing evidence of her rehabilitation, such as completion of counseling, letters of recommendation, or educational certificates. The court could grant a CROP based on specific eligibility criteria related to compliance with sentencing and the changed circumstances of the applicant which demonstrate that the person is rehabilitated.

### **What type of evidence might an applicant present to the court?**

- Records demonstrating completion of drug, mental health, veteran's court or similar program.
- Records showing participation in mental health or substance abuse counseling.
- Declarations and records from probation officer, healthcare provider, community leader, employer or applicant.
- Certificates demonstrating completion of training or education.

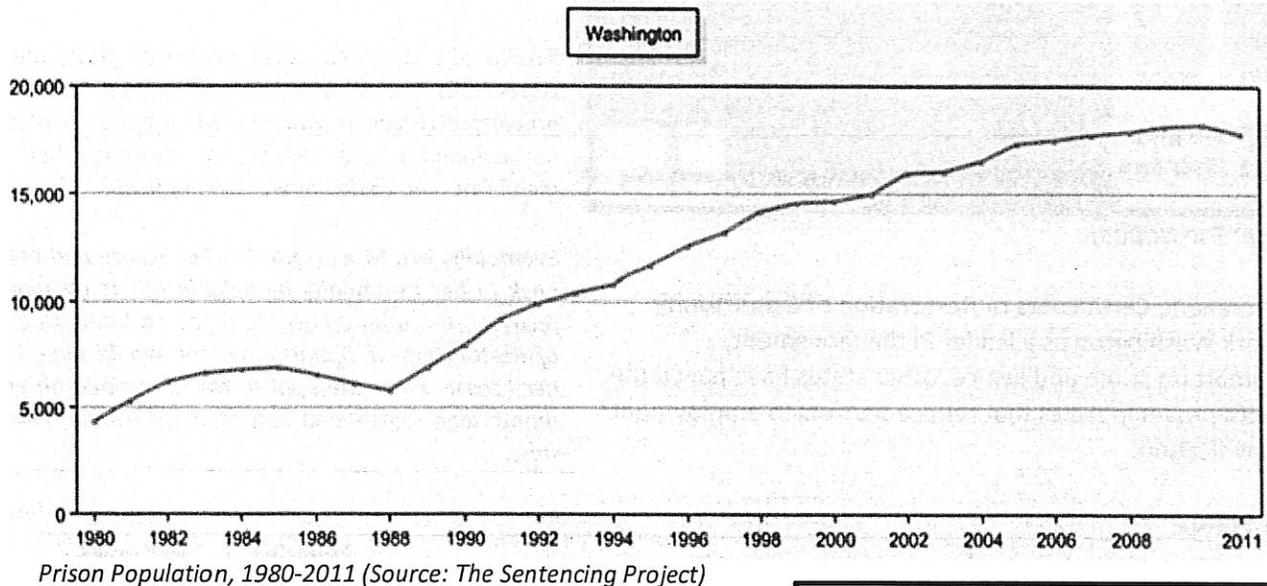
### **What other States have a similar process?**

- Arizona, California, Connecticut, Hawaii, Illinois, Iowa, New Jersey, New York, North Carolina and Ohio.

## Certificate of Restoration of Opportunity (CROP)

Many people who have criminal records are restricted from working in certain occupations even though they are otherwise qualified to do so. In Washington, these occupation restrictions apply to jobs as diverse as chemical dependency counselor, commercial fishing, and barber. Overall, there are more than 90 career paths that may be closed to someone because of a prior conviction.

The Certificate of Restoration of Opportunity (CROP) will improve public safety, increase employer choices and strengthen families by creating an opportunity for people with a criminal record to have their rehabilitation efforts verified, creating a pathway for obtaining necessary occupational licensure and jobs.



**1 in 5 Washington adults has a criminal record.** Washington's prison population, like that of the entire United States, has been steadily and dramatically increasing over the past 30 years. Increasingly lawmakers and citizens have recognized that this level of growth is unsustainable and bad for our state. Policymakers from across the aisle are committed to reducing the prison population while ensuring the safety of our communities.

**Access to jobs reduces recidivism.** A key part of reducing our prison population is ensuring that people who serve their time can benefit from their rehabilitation by being able to prove their credentials and become licensed. One study found that people who were employed had an 18% recidivism rate, compared to a 52.3% rate for the general release population.

### Reducing Recidivism is a Bipartisan Issue

"Let's focus more resources on rehabilitating those offenders so we can ultimately spend less money locking them up again."

-Rick Perry, Governor of Texas

"Collateral consequence statutes and policies impose additional burdens on people who have served their sentences, including denial of employment . . . without increasing public safety . . . Public safety requires us to carefully tailor laws and policies to genuine risk while reducing or eliminating those that impede successful reentry without community benefit."

-U.S. Attorney General Holder

"It is time to fundamentally rethink how we treat and rehabilitate our prisoners."

-Newt Gingrich & Pat Nolan

**Andrea M's Story\***

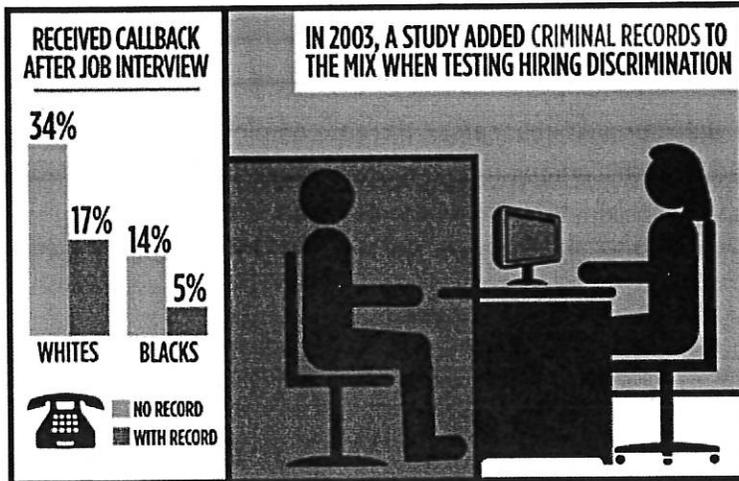
Andrea M struggled with a serious drug addiction for many years. As a result, she had a criminal record due to her drug use. Eventually, she sought treatment and engaged in recovery. She went back to school because she wanted to help others who struggle with chemical dependency. She studied addiction counseling and worked hard to obtain her degree.

In spite of all her efforts, there were legal barriers in her way. Although she met all the other qualifications necessary to be a substance abuse counselor, her criminal record prohibited her from pursuing her chosen profession. She was denied her license, and she did not know where to turn.

Finally, she obtained legal assistance from the Union Gospel Mission. An attorney represented her through a grueling eighteen month appeals process to prove that her criminal record should not disqualify her. In the meantime, she could not work in her field.

Eventually, Ms. M was granted her license and now gives back to her community by helping others overcome and recover from drug addiction. If she had had a Certificate of Restoration of Opportunity, she would have received her license when she applied for it, avoided an eighteen month legal battle and helped more people during that time.

It is time for Washington to ensure opportunities for all residents and reduce unnecessary barriers to employment that do not contribute to public safety.



(Source: The Nation)

While creating Certificates of Restoration of Opportunity will mark Washington as a leader in the movement to be smart on crime and justice, other states have paved the way with proven policies that reduce barriers to employment and certification.

**Other States**

\*Pseudonym

State	Type of relief	Process	Felonies Included in Relief	Removes barriers to employment
Arizona	Setting aside judgment	Judicial	Yes	Yes
	Restoration of civil rights	Judicial	Yes	Yes
California	Certificate of rehabilitation	Judicial	Yes	Yes
	Dismissal of charge	Judicial	Yes	Yes
Colorado	Order of collateral relief	Judicial	Yes	Yes
Connecticut	Certificate of employability	Administrative	Yes	Yes
	Certificate of suitability for licensure	Administrative	Yes	Yes
Illinois	Certificate of relief from disabilities	Judicial	Yes	Yes
	Certificate of good conduct	Judicial	Yes	Yes
Iowa	Certificate of employability	Administrative	Yes	Yes
New Jersey	Certificate suspending certain restrictions for employment	Both	Yes	Yes
New York	Certificate of relief from disabilities	Both	Yes	Yes
	Certificate of good conduct	Administrative	Yes	Yes

For more information and to become a sponsor of CROP, contact Merf Ehman or Melissa Lee at 206-464-0838.



# STATE OF WASHINGTON MINORITY AND JUSTICE COMMISSION

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Co-Chairperson  
Washington State Supreme Court

Justice Mary I. Yu  
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Commissioner Joyce McCown  
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Judge LeRoy McCullough  
King County Superior Court

Ms. Karen Murray  
Associated Counsel for the Accused

Ms. P. Diane Schneider  
National Latino Peace Officers Association

Judge Lori K. Smith  
King County Superior Court

Judge Marlane C. Spearman  
King County Superior Court

Mr. Travis Stearns  
Washington Defender Association

Justice Debra L. Stephens  
Washington State Supreme Court

Judge Greg D. Sypolt  
Spokane County Superior Court

Judge Vicki J. Toyohara  
Judge Pro Tem

Judge Dennis D. Yule, Retired  
Benton-Franklin County Superior Court

January 13, 2015

Honorable Stephen Warning  
Cowlitz County Superior Court  
312 SW 1<sup>st</sup> Ave, 2<sup>nd</sup> Fl  
Kelso, WA 98626-1739

Honorable Kitty-Ann van Doorninck  
Pierce County Superior Court  
930 Tacoma Ave S, Rm 334  
Tacoma, WA 98402-2108

Honorable Sam Cozza  
Spokane County Superior Court  
1116 W Broadway Ave  
Spokane, WA 99260-0350

Dear Judge Warning, Judge van Doorninck, Judge Cozza, and  
Members of the Superior Court Judges' Association (SCJA)  
Legislative Committee and Criminal Law Committee:

We write to respectfully ask that the SCJA consider lending  
support to Representative Walkinshaw's bill relating to the issuance of  
certificates of restoration of opportunity (CROP).

We understand that SCJA had some concerns. Judge Steve  
Warning, co-chair of the Legislative Committee, and King County  
Superior Court Judge Theresa Doyle, member of the Minority and  
Justice Commission, had several productive meetings with Rep.  
Walkinshaw to address these issues. Accordingly, the bill was  
revised.

First, there was concern about judges having to make a  
determination of an applicant's rehabilitation, and that this would  
require them to issue an advisory opinion to state agencies. In  
response to this concern, the requirements for obtaining a CROP have  
been changed so that judges will now look at a limited set of objective  
factors on a checklist to determine whether an applicant is qualified.

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Olympia, Washington 98504-1170  
Telephone (360) 705-5327 ♦ Telefacsimile (360) 956-5700  
E-mail: [Minority.Justice@courts.wa.gov](mailto:Minority.Justice@courts.wa.gov) ♦ Website: [www.courts.wa.gov](http://www.courts.wa.gov)

The checklist simplifies the requirements without having the judge make a determination of rehabilitation.

Second, there was concern that the implementation of CROP would need additional resources. This concern has largely been met by having it be an ex parte process without the need for a hearing, making it much more efficient for judges considering the cases.

Third, there was concern as to who would be responsible for gathering an applicant's criminal history. The bill has been changed to require the applicant to submit their criminal history report with their application, which the prosecutor's office will then verify and provide to the court.

Fourth, there was concern about whether applicants could easily access the court, especially those who file pro se. In response, the bill now requires that pattern forms and instructions be created to streamline the process for applicants, making it easier for those who file pro se.

Fifth, there was concern that the process for obtaining a CROP would vary depending on the county where the CROP is sought. Now, due to the pattern forms, the process for obtaining a CROP should be similar statewide.

Lastly, there was concern about issuing a CROP that would apply to crimes that were not adjudicated in the same jurisdiction. Now, the judge will have the discretion whether to grant the CROP as to the entire criminal history, or to limit it to particular crime(s) only in the county where that judge sits. Additionally, CROP applications will be filed as a new civil matter, so the Superior Courts will have jurisdiction over any case in the county, whether it involves crimes adjudicated in Municipal, District or Superior Court.

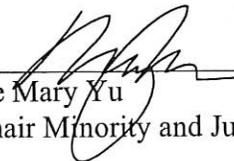
Over the last 25 years, the Minority and Justice Commission has been working diligently on behalf of the judicial branch to eliminate racial bias and unfairness from our system of justice. As you may know, individuals leaving prison or jail face numerous economic barriers because of the collateral consequences of a criminal conviction, particularly with regard to job opportunities. This bill, which enjoys the support of both prosecutors and criminal defense counsel, is an extraordinary and unique opportunity for us to address a systemic barrier facing people of color and the poor who are disproportionately affected by criminal records. CROP is consistent with our judicial mission of securing and advancing justice, and we respectfully request your support of it.

Very truly yours,



---

Justice Charles Johnson  
Co-Chair Minority and Justice Committee



---

Justice Mary Yu  
Co-Chair Minority and Justice Committee

cc:

Judge George Bowden  
Judge Richard Brosey  
Judge Harold Clarke  
Judge Jerry Costello  
Judge Jeanette Dalton  
Judge Marybeth Dingley  
Judge Michael Downes  
Judge Janis Ellis  
Judge Blane Gibson  
Comm. Steven Grovdahl  
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Spokane County Superior Court

Judge Dennis D. Yule, Retired  
Benton-Franklin County Superior Court

February  
January 3, 2015

Honorable Roger Goodman  
Washington State House of Representatives  
436B Legislative Building  
PO Box 40600  
Olympia, WA 98504-0600

Dear Representative Goodman, and Members of the Public Safety Committee:

On behalf of the Minority and Justice Commission, we once again write to express our support of HB 1553, the bill relating to the issuance of certificates of restoration of opportunity (CROP). We were very supportive last year when the bill was first introduced and we remain supportive with the modifications.

As you may know, the most significant barrier facing minority communities today, in particular Black men, is re-entry to society upon release from incarceration. This bill, much like the restoration of civil rights (the right to vote or possess a firearm), allows judges to certify that the conditions of an applicant's sentence have been met or that the individual is in compliance with the conditions of their sentence.

Over the last 25 years, the Minority and Justice Commission has been working diligently on behalf of the judicial branch to eliminate racial bias and unfairness from our system of justice. Individuals leaving prison or jail face numerous economic barriers because of the collateral consequences of a criminal conviction, particularly with regard to job opportunities. This bill, which enjoys the support of superior court judges, prosecutors, and criminal defense counsel, is an extraordinary and unique opportunity for us to address a systemic barrier facing people of color and the poor who are disproportionately

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Honorable Roger Goodman  
Members of the Public Safety Committee  
Page 2

affected by criminal records. CROP is about economic opportunity and reintegration into society, and we applaud any effort that attempts to help restore one's ability to be relicensed and to work. We join our colleagues in the criminal justice system in expressing our support since it is consistent with our judicial mission of rehabilitating and advancing justice, and we gladly express our support of it.

Very truly yours,



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Justice Charles Johnson  
Co-Chair



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Justice Mary Yu  
Co-Chair

cc: Rep. Tina Orwall  
Rep. Brad Klippert  
Rep. Dave Hayes  
Rep. Sherry Appleton  
Rep. Dan Griffey  
Rep. Louis Moscoso  
Rep. Eric Pettigrew  
Rep. Lynda Wilson  
Cassie Jones  
Dinah Le Duc  
Kelly Leonard  
Yvonne Walker  
Members of the Minority and Justice Commission



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## Judiciary Committee

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### HB 1390

**Title:** An act relating to legal financial obligations.

**Brief Description:** Concerning legal financial obligations.

**Sponsors:** Representatives Goodman, Holy, Jinkins, Kagi, Moscoso, Ormsby and Pollet.

#### Brief Summary of Bill

- Eliminates interest accrual on the non-restitution portions of legal financial obligations (LFOs) imposed in a criminal judgment and modifies standards for a court to reduce or waive interest that has accrued on LFOs.
- Provides that a court may not impose costs on a defendant who is indigent at the time of sentencing.
- Establishes provisions governing payment plans and priority of payment of LFOs.
- Addresses actions a court may take in sanction proceedings for failure to pay LFOs where the offender's failure to pay is not willful.
- Provides that the DNA Database fee is not mandatory if the state has already collected the offender's DNA as a result of a prior conviction.

**Hearing Date:** 1/21/15

**Staff:** Edie Adams (786-7180).

#### **Background:**

##### Legal Financial Obligations.

When a defendant is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. LFOs include: victim restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Interest on Legal Financial Obligations.

*Interest Rate:* LFO judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the applicable interest rate on LFOs for over two decades. For cases in courts of limited jurisdiction, interest accrues on non-restitution financial obligations at the rate of 12 percent upon assignment to a collection agency.

Interest that accrues on the restitution portion of the LFO is paid to the victim of the offense. All other accrued interest is split between the state and the county as follows: 25 percent to the state General Fund; 25 percent to the state Judicial Information System Account; and 50 percent to the county, 25 percent of which must be used to fund local courts.

*Reduction or Waiver of Interest:* An offender may petition a court to reduce or waive the interest on LFOs as an incentive for the offender to pay the principal. The court must waive interest on the portion of LFOs that accrued during the term of total confinement for the conviction giving rise to the LFOs if it creates a hardship for the offender or his or her family. The court may otherwise reduce interest on non-restitution LFOs if the offender has made a good faith effort to pay. Interest on restitution may not be waived, but may be reduced if the offender has paid the restitution principal in full.

### Imposition and Collection of LFOs.

*Costs:* Costs that may be imposed on a defendant include public defense costs, jury fee, criminal filing fee, bench warrant fee, deferred prosecution fee, pre-trial supervision fee, witness costs, incarceration costs, and other costs as ordered by the court.

A court may not order a defendant to pay costs unless the court finds that the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court must take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose. A defendant not in default in the payment of costs may petition for remission of all or part of the costs owed if payment of the amount due will result in manifest hardship to the defendant or his or her family.

*Priority of Payment:* An offender's payments towards a legal financial obligation are applied first to restitution, and then proportionally to other monetary obligations after restitution has been satisfied. Costs of incarceration, if ordered, are paid last.

### Failure to Pay Legal Financial Obligations.

The requirement that an offender pay a monthly sum towards a legal financial obligation is a condition of the sentence and an offender is subject to penalties for noncompliance. Under the Sentencing Reform Act, sanctions for a willful failure to pay can include incarceration or other penalties such as work crew or community restitution. If the failure to pay is not willful, the court may modify the offender's LFOs.

Civil contempt sanctions may also apply to an offender who fails to pay financial obligations. If the court finds that the failure to pay was willful, the court may impose contempt sanctions including incarceration. If the court determines the failure to pay was not willful, the court may modify the terms of payment, or reduce or revoke the amount of the financial obligation.

### DNA Database Fee.

A biological sample must be collected for purposes of DNA identification analysis from every person convicted of a felony or certain other offenses, and the court must impose a \$100 fee as part of the sentence for the offense. Eighty percent of the fee is deposited into the DNA Database Account and 20 percent of the fee is transmitted to the local agency that collected the biological sample.

### **Summary of Bill:**

#### LFO Interest.

*Interest Rate:* Interest accrual on the non-restitution portion of an offender's LFOs imposed in superior court or courts of limited jurisdiction is eliminated as of the effective date of the act.

*Reduction or Waiver of Interest:* Standards for the reduction or waiver of interest on LFOs are revised. Upon motion of the offender, the court must waive interest on the non-restitution portion of the LFOs that accrued prior to the effective date of the act. In addition, the court must waive interest that accrued on restitution while the offender was in total confinement for the conviction that gave rise to the LFO.

#### Imposition and collection of LFOs.

*Costs:* A court may not impose costs on an offender if the court finds the offender is at the time of sentencing indigent as defined in laws governing the provision of indigent defense services. A person is "indigent" under these standards if the person is receiving certain types of public assistance, involuntarily committed to a public mental health facility, or receiving an annual income after taxes of 125 percent of the federal poverty levels.

An offender who is not in default in the payment of costs may request the court to convert unpaid costs to community restitution hours at the rate of the minimum wage if payment of the amount due will result in manifest hardship to the defendant.

*Priority of Payment:* An offender's LFO payment must be applied to the principal on restitution obligations in all cases within a jurisdiction prior to payment of any other monetary obligations. The priority of payment applies to cases in courts of limited jurisdiction as well as superior court.

*Payment plans:* If the court finds that the defendant is indigent, the court must grant permission for payment of legal financial obligations to be made within a specified period of time or in specified installments.

#### Enforcement of LFOs.

When a court is considering sanctions for failure to pay LFOs, if court finds that failure to pay is not willful the court may, and if the defendant is indigent the court must, either: (1) modify the terms of payment; (2) reduce or waive non-restitution amounts; or (3) with the offender's consent allow conversion of non-restitution obligations to be converted to community restitution hours at the rate of no less than the state minimum wage for each hour of community restitution. The crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours.

If the court determines that the offender is homeless or is a person who is mentally ill, failure to pay LFOs is not willful noncompliance with the conditions of the sentence and does not subject the offender to penalties.

DNA Database Fee.

The court is not required to impose the DNA database fee if the state has previously collected the offender's DNA as a result of a prior conviction.

**Appropriation:** None.

**Fiscal Note:** Requested on January 19, 2015.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.



# SENATE BILL REPORT

## SB 5752

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As of February 9, 2015

**Title:** An act relating to information concerning racial disproportionality.

**Brief Description:** Regarding information concerning racial disproportionality.

**Sponsors:** Senators Hasegawa, Darneille, Kohl-Welles, Jayapal, Chase and McAuliffe.

**Brief History:**

**Committee Activity:** Government Operations & Security: 2/10/15.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & SECURITY

**Staff:** Samuel Brown (786-7470)

**Background:** Fiscal note estimates of the fiscal impact of proposed legislation are prepared by the executive branch for use during the legislative process. For legislation that has a fiscal impact on state agencies, fiscal notes are prepared under a process coordinated by the Office of Financial Management (OFM). Pursuant to instructions issued by OFM, affected agencies estimate the bill's impacts on state revenues and expenditures and work with OFM to produce the fiscal note. For legislation that affects counties, cities, and other units of local government, the Department of Commerce produces local government fiscal notes, which are also subject to coordination by OFM.

Several states, including Iowa, Connecticut, and Oregon, have established procedures for the provision of racial impact statements, which provide a statistical analysis of the projected impact of proposed legislation on racial or ethnic minority populations. The Minnesota Sentencing Guidelines Commission also produces racial impact statements on proposed legislation, although it is not required to by statute.

**Summary of Bill:** The Caseload Forecast Council (CFC) must establish a procedure for producing racial impact statements on the effect proposed legislation will have on racial and ethnic minorities, including how legislation will impact the racial and ethnic composition of the criminal and juvenile justice systems. Racial impact statements must be available at the request of any legislator. The lack of a racial impact statement does not affect the validity of any measure passed by both houses of the Legislature.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The CFC must work in cooperation with appropriate legislative committees, OFM, the Department of Corrections, the Department of Social and Health Services, the Administrative Office of the Courts, the Minority and Justice Commission, the Washington State Institute for Public Policy, and the Sentencing Guidelines Commission in developing a procedure for provision of racial impact statements.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

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SENATE BILL 5752

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Hasegawa, Darneille, Kohl-Welles, Jayapal, Chase, and McAuliffe

Read first time 02/02/15.      Referred to Committee on Government Operations & Security.

1            AN        ACT        Relating        to        information        concerning        racial  
2        disproportionality; amending RCW 43.88C.050; adding a new section to  
3        chapter 43.88C RCW; and creating a new section.

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

5            NEW SECTION.      **Sec. 1.**      The legislature finds that the health,  
6        safety, and productivity of all communities is of the utmost  
7        importance to the state of Washington, including historically  
8        marginalized racial and ethnic communities. All citizens are harmed  
9        by unintended racial and ethnic disparities created by legislation.  
10        Therefore, the legislature intends to create a proactive tool  
11        intended to provide legislators with aggregated and disaggregated  
12        demographical data and other information to help legislators  
13        understand possible disparate racial and ethnic impacts, and thus  
14        better informed and intentional decisions on legislative proposals.

15            **Sec. 2.**      RCW 43.88C.050 and 2011 1st sp.s. c 40 s 29 are each  
16        amended to read as follows:

17            (1) The caseload forecast council shall appoint a research staff  
18        of sufficient size and with sufficient resources to accomplish its  
19        duties. The caseload forecast council may request from the  
20        administrative office of the courts and the department of social and

1 health services such data, information, and data processing  
2 assistance as it may need to accomplish its duties, and such services  
3 shall be provided without cost to the caseload forecast council.

4 (2) The caseload forecast council may request from the  
5 administrative office of the courts, the department of social and  
6 health services, the department of corrections, the office of the  
7 superintendent of public instruction, and other agencies, such data,  
8 information, and data processing assistance as it may need to  
9 accomplish its duties, and these services shall be provided without  
10 charge to the caseload forecast council.

11 (3) The caseload forecast council is considered a criminal  
12 justice agency within the meaning of RCW 10.97.030.

13 NEW SECTION. Sec. 3. A new section is added to chapter 43.88C  
14 RCW to read as follows:

15 (1) The caseload forecast council, in cooperation with  
16 appropriate legislative committees and legislative staff, the office  
17 of financial management, the department of corrections, the  
18 department of social and health services, the administrative office  
19 of the courts, the minority and justice commission, the Washington  
20 state institute for public policy, and the sentencing guidelines  
21 commission shall establish a procedure for the provision of racial  
22 impact statements on the effect that legislative bills and  
23 resolutions will have on racial and ethnic minority groups, including  
24 but not limited to the racial and ethnic composition of the criminal  
25 and juvenile justice systems.

26 (2) The caseload forecast council shall provide a racial and  
27 ethnic impact statement on any legislative proposal at the request of  
28 any legislator.

29 (3) This section shall not prevent either the house of  
30 representatives or the senate from acting on any bill before it as  
31 otherwise provided by the state Constitution, by law, or by the rules  
32 and joint rules of the senate and house of representatives, nor shall  
33 the lack of any racial impact statement provided in this section or  
34 any error in the accuracy thereof affect the validity of any measure  
35 otherwise duly passed by the legislature.

36 (4) For the purpose of this section, the juvenile justice system  
37 includes, but is not limited to, all matters based in juvenile court

1 as defined in RCW 13.04.030 and all juvenile court matters related to  
2 compulsory school attendance as described in chapter 28A.225 RCW.

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**Labor Committee**

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**HB 1701**

**Brief Description:** Prohibiting employers from asking about arrests or convictions before an applicant is determined otherwise qualified for a position.

**Sponsors:** Representatives Moscoso, Walsh, Haler, Jenkins, Reykdal, S. Hunt, Blake, Riccelli, Ortiz-Self, Walkinshaw, Tharinger, Appleton, Sells, Gregerson, Santos, Farrell and Ormsby.

**Brief Summary of Bill**

- Prohibits an employer from: (1) inquiring about an applicant's arrest or conviction history before determining whether the applicant is otherwise qualified for the position; (2) advertising job openings in a way that excludes people with arrests or convictions; and (3) implementing policies that automatically and categorically exclude people with an arrest or conviction record from consideration.
- Provides exceptions for certain employment positions and creates a cause of action.

**Hearing Date:** 2/9/15

**Staff:** Trudes Tango (786-7384).

**Background:**

Under the Washington Law Against Discrimination, the Human Rights Commission has issued, in rule, a preemployment inquiry guide. The rule provides that inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest occurred within the last 10 years. Inquiries about convictions may be justified by business necessity if the crimes inquired about reasonably relate to the job duties, and if the convictions occurred within the last 10 years.

Exempt from the rule are law enforcement agencies and state agencies, school districts, businesses, and other organizations that have a direct responsibility for the supervision of children, persons with disabilities and vulnerable adults.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Various state laws allow or require employers or licensing agencies to conduct criminal background checks on applicants. Examples include: school districts hiring people who will have regularly scheduled unsupervised access to children; the Department of Health for purposes of licensing certain health care professionals; applicants for a mortgage lender's license; and applicants for positions with the Department of Early Learning who will or may have unsupervised access to children.

**Summary of Bill:**

An employer is prohibited from:

- inquiring, either orally or in writing, or obtaining information about an applicant's arrests or convictions before having determined that the applicant is otherwise qualified for the position;
- advertising openings in a way that excludes people with arrests or convictions from applying; and
- implementing a policy or practice that automatically or categorically excludes people with an arrest or conviction from consideration prior to determining that the applicant is otherwise qualified.

The prohibitions do not apply to:

- Any employer hiring a person who will have unsupervised access to children under the age of 18 or vulnerable individuals;
- Any employer, including a financial institution, who is expressly permitted or required under federal or state law, to inquire into, consider, or rely on information about an applicant's or employee's arrest or conviction record for employment purposes; and
- Employment by general or limited law enforcement agencies.

The legislation may not be construed to or interpreted to:

- interfere with, impede, or diminish any provision in a collective bargaining agreement;
- diminish or conflict with any requirements of state or federal law, including the federal Civil Rights Act, Fair Credit Reporting Act, and laws regarding unsupervised access to children and vulnerable individuals;
- obligate an employer to provide accommodations or job modifications for employing a person with an arrest or conviction record or who is facing pending charges; or
- discourage or prohibit an employer or local government from adopting greater protections.

A right of action is created. It is presumed that damages to the applicant are equal to the cost of application, if any, plus \$500. Costs of the suit may also be recovered, but any additional economic damages must be proven.

The state may form an advisory committee to provide recommendations to improve these provisions, including recommendations for rule-making, if necessary.

Definitions for certain terms are provided. The act may be known as the Washington Fair Chance Act.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.



**Access to Justice Conference: Working for Justice “Our Journey Continues”**

**Friday, June 12 – Sunday, June 14**

**Wenatchee Conference Center**

**Agenda**

Friday, June 12

- 10am-2pm – Minority and Justice Commission meeting
- 5:30pm-7pm – Reception

Saturday, June 13

- Full-day of Workshops
- Keynote Speaker – Lateefah Simon, Director of the Rosenberg Foundation’s California’s Future initiative

Sunday, June 14

- Plenary Session

**Lodging**

Coast Wenatchee Center Hotel

201 N. Wenatchee Ave.

**Cost of Registration** - \$250 (waiting to hear if we can get group discount)

## Minority and Justice Commission Meeting Schedule 2015

Conference Number: 1-888-757-2790, Participant Code 285042#

Date	Time	Location
Friday, February 13, 2015	8:45 a.m. – 12:30 p.m.	AOC SeaTac
Friday, April 10, 2015	8:45 a.m. – 12:30 p.m.	Seattle University School of Law
Friday, June 12, 2015	10:00 a.m. – 2:00 p.m.	Wenatchee Conference Center (in conjunction w/ ATJ Conference)
Friday, August 14, 2015	8:45 a.m. – 12:30 p.m.	AOC SeaTac--Tentative
Friday, October 9, 2015	8:45 a.m. – 12:30 p.m.	AOC SeaTac--Tentative
Friday, December 4, 2015	8:45 a.m. – 12:30 p.m.	TBD (AOC reserved for JISC)

Please contact Cynthia Delostrinos at [Cynthia.Delostrinos@courts.wa.gov](mailto:Cynthia.Delostrinos@courts.wa.gov) or 360-705-5327 if you have any questions.





# SUQUAMISH TRIBAL COURT

P.O. Box 1209

Suquamish, WA 98392

January 23, 2015



Dear «Salutation»:

We would like to extend an invitation to you to participate in our first regional meeting of the Tribal State Court Consortium (TSCC) hosted by the Suquamish Tribe and the Washington Supreme Court Commissions on Wednesday, February 25, 2015, from 8:30 a.m. – 4:30 p.m. at the House of Awakened Culture, 7235 NE Park Way, Suquamish, WA 98392. The TSCC was launched in 2012 to encourage and promote communication and collaboration between tribal and state court judges throughout Washington.

To date, there have been two TSCC meetings held in conjunction with the Fall Judicial Conference. This will be the first regional meeting of the TSCC. The purpose of the Suquamish regional meeting is to bring together district and superior court judges with tribal court judges from the upper western region of Washington, which includes Clallam, Jefferson, and Kitsap counties, to discuss culture, tribal code, and cross-jurisdictional issues impacting domestic violence and sexual assault cases. Our goal is to create and/or build on existing practical strategies that will help foster and sustain dialogue and collaboration between the state and tribal courts.

We hope you can participate in this important meeting. Please RSVP by February 13, to Ms. Paula Odegaard, Administrative Office of the Courts at [paula.odegaard@courts.wa.gov](mailto:paula.odegaard@courts.wa.gov) or (360) 705-5214.

If you have any substantive questions about the meeting or the TSCC, please contact Supreme Court Commissions Manager, Danielle Pugh-Markie at [danielle.pugh-markie@courts.wa.gov](mailto:danielle.pugh-markie@courts.wa.gov) or (360) 705-5290.

Sincerely,

Chief Justice Barbara A. Madsen  
WA State Supreme Court

Judge Cindy K. Smith  
Suquamish Tribal Court

Judge Tom Tremaine  
NW Tribal Judges'  
Association

## **2<sup>nd</sup> Annual Tribal State Court Consortium**

**Monday, September 22, 2014**

**Spokane, WA**

### **MEETING NOTES**

The theme for the meeting is to think about what is best for OUR clients, because we need to start framing these meetings with the understanding that we share the same clients.

The goals for the meeting are as follows:

1. Structure—what would a regular consortium meeting look like?
2. Identify tribal and state court judges who want to be involved in the consortium
3. Figure out what to report on for next year's consortium—what issue do we want to work on from now until next year?

There will be two presentations during the meeting on ICWA and VAWA.

### **PRESENTATIONS / Identification of Issues**

- Courts, not attorneys, should be the leaders on transferring jurisdiction from state to tribal courts
- It is all about the relationships we have
- Qualified Expert Witnesses—issue
  - There is a delineation in state law on who a QEW can be
  - Tribal courts will not testify against parents
  - It would help if we had relationships with people who are able to have lists of individuals who are able to testify as QEW, such as the Attorney General's Office
- Tribal Youth in Foster Care—issue
  - Under ICWA, the tribal court should be notified when a child comes into state court on non-custody cases
  - Tribal courts are better suited to deal with tribal children
- Concurrent Jurisdiction—issue
  - Parents in blended families—how can state & tribal courts work together? Someone from each court has to be in communication with one another about the requirements of the parents
  - Paternity in ICWA cases—In these types of cases, lines of communication must stay open between the courts
- Disproportionality—issue
  - Tribal youth are disproportionately represented in foster care in comparison to their overall population in WA state.
  - It is important that we start to ask the question of what the numbers mean
- Youth from non-local tribes—issue
  - In Pierce county there are a lot of youth who are from tribes far away from that county

- Resources are being used for youth who are not from the local tribes
- Violence Against Women Act—issue
  - We are going to need a lot of coordination between the state and tribal courts once VAWA comes into effect
  - Some foreseen issues involve
    - Dual probation
    - Areas of coordination will increase for things like victim services & probation

## **STRUCTURE OF CONSORTIUM**

### **Why do we need the consortium?**

- We need a concerted effort to figure out what the data showing disproportionality means—WHY is there disproportionality
- The federal government is opening in the door to more collaborative areas
- There are many areas of crossover between the state and tribal courts: ICWA, VAWA, state version of Full Faith and Credit (82.5)
- Ongoing question—how do you grow and sustain consortiums—ability to prepare for a crisis, not wait until it happens to respond.

### **Elements of Success**

1. Persistent leadership that is institutionalized, not merely person-driven
2. Sustained educational efforts: CJE's, CLE's, cross-cultural education
3. Focus on common goals, interests, and tasks- NOT conflicts
4. Cost savings—coordination of resources, not duplicating efforts
5. Fairness and respect for one another and for the courts
6. Broad mission statement/goal with the ability to determine tasks—to improve coordination and collaboration between state and tribal courts

### **MODEL: New Mexico Consortium**

- 14 members of the consortium; 7 tribal; 7 state
- Meetings are cross-cultural & spread out throughout the state in regions

### **FUNDING**

- The Gender and Justice Commission has a \$20,000 grant for VAWA related work.
  - Criteria for grant:
    - Deals with procedures for DV cases
    - Develop/monitor process for cases with DV & tribal members
    - Support state and tribal court communication in 3 regions of the state where there is overlap
    - Develop recommendations
    - Collect and submit data

### **CONSORTIUM MEMBERSHIP**

- Members only consist of judicial officers

- It was suggested that people other than judges should be part of it: such as law enforcement, CPS, probation counselors, caseworkers—however, it was decided that these other individuals should just be invited on a meeting by meeting basis as consultants, but not members of the consortium because it is safest with just judicial officers
- We should have American Judges Association judges present—tribal and state court judges from around the country

## **TRAINING**

- The consortium would create training tools, for example, a DV Benchguide specific to tribal-state coordination
- Need staff to be able to record meetings for those who are unable to make it to the meetings but would like to stay connected.

## **MEETINGS**

- We need to acknowledge all of the individuals in the room who have consistently stayed involved—this group could be the core group
- We will NOT limit membership—we will encourage anyone who wants to be a part of it to join. Invite every judge.
  - Share the invite through all of the judicial listservs
- 3 meetings a year
- Meetings are on tribal land

## **LOCATIONS**

- The regions will be selected based on how the court of appeals is set up (3 divisions)
  - Upper west side
  - Lower west side
  - Eastern

## **GOALS/VISION/MISSION**

- Should be kept broad—do not narrow the focus of the consortium
- Judges and court staff will come together and identify two things
- Meetings are for information sharing for future projects
- We should have a repository to have a place to keep a memory of the work we do and the work around the state

## **FOLLOW-UP**

- Look at areas where there is overlap (First Annual Project)
- Disproportionality—develop a program to really understand what the numbers mean
- There was a suggestion to look at other states' consortiums & come up with a report to help the discussion of what we want our consortium to look like
- Develop a governing board
- Plan a meeting in 6 months—have next meeting in Division 2 (Tacoma area)
  - Hosted by Suquamish tribe (Possibly Cindy Smith)



## **Minority and Justice Commission - Committees**

### **Outreach Committee**

**Mission:** To facilitate communication between the Minority and Justice Commission and the public and, specifically, the legal and court communities of Washington State, regarding interaction with and participation in the justice system by minorities or persons of color.

**Projects:**

- Produce and distribute Annual Report
- Obtain artwork expressing diversity for the Commission's annual poster
- Assist the Commission in broadening its exposure to the public and constituencies it serves by recommending and facilitating Commission meetings and other public events at locations and in communities throughout the state
- Recommend individuals for appointment to the Commission voting membership

### **Education Committee**

**Mission:** To improve the administration of justice by eliminating racism and its effects by offering and supporting a variety of innovative, high quality, education programs designed to improve the cultural and professional competency of court employees and other representatives of the Washington State justice system

**Projects:**

- Identifying new topics and faculty for education programming for justice system workers
- Planning and implementation of education programming

### **Workforce Diversity Committee**

**Mission:** To promote equal employment and to increase the number of racial and ethnic minorities employed in the justice system.

**Projects:**

- New Project: Update judicial officers of color directory
- Youth and Justice Forums

### **Research Committee**

**Mission:** To help with the design, creation, implementation, and distribution of research projects relating to problems experienced by racial and ethnic minorities in the Washington State Justice System

**Projects:**

- Jury diversity survey
- Civil legal needs study?
- Brainstorming new topics





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February 9, 2015

David Keenan  
(206) 839-4368  
dkeenan@orrick.com

Washington State Minority and Justice Commission  
Administrative Office of the Courts  
P.O. Box 41170  
Olympia, Washington 98504-1170

Re: Civil Legal Needs Study Update

Dear Commission Members:

As the Commission's Liaison to the Civil Legal Needs Study Update Committee (and as a voting member of the Committee itself), I am writing to update the Commission concerning the status of the study, and to solicit any feedback and questions the Commission might have concerning preliminary study results.

## I. PROBABILITY SURVEY COMPLETE

The Committee's research partner at the Washington State University Social & Economic Research Center recently completed the probability portion of the study, which involved sending a seventy-question survey to certain census tracts where there was a high probability of finding individuals impacted by civil legal needs, because of factors such as income, race, and ethnicity. Nearly 1,300 people responded to the probability portion of the study.

## II. EARLY ASSESSMENT SHOWS DISCRIMINATION

The Committee's research partner is still in the early stages of analyzing the data, but the initial responses indicate a high level of level of discrimination among minority groups in several areas relating to civil legal needs.<sup>1</sup> For example:

- More than 40 percent of respondents reported being discriminated against on the basis of at least one personal characteristic in the prior twelve months.
- Respondents reported that any discrimination took place predominantly in connection with many areas which relate to civil legal needs, including:
  - employment;
  - rental housing;

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<sup>1</sup> This data is very preliminary and subject to continued testing.



ORRICK

Washington State Minority and Justice Commission

February 9, 2015

Page 2

- consumer and financial services; and
- healthcare.
- The reported discrimination appeared disproportionately among individuals with troubled credit histories, those with criminal records, and certain other groups.
- Discrimination on the basis of credit history was particularly high in connection with employment, consumer and financial services, and healthcare.
- Taking no action at all to address their civil legal needs was the most frequent approach reported among probability survey respondents.

### **III. NON-PROBABILITY SURVEY IS NEXT**

The probability portion of the study closed on December 31st, and the non probability portion is underway. During this phase of the study, the Committee's research partner will work in impacted communities to find survey respondents who might have been missed during the probability study, with the goal of filling in gaps among the initial responses.

### **IV. INITIAL PRESENTATION SHOULD BE AVAILABLE IN MARCH**

An initial, high-level presentation concerning data from the probability portion of the study should be available in March.

### **V. FULL REPORT SHOULD BE AVAILABLE IN JUNE**

A full report of the results of the study is expected to be ready in June.

### **VI. THE COMMISSION'S QUESTIONS ARE WELCOME**

The Committee wants the study to be useful to the Commission and welcomes the Commission's feedback and any specific questions it has concerning the preliminary data.



Washington State Minority and Justice Commission  
February 9, 2015  
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "David Keenan", with a large, sweeping loop at the beginning and a horizontal line extending to the right.

David Keenan