

# **BOARD FOR JUDICIAL ADMINISTRATION**



**WASHINGTON  
COURTS**

## **MEETING PACKET**

**FRIDAY, FEBRUARY 17, 2012  
9:30 A.M.**

**PUGET SOUND CONFERENCE ROOM  
ADMINISTRATIVE OFFICE OF THE COURTS  
OLYMPIA, WASHINGTON**

# Board for Judicial Administration Membership

## VOTING MEMBERS:

**Chief Justice Barbara Madsen**, Chair  
Supreme Court

**Judge Chris Wickham**, Member Chair  
Superior Court Judges' Association  
Thurston County Superior Court

**Judge Marlin J. Appelwick**  
Court of Appeals, Division I

**Judge Ronald Culpepper**  
Superior Court Judges' Association  
Pierce County Superior Court

**Judge Deborah Fleck**  
Superior Court Judges' Association  
King County Superior Court

**Judge Janet Garrow**  
District and Municipal Court Judges'  
Association  
King County District Court

**Judge Laura Inveen**, President  
Superior Court Judges' Association  
King County Superior Court

**Judge Jill Johanson**  
Court of Appeals, Division II

**Judge Teresa Kulik**  
Court of Appeals, Division III

**Judge Michael Lambo**  
District and Municipal Court Judges'  
Association  
Kirkland Municipal Court

**Judge Jack Nevin**  
District and Municipal Court Judges'  
Association  
Pierce County District Court

**Justice Susan Owens**  
Supreme Court

**Judge Kevin Ringus**  
District and Municipal Court Judges'  
Association  
Fife Municipal Court

**Judge Scott Sparks**  
Superior Court Judges' Association  
Kittitas County Superior Court

**Judge Gregory Tripp**, President  
District and Municipal Court Judges'  
Association  
Spokane County District Court

## NON-VOTING MEMBERS:

**Mr. Stephen Crossland**, President  
Washington State Bar Association

**Judge Sara Derr**, President-Elect  
District and Municipal Court Judges'  
Association  
Spokane County District Court

**Mr. Jeff Hall**  
State Court Administrator

**Ms. Paula Littlewood**, Executive Director  
Washington State Bar Association

**Judge Craig Matheson**, President-Elect  
Superior Court Judges' Association  
Benton and Franklin Superior Courts

**Ms. Michele Radosevich**, President-Elect  
Washington State Bar Association

**Judge Ann Schindler**, Presiding Chief Judge  
Court of Appeals, Division I



**Board for Judicial Administration (BJA)**  
 Friday, February 17, 2012 (9:30 a.m. – 2:30 p.m.)  
 Puget Sound Conference Room, AOC Office, Olympia

**AGENDA**

<b>1. Call to Order</b>	Chief Justice Barbara Madsen Judge Chris Wickham	9:30 a.m.
<b>2. Welcome and Introductions</b>	Chief Justice Barbara Madsen Judge Chris Wickham	9:30 a.m.
<b>3. Implementation of GR 34</b>	Judge Mary Yu	9:35 a.m.  Tab 1 Handout
<b>Action Items</b>		
<b>4. December 9, 2011 Meeting Minutes</b> Action: Motion to approve the minutes of the December 9, 2011 meeting	Chief Justice Barbara Madsen Judge Chris Wickham	10:10 a.m.  Tab 2
<b>5. Regional Courts Work Group</b> Action: Motion to go forward with the recommendation of the Regional Courts Work Group	Judge Sara Derr	10:15 a.m.  Tab 3
<b>6. Trial Court Operations Funding Committee Appointments</b>	Ms. Mellani McAleenan	10:30 a.m.  Tab 4
<b>Reports and Information</b>		
<b>Break</b>		10:35 a.m.
<b>7. Legislative Report</b>	Ms. Mellani McAleenan	10:50 a.m.  Tab 5
<b>8. DWLS 3 Reform Bill</b>	Ms. Darby DuComb	11:05 a.m.  Tab 6

<p><b>9. Role of the BJA</b>  Introduction</p> <p>History</p> <p>Comments from associations</p> <p>Break to pick up lunch</p> <p>Comments from others</p> <p>Strategic planning</p> <p>Discussion</p>	<p>Chief Justice Barbara Madsen  Judge Chris Wickham</p> <p>Mr. Jeff Hall</p> <p>Judge Ann Schindler  Judge Laura Inveen  Judge Gregory Tripp</p> <p>All</p> <p>Chief Justice Barbara Madsen  Mr. Steve Henley</p> <p>All</p>	<p>11:30 a.m.</p> <p>11:40 a.m.</p> <p>11:55 a.m.  12:05 p.m.  12:15 p.m.</p> <p>12:25 p.m.</p> <p>12:35 p.m.</p> <p>1:00 p.m.</p> <p>1:10 p.m.</p> <p>Tab 7</p>
<p><b>10. Budget Process</b></p>	<p>Chief Justice Barbara Madsen  Mr. Jeff Hall</p>	<p>1:30 p.m.</p> <p>Tab 8  Handout</p>
<p><b>11. Therapeutic Courts</b></p>	<p>Ms. Mellani McAleenan</p>	<p>1:50 p.m.</p> <p>Tab 9</p>
<p><b>12. Part-time Municipal Courts in Washington</b></p>	<p>Mr. Dirk Marler</p>	<p>2:05 p.m.</p> <p>Tab 10  Handout</p>
<p><b>13. Other Business</b></p> <p>Next meeting: March 16  Beginning at 9:30 a.m. at the  Temple of Justice, Olympia</p>	<p>Chief Justice Barbara Madsen  Judge Chris Wickham</p>	<p>2:20 p.m.</p>
<p><b>14. Adjourn</b></p>		<p>2:30 p.m.</p>
<p>Persons with a disability, who require accommodation, should notify Beth Flynn at 360-357-2121 or <a href="mailto:beth.flynn@courts.wa.gov">beth.flynn@courts.wa.gov</a> to request or discuss accommodations. While notice five days prior to the event is preferred, every effort will be made to provide accommodations, when requested.</p>		



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

(a) Any individual, on the basis of indigent status as defined herein, may seek a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief from a judicial officer in the applicable trial court.

(1) The application for such a waiver may be made ex parte in writing or orally, accompanied by a mandatory pattern form created by the Administrative Office of the Courts (AOC) whereby the applicant attests to his or her financial status or, in the case of an individual represented by a qualified legal services provider ("QLSP") or an attorney working in conjunction with a QLSP, a declaration of counsel stating that the individual was screened and found eligible by the QLSP.

(2) The court shall accept an application submitted in person, by mail and where authorized by local court rule not inconsistent with GR 30, electronic filing. The process for presentation of the application shall conform to local court rules and clerk processes not inconsistent with the rules of this court for presenting ex parte orders to the court directly or via the clerk. All applications shall be presented to a judicial officer for consideration in a timely manner and in conformity with the local court's established procedures. There shall be no locally imposed fee for making an application. The applicant or applicant's attorney filing by mail, shall provide the court with a self-addressed stamped envelope for timely return of a conformed copy of the order.

COMMENT

This rule establishes the process by which judicial officers may waive civil filing fees and surcharges for which judicial officers have authority to grant a waiver. This rule applies to mandatory fees and surcharges that have been lawfully established, the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief. These include but are not limited to legislatively established filing fees and surcharges (e.g., RCW 36.18.020(5)); other initial filing charges required by statute (e.g., family court facilitator surcharges established pursuant to RCW 26.12.240; family court service charges established pursuant to RCW 26.12.260; domestic violence prevention surcharges established pursuant to RCW 36.18.016(2)(b)); and other lawfully established fees and surcharges which must be paid as a condition of securing access to judicial relief.

(3) An individual who is not represented by a qualified legal services provider (as that term is defined below) or an attorney working in conjunction with a qualified legal services provider shall be determined to be indigent within the meaning of this rule if such person, on the basis of the information presented, establishes that:

(A) he or she is currently receiving assistance under a needs-based, means-tested assistance program such as the following:

- (i) Federal Temporary Assistance for Needy Families (TANF);
- (ii) State-provided general assistance for unemployable individuals (GA-U or GA-X);
- (iii) Federal Supplemental Security Income (SSI);
- (iv) Federal poverty-related veteran's benefits; or
- (v) Food Stamp Program (FSP); or

(B) his or her household income is at or below 125 percent of the federal poverty guideline; or

(C) his or her household income is above 125 percent of the federal poverty guideline and the applicant has recurring basic living expenses (as defined in RCW 10.101.010(4)(d)) that render him or her without the financial ability to pay the filing fees and other fees or surcharges for which a request for waiver is made; or

(D) other compelling circumstances exist that demonstrate an applicant's inability to pay fees and/or surcharges.

(4) An individual represented by a QLSP, or an attorney working in conjunction with a QLSP that has screened and found the individual eligible for services, is presumptively deemed indigent when a declaration from counsel verifies representation and states that the individual was screened and found eligible for services.

(5) As used in this rule, "qualified legal services provider" means those legal services providers that meet the definition of APR 8(e).

COMMENT

The adoption of this rule is rooted in the constitutional premise that every level of court has the inherent authority to waive payment of filing fees and surcharges on a case by case basis. Each court is responsible for the proper and impartial administration of justice which includes ensuring that meaningful access to judicial review is available to the poor as well as to those who can afford to pay.

(b) Nothing in this rule shall prohibit or delay action on the underlying petition upon the court's approval of a waiver and presentation of an original petition may accompany the initial fee waiver.

[Adopted effective December 28, 2010.]

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**Board for Judicial Administration (BJA) and  
Court Management Council (CMC) Joint Meeting**  
Friday, December 9, 2011 (9:00 a.m. – 12:00 p.m.)  
AOC SeaTac Office, 18000 International Blvd., Suite 1106, SeaTac

**MEETING MINUTES**

**Members Present:**

Chief Justice Barbara Madsen, Co-Chair  
Judge Chris Wickham, Member Chair  
Judge Marlin Appelwick  
Judge Ronald Culpepper  
Judge Deborah Fleck  
Judge Janet Garrow  
Mr. Jeff Hall  
Judge Laura Inveen  
Judge Jill Johanson  
Judge Teresa Kulik (by phone)  
Judge Michael Lambo  
Judge Craig Matheson  
Justice Susan Owens  
Judge Kevin Ringus  
Judge Scott Sparks  
Judge Ann Schindler  
Judge Gregory Tripp

**Guests Present:**

Mr. Jim Bamberger  
Ms. Barbara Christensen (by phone)  
Mr. Pat Escamilla  
Ms. Delilah George  
Ms. Betty Gould  
Mr. N.F. Jackson  
Ms. Lynne Jacobs  
Ms. LaTricia Kinlow  
Ms. Kathryn Leathers  
Mr. Frank Maiocco  
Judge Christine Quinn-Brintnall  
Ms. Nancy Scott

**AOC Staff Present:**

Ms. Beth Flynn  
Mr. Dirk Marler  
Ms. Mellani McAleenan  
Dr. Carl McCurley

The meeting was called to order by Judge Wickham.

Court Manager of the Year Award

This year there were twelve nominations for Court Manager of the Year: Ms. Linda Bell, Pierce County District Court; Ms. Tricia Crozier, King County District Court ; Ms. Delilah George, Skagit County Superior Court; Ms. Betty Gould, Thurston County Clerk; Mr. N.F. Jackson, Whatcom County Superior Court; Mr. Frank Maiocco, Kitsap County Superior Court; Ms. Shelly Maluo, Pierce County Juvenile Court; Mr. Ron Miles, Spokane County Superior Court; Ms. Jorene Reiber, King County Superior Court; Ms. Marilyn Staricka, Pacific County Superior Court; Mr. Robert White, Seattle Municipal Court; and Ms. Deana Wright, Lakewood and University Place Municipal Court. All of them should be commended.

The Court Manager of the Year is N.F. Jackson who was nominated by Ms. Delilah George, Judge Steven Mura and Justice Mary Fairhurst for his 22 years of service to the courts and on statewide committees, including the Judicial Information System Committee (JISC), and his creation and implementation of a computerized file storage system in Whatcom County, along with his assistance in developing the rules that allow electronic filing in Washington courts.

Ms. George stated that Mr. Jackson always sets the bar high and is the person other clerks turn to when they have a question. It has been an honor to work with Mr. Jackson and she appreciates him and will miss him after he retires.

Mr. Jackson said he cannot be more rewarded than to have worked in such an honorable profession.

#### Washington State Center for Court Research

Dr. Carl McCurley provided an overview of the Washington State Center for Court Research (WSCCR) which was established by Supreme Court Order in September 2004 to provide independent, objective, and informed research which enables the judiciary to participate as an equal partner in government affairs. Two-thirds of the WSCCR funding is from the State General Fund and one-third is from private, federal, and state grants.

An advisory board guides the WSCCR and the board is chaired by Judge Ann Schindler. The advisory board guides the WSCCR regarding the research priorities for the judicial branch. Some of the factors they consider when setting the priorities are what the current priorities are, how much time a project will take, is the data viable or does it need to be developed, is there funding, etc.

The WSCCR is working on the following projects:

- The WSCCR performs many tasks related to the Race and the Criminal Justice System Task Force.
- The Minority and Justice Commission asked the WSCCR to participate in a replication of the research by Mr. Mark Peffley and Mr. Jon Hurwitz in the book *Justice in America*. They will field a survey that will ask Washingtonians who are part of specific racial groups what their perceptions are in the fairness of the justice system and their experiences with the justice system.
- The City of Seattle contracted with the WSCCR to evaluate their residential placement program, the Bridge Program, which is primarily for girls who were prostituted youth. The evaluation is just getting started now and will take about a year and a half to complete.
- The MacArthur Foundation Models for Change grant provides awards for reforming juvenile justice. The Administrative Office of the Courts (AOC) is holding trainings and providing technical assistance to juvenile courts in the collection of race and ethnicity data in the juvenile courts.
- The WSCCR evaluated the Washington State Aggression Replacement Training Program's impact on offenders from 2004-2006. Offenders who completed the training had recidivism rates drop from 36.7% to 27.6%.

- The WSCCR staff created an online directory of Washington problem-solving courts. They are hoping to be able to build off the directory and gather more information about what those courts are doing.
- The WSCCR participates in a federal court improvement program which funds a position in the WSCCR and that position is responsible for the Timeliness of Dependency Case Processing in Washington Report which is now on the Inside Courts Web site.
- The WSCCR received a federal grant from the Bureau of Justice Administration to look at the effects of child maltreatment on school performance and contact with the justice system. In addition, they can identify courts that handle domestic violence offenders well and can try to figure out what they are doing that works. The findings will be available through the report but the WSCCR can work with individual counties regarding specific information about their county. At this point in time though they do not have a process in place to provide the court-specific information.

Judge Schindler stated that the work of the WSCCR is not only important but it is really the jewel in the crown of the judicial branch and the AOC. Earlier this week Dr. McCurley received a Champion for Change award from the MacArthur Foundation and was recognized for the work the WSCCR has done in analyzing and improving outcomes for court-involved children.

#### Transcriptionist Subcommittee

Ms. George stated the original problem: courts experienced frustration getting timely verbatim reports of proceeding from transcriptionists or independent court reporters and that there was not a mechanism in place to deal with problems. She gave an overview of the goals of the Subcommittee.

Ms. George stated that the Court Management Council (CMC) Transcriptionist Subcommittee started looking at transcriptionist issues in 2009. They did not address court reporters who were employees of the court, only outside reporters and transcriptionists.

Currently, only four states solely use electronic technology and Alaska has to use technology because they do not have court reporters. All of the states they looked at either had policies and procedures in place or were working on it. After surveying the states, they also surveyed the courts in Washington. When asked, "does your court have a process that authorizes transcriptionists and independent court reporters (non-employees) to provide verbatim report of proceedings of your record?" 76% responded that they did not have a process in place, 15% stated they had an unwritten process in place, and only 9% had a written process. The complete survey results were presented to the CMC. It was determined by the Subcommittee to be critical that transcription standards be developed.

Some of the important points of the Subcommittee include:

- A plan is needed to accommodate the declining numbers of court reporters;
- The Final Report and Recommendations for Electronic Recording document was reviewed and changes proposed (original report completed in 1984; updated in 2002);
- An emphasis on the responsibility of judge and operator;

- Possible certification for court transcriptionists;
- Court rules and RCWs needed to be updated; new rules will be proposed.

The Subcommittee's final task was to go through all the statutes and RCWs related to court reporting/transcriptionists to determine revisions that will be needed based on the final report. They will also be proposing new applicable rules. The CMC will approve the report and then it will be submitted to the BJA for approval.

There will be a session on this topic at the SCJA/AWSCA spring conference.

#### November 18, 2011 Meeting Minutes

Judge Schindler requested that the wording for the Court of Appeals report be revised as follows:

**Court of Appeals:** Judge Schindler stated the Court of Appeals continues to grapple with budget issues from the last few years. Division II continues to have a backlog. The backlog for Division I has also doubled but all three divisions are working together to identify cases to transfer to help with the Division II backlog.

**Judge Ringus moved and Judge Garrow seconded to approve the November 18 BJA meeting minutes with Judge Schindler's revisions. The motion carried.**

#### BJA Account Audit

Ms. McAleenan reported that the Proposed BJA Account Audit Policy is the language that was discussed at the November BJA meeting with a few revisions that were requested during the discussion.

**It was moved by Judge Garrow and seconded by Judge Sparks to adopt the policy as amended. The motion carried.**

#### Regional Courts Work Group

Judge Ringus reported that the Regional Courts Work Group will proceed as the BJA wishes.

Chief Justice Madsen stated that Senator James Hargrove has expressed great interest in this issue. In addition, Mr. Hall and Chief Justice Madsen discussed the possibility of getting funding for a pilot or study from the National Center for State Courts (NCSC). Mr. Hall will speak with the NCSC regarding a funding proposal and be prepared to discuss it with the Work Group in January.

Judge Ringus stated that statutorily, there are currently ways to regionalize and there are existing courts that can be studied but it would cost some funds for the research.

Mr. Hall responded that given Senator Hargrove's interest the BJA needs to be prepared with a solid legislative proposal. This needs to be on the January BJA agenda and the Work Group

needs to meet prior to the January BJA meeting, if possible, to review the funding information from the NCSC.

#### BJA Legislative Agenda

Ms. McAleenan stated that the only item left for action on the BJA Legislative Agenda is the election of municipal court judges issue. The BJA has been putting off the decision to 1) get an idea of what the session will look like, and 2) wait for a decision on the regional courts issue.

The BJA has not decided if the municipal court election bill from last year should be pursued or not.

A few BJA members indicated this may not be the year to move forward with this.

Ms. McAleenan reported that Senator Adam Kline is not sure this is the year to move forward on this and Representative Jamie Pedersen is not a proponent and does not want it to move forward.

Judge Fleck said that Senator Mike Padden seemed interested.

**It was moved by Judge Sparks and seconded by Judge Tripp that this issue trail the regional courts work group discussion during next month's BJA meeting. The motion carried.**

#### Trial Court Operations Funding Committee Charter

A few small wording changes were made to the Trial Court Operations Funding Committee charter and Ms. McAleenan had an opportunity to share the revisions with Judge Harold Clarke and he is fine with them.

**Judge Inveen moved and Judge Garrow seconded to approve the Trial Court Operations Committee charter as presented. The motion carried.**

#### BJA Best Practices Committee

Judge Quinn-Brintnall, co-chair of the BJA Best Practices Committee along with Judge Jean Rietschel, stated that the Committee is working on the following:

- The Committee developed, tested, and approved a case management measure for superior courts.
- The Committee is developing case management measures for the appellate courts which will include the development of case processing time standards.
- Despite intensive data retrieval and analysis efforts, it was not possible to obtain appropriate data to be used to create a case management measure for courts of limited jurisdiction at this time.

The superior court case management measures, together with a previously completed jury management measure, will be recommended to the BJA for adoption when the Court of Appeals measure is complete.

### Role of the BJA

Mr. Hall stated that this will be on the January BJA meeting agenda and he would like everyone to review the documents included in the meeting materials and be prepared to discuss the role of the BJA in January.

Several activities are going on regarding the role of the BJA including the budget group and the Justice in Jeopardy Implementation Committee (JIJIC). In addition, the BJA needs to determine how it sets policy. The BJA has explored the idea of using resolutions as a way to make policy statements. Does the BJA want to continue that in the future?

Chief Justice Madsen said the conversation in January will give the BJA an opportunity to determine how this group wants to participate and take action.

During the discussion it was decided to begin all future meetings at the AOC SeaTac office at 9 a.m. instead of 9:30 a.m. The Olympia meetings will still begin at 9:30 a.m.

### Task Force on Race and the Criminal Justice System Recommendations

Chief Justice Madsen said that the meeting materials include all of the recommendations from the Race and Criminal Justice Task Force. Recommendations #6 and #7 involve the BJA. The Supreme Court has no expertise on these recommendations because they impact trial courts.

- Task Force Recommendation #6 - Support the expansion of alternative sentencing policies (other than incarceration) and have a serious dialogue regarding the status of felons post-release from prison and the obstacles to successful re-entry into society.
- Task Force Recommendation #7 - Encourage and advocate for an increase in pretrial diversion programs, alternatives to arrest, and the expansion of therapeutic courts.

Judge Inveen commented that variations of both recommendations 6 and 7 have been included in the Superior Court Judges' Association's (SCJA) prior legislative agendas. This year they have been put on hold because of the legislative climate. The SCJA has not supported, specifically, all of Task Force issues but they are not inconsistent with the issues the SCJA has supported in the past.

After discussion, Chief Justice Madsen stated that the BJA seemed to be in favor of taking on an active role in these recommendations. This topic will be added to the January BJA meeting agenda for further discussion.

2011 COSCA Resolutions

Ms. McAleenan reported that behind tab 10 there is a summary of the 2011 Conference of State Court Administrators (COSCA) resolutions. Only two full resolutions are included in the materials:

- Resolution 7 – In Support of the Guiding Principles on Using Risk and Needs Assessment Information in the Sentencing Process. The National Center for State Courts (NCSC) created the report, "Using Offender Risk and Needs Assessment Information at Sentencing" and Resolution 7 endorses the report and encourages state and local courts to incorporate the information in the report.
- Resolution 13 – In Support of the Model Time Standards for State Trial Courts. Washington has model time standards but they have not been reviewed recently. It might be timely to review Washington's standards in light of this resolution.

This topic will be on the January BJA meeting agenda for further discussion.

Other Business

**GR 31A Public Hearing:** Behind Tab 11 is information about the public hearing for GR 31A on February 6 at 9:30 a.m.

**Association Reports:** This month the association reports were not included on the meeting agenda because of time constraints. If the BJA is going to go to another level, there is not time to have reports from everyone. People are welcome to use the "Other Business" portion of the meeting to inform the BJA of anything that might be of interest to everyone or to distribute a written report.

**JJIC:** Because the BJA will be talking about the role of the BJA, the future of the JJIC should also be discussed because most of their positions are sunsetting in February 2012. Chief Justice Madsen's understanding is that the committee work will be done by the end dates. There is no disagreement that the JJIC issues were important but the committee's broad consensus was that this is not the right group to continue and the BJA should look at taking on the role of court funding. This will be discussed at a future BJA meeting.

There being no further business, the meeting was adjourned.

**Recap of Motions from December 9, 2011 meeting**

<b>Motion Summary</b>	<b>Status</b>
November 18 Meeting Minutes with Judge Schindler's Revisions	Passed
Proposed BJA Account Audit Policy	Passed
Put BJA Legislative Agenda on January Agenda	Passed
Approve the Trial Court Operations Funding Committee Charter	Passed

**Action Items updated for December 9, 2011 meeting**

Action Item	Status
<u>November 18, 2011 Meeting Minutes</u> <ul style="list-style-type: none"> <li>• Include minutes in the En Banc binders</li> <li>• Post the approved minutes online</li> </ul>	Done Done
<u>BJA Account Audit</u> <ul style="list-style-type: none"> <li>• The BJA approved the audit policy</li> </ul>	
<u>Regional Courts Work Group</u> <ul style="list-style-type: none"> <li>• Put on the January agenda for action</li> <li>• Judge Ringus will schedule another meeting of the group to discuss the NCSC proposal if it is possible to schedule something prior to the January BJA meeting</li> </ul>	Done Done
<u>BJA Request Legislation</u> <ul style="list-style-type: none"> <li>• Delay the decision on the municipal court judge election bill until the Regional Courts issue is decided upon and add to January BJA meeting agenda</li> </ul>	Done – going through BJA Legislative/Executive Committee
<u>Trial Court Operations Funding Committee Charter</u> <ul style="list-style-type: none"> <li>• Charter was approved by the BJA - notify associations of committee appointments</li> </ul>	Done
<u>Role of the BJA</u> <ul style="list-style-type: none"> <li>• Put on January agenda</li> <li>• Begin all future SeaTac BJA meetings at 9 a.m.               <ul style="list-style-type: none"> <li>• Change Online BJA Meeting Schedule</li> <li>• Change Master Calendar</li> </ul> </li> </ul>	Done  Done Done
<u>Task Force on Race and the Criminal Justice System Recommendations</u> <ul style="list-style-type: none"> <li>• Put on the January agenda</li> </ul>	Done
<u>2011 COSCA Resolution</u> <ul style="list-style-type: none"> <li>• Put on the January agenda</li> <li>• Mellani will send links to reports that were included in the meeting materials</li> </ul>	Done Done
<u>Justice in Jeopardy Implementation Committee</u> <ul style="list-style-type: none"> <li>• Put on a future agenda</li> </ul>	Done
<u>Association Reports</u> <ul style="list-style-type: none"> <li>• Stop including association reports on the BJA agendas</li> </ul>	Done



## REGIONAL COURTS WORKGROUP – SUMMARY

The Regional Courts Workgroup of the BJA has meet and discussed the charge of the committee to evaluate the efficiencies and benefits of a consolidated or regionalized model of limited jurisdiction court operations, administration, and services. The court members of the workgroup met in September and October, and the combined workgroup representatives met October, November, and January.

The goals of the regional court are to:

1. Improve services to the court customer populations;
2. Spend funds efficiently in support of the courts;
3. Provide better justice by maximizing existing resources and services;
4. Obtain a consistent level of training and expertise for administrative and support court staff statewide.

### JUDICIAL BRANCH:

The Workgroup discussed two approaches. We discussed setting up pilot courts meeting the below indicated criteria, doing a comparison study using similarly situated control courts.

The other approach is to study existing courts that meet many of the below listed criteria to determine the cost and performance efficiencies between them and control courts.

The Workgroup had decided to study existing courts and to apply for a grant through State Justice Institute (SJI). A technical assistance grant of \$50,000 with a \$5,000 match is available but must be submitted by the end of January. Should we be awarded the grant, a small sub-group of the Workgroup would be asked to assist in determining the elements of the study. Additionally, the Municipal Research and Services Center of Washington will be asked to partner in the study. Ms. Candace Bock has offered to coordinate a conversation with them to effectuate such a partnership.

Additionally, the study courts will need to be identified and agree to participate in it. Several county and city jurisdictions have been identified as potential participants.

Regional Court criteria, at a minimum, are desirable for the study jurisdictions

1. Full time Court Administrator and staff centrally located at the hub court
2. Record maintenance by entering court data in the Judicial Information System (JIS)
3. Elected Presiding Judge serving at the designated hub court

Additional criteria include:

1. An identified hub court for the region;
2. A Regional Court Presiding Judge elected by the judges serving the regional court;

3. Centralized and full time Court Administrator and support staff primarily located at the hub court;
4. Centralized services – records, forms, cashiering (universal within the region), probation, pretrial technology, clerk support, etc.;
5. A commitment for a period of years for the Pilot Court study or implementation;
6. A commitment to abide by the Judicial Needs Estimate in determining the number of judicial officers necessary for the Regional Court;
7. Neutral evaluation of any pilot courts.

#### GOVERNANCE:

The Workgroup has identified a need for an oversight or governance body especially for the Pilot Court project, should that be the direction BJA chooses to follow. However, the Workgroup also could not agree on how the governance body would look. There was hesitation to actually establish the parameters and elements of the governance body until after the hoped-for evaluation of existing courts by the SJI grant. Some wanted to know what works and what doesn't. It is noted that each jurisdiction combination have its own political interactions and economics which can affect how the governance body would work.

Therefore, the Workgroup proffers the following guidelines as a *placeholder* until information is gathered on existing successful regional court jurisdictions.

1. Membership would consist of representatives from all contracting jurisdictions;
2. Meetings would be convened regularly by an agreed upon chair;
3. The governance body could be created by interlocal contract or MOU with an evaluation for possible statutory changes;
4. The regional Court Presiding Judge would be a member and active participant in the oversight body, especially as concerns any issues affecting the court;
5. Fiscal impact consideration as well as contract process considerations would be considered by the governance body.

The Workgroup realizes the BJA must make a decision on the direction it will take regarding these proposals. Additionally, the DMCJA will be asked to review the proposal and provide the BJA with information as appropriate.

Respectfully submitted

Judge Sara Derr  
Chair, Regional Courts Workgroup  
Spokane County District Court



# WASHINGTON COURTS

ADMINISTRATIVE OFFICE OF THE COURTS

January 31, 2012

**Jeff Hall**  
State Court Administrator

Mr. Jonathan Mattiello  
Executive Director  
State Justice Institute  
1650 King Street, Suite 600  
Alexandria, VA 22314

Dear Mr. Mattiello:

As State Court Administrator in Washington, I am submitting this application to the State Justice Institute (SJI) to request funding to conduct an analysis of selected jurisdictions that illustrate various forms of regionalization of Washington's limited jurisdiction courts to ascertain their efficiency and special features that mark each court's operational effectiveness in management and service. This is an important prelude to the reform of court organization in our limited jurisdiction courts. This request is being made with the support and under the auspices of the Board for Judicial Administration (BJA). The BJA formed a Regional Courts Work Group last fall that has issued some initial recommendations, but before next steps can be taken, an objective analysis of various models for regionalization presented in the sample jurisdictions must be undertaken. We feel that the National Center for State Courts (NCSC), with its wealth of expertise and knowledge of the inner workings of courts at all levels, is best equipped to perform such an in-depth and extensive study.

We are pleased that the NCSC will provide us the services of Nial Raaen and John Doerner, two senior court consultants, who have experience in court organization and financing. John Doerner is a CPA, who was the Auditor for the Colorado Judicial Branch. Nial Raaen, as a top manager in the Michigan Administrative Office of Courts, oversaw a major court reorganization in that state and is very familiar with the data and analysis necessary to support such an effort.

The Supreme Court of Washington, through my office as designee, endorses this application. Form B is enclosed.

## **I. THE SETTING**

Washington's limited jurisdiction court system is comprised of district courts and municipal courts, both locally funded. Both courts of limited jurisdiction hear misdemeanor criminal cases; traffic, non-traffic, and parking infractions; domestic violence protection orders; the district courts hear civil actions of \$75,000 or less and small claims up to \$5,000. There are 39 counties in Washington, and each county has at least one district court. Many of the state's cities and towns have an independent municipal court and some municipalities contract with the district court to hear ordinance

violations. Some municipalities contract with another municipal court. Many courts do not have a full-time judge. The majority of the caseload, judges and staff are concentrated in a relatively small number of courts.

Currently there is a wide variety in the manner in which Washington counties and cities have organized their limited jurisdiction courts ranging from counties with a highly fragmented system of limited jurisdiction courts to counties with a substantial degree of unification. The study will show operational patterns in providing services and cost factors under various forms of court organization and also provide us a closer look at some counties that have a high degree of regionalization.

## **II. THE NEED FOR FUNDING**

The state budget for the Administrative Office of the Courts (AOC) includes a number of mandated items over which we have no control, notably expenditures for the salaries of superior court judges and state funds in support of the "Becca" program. The agency operating budget and other non-mandated pass-through funds account for less than one-third of the total state general fund appropriation. Over the past three fiscal years, the agency's state general fund appropriation for non-mandated expenditures has been reduced by a total of 27 percent. The agency no longer has funds for projects of the type submitted in this proposal.

## **III. THE PROJECT PURPOSE AND WORK PLAN**

### **A. Overview of Project**

The purpose of the project is to examine the cost and major operational features of courts in jurisdictions that represent various types of organizational structure and governance to facilitate the work of the committee considering improvements in court organization. This will be done by analysis and comparison of selected courts that represent various forms of regionalization and decentralization. A subcommittee of the Regional Courts Work Group will be involved in determining the methodology for this study, the selection of courts, and defining the type of information that will be gathered. The NCSC staff members have a broad background in such studies. After their review of data sources and our expectations for the study, they will propose various options that we might pursue and the scope and nature of the information that should be gathered. The NCSC, in conjunction with my staff and me, will outline the methodology, the financial and operational information requirements, and the nature of the report that will be delivered. The results of this study will be used by my office and the Regional Courts Work Group to make recommendations to the BJA on the future course of regionalization, our goal being to achieve a court organizational structure that will make Washington courts of limited jurisdiction more efficient and more effective in providing services. This effort is in furtherance of the BJA's policy position that Washington should establish a single, regionally-based court of limited jurisdiction.

**B. Work Task Structure**

**Task 1: Initial Conference Call**

At the outset of the project, John Doerner and Nial Raaen will conduct a teleconference call with the Regional Courts Work Group Subcommittee and key members of the AOC staff to discuss:

- Expectations for the project
- Data sources
- Project chronology and logistics
- The scheduling and agenda for the site visit to Olympia and the interviews that should be conducted; for example, with the Chief Justice, staff in the State Auditor's Office, or members of the Regional Courts Work Group
- Data that can be transmitted to the NCSC at an early stage to assist in the building of a database or to provide background material, such as the major court financial study published as part of the 2004 Court Funding Taskforce Report which has already been provided to the NCSC.

**Task 2: Site Visit**

The NCSC consultants will spend most of a week in Olympia and will start with a meeting with the agency staff and me to review the whole project, covering such items as:

- Review of the data in our office and that of the state auditor
- Criteria for selection of counties and selection of the counties
- Contact information for the counties and role of the AOC in assisting in data collection
- Report format that will, in addition to the county-specific data, include an overview of the limited jurisdiction court system, in particular its structure and staffing
- Interviews with members of the Regional Courts Work Group, the Chief Justice, and such other stakeholders as might contribute to the study
- Discussion of methodology and agreement on the approach that will be used
- Ongoing contact with my office

My office has extensive information on judicial and staff FTE and caseload that may be used to compute various ratios that may reflect efficiency, such as staff workload ratios and to complete the county profiles. Cost data is the province of the State Auditor.<sup>1</sup> The NCSC visit to that office will provide an opportunity to

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<sup>1</sup> The State Auditor data will be helpful, but it is more likely that the NCSC would collect district court budgets from county auditors and municipal court budgets from the courts, as well as to verify AOC data on judges and staffing.

examine county audits and the nature of the court information collected, best ways to obtain access to this data, and discussions with auditors on the best way to make use of their data. The Auditor operates a Local Government Reporting system that might be helpful for municipal court cost data. The visit will produce an understanding of project methods and the nature of the report that will be developed.

### **Task 3: Build Database**

The NCSC consultants will collect data by phone contact and e-mail communication as the budget cannot support visits to counties. This is a foundational task in which the staff, caseload and financial data will be gathered and entered into a computerized database. This task will involve phone interviews in selected counties, follow-up calls to seek clarification of data, and steps to ensure that financial data are arrayed in a common format. For example, the 2004 financial study had to back out indigent defense costs, capital outlays, and inter-departmental transfers.

The NCSC consultants will follow the format agreed upon in the Olympia meeting. All steps to establish the integrity of the database will be discussed with me or my staff. This is a time-consuming task with which the consultants will be assisted by analysts in the Denver office of NCSC as well as members of my staff. This task goal is to ensure that the data entered into the system has been validated and arrayed in a format common to all counties in the sample.

There would also be a more subjective aspect of the study. Based on the Olympia meeting, the NCSC consultants may also request information on key operational features of the courts such as governance structure, access, case management, jury management, specialty courts, scope of service, and relationships with court-related agencies such as prosecution, defenders, probation, sheriffs and some police departments. This could enable NCSC to construct an overview of court organization and compile profiles of limited jurisdiction courts in the counties that have been examined.

### **Task 4: Analytics**

The NCSC consultants will perform analysis of the data. The NCSC will compute certain ratios for each county that reflect efficiency, such as staff-caseload ratio and perhaps expenditures per case and per staff, and will aggregate information pertaining to each operational feature that was selected to provide a picture of how well the limited jurisdiction court system functions in each county.

The NCSC will produce a series of tables and graphs, provide a commentary on the methodology, and provide such interpretation of the data as is necessary.

**Task 5: Draft Report**

The NCSC consultants will prepare a draft report that compares the courts in each sample county in terms of their costs applying such ratios as have been chosen as a measure of efficiency. The report will aggregate information pertaining to the major operational features of the courts and place these in a comparative framework. This could include quantitative elements such as performance measures of caseflow management and jury management. The report will include a section on methodology and persons interviewed as well as a profile of each county and a comparative overview.

This draft report will receive careful review by my office and such other parties as should be consulted, such as members of the Regional Courts Work Group. This review should be completed within 10-14 days at which time we will have a teleconference with NCSC consultants to convey our reactions. We may indicate our reactions on the face of the draft report and send these to the NCSC consultants.

**Deliverable:** Draft Report

**Task 6: Final Report**

After review of our comments, the NCSC consultants will produce a formal final report with an executive summary and attachments reflecting the statistical basis for the study.

**Deliverable:** Final Report

**IV. PROJECT CHRONOLOGY**

The timeframe for the project is five to six months:

- Month 1: Initial telephone conference and visit to Olympia
- Months 2 - 3: Build database
- Months 3 - 4: Build database; analytics
- Months 4 - 5: Complete draft report
- Months 5 - 6: AOC and Subcommittee review; final report

**V. CONSULTANT QUALIFICATIONS**

**JOHN DOERNER** became a Principal Court Management Consultant with the NCSC in October 2007 after 21 years with the Colorado Judicial Branch where he served as Manager of Audit and Operations Support for the Colorado Judicial Branch and Clerk and Court Administrator for the Colorado Court of Appeals. Since joining the NCSC, he has conducted various operational assessments, one of them in the Kentucky AOC and has performed assessments of financial business processes in several courts. He is a CPA

and has won many awards for innovative and effective services in the courts. He is very knowledgeable in auditing and documentation of court activity.

As Manager of Audit and Operations Support for the Colorado Judicial Department, he personally conducted a performance evaluation of various Judicial Branch operations and examined court business processes throughout the state. He is highly knowledgeable in every area of court operation and while at the Colorado courts managed a number of projects relating to court technology and records management, among them:

- Developed and completed a pilot study to evaluate the feasibility of receiving appellate records and briefs electronically, earning the Judicial Branch Team of the Year Award (2002) and resulting in a statewide appellate rule change regarding electronic records.
- Project manager for the development and implementation of the Colorado Jury Information System (JIS) software program.
- Project manager for the development and implementation of the financial modules in the statewide trial court case management systems.

Mr. Doerner chaired several statewide bodies including the Colorado Case Processing Model Procedures Committee, the Records Management Advisory Committee and the Colorado Judicial Facilities Task Force. He also served as a member on the Colorado Supreme Court Jury Reform Committee, Colorado Supreme Court Attorney Regulation Committee, and the Colorado Judicial Branch Budget Advisory Committee.

Since joining the NCSC, Mr. Doerner has done judicial workflow studies in Minnesota, Iowa, New York and most recently has completed judicial workload studies in Oregon, and Louisiana. Mr. Doerner has also directed or assisted with the following projects: Oregon Legislative Project on court financing, Arizona Appellate Courts Performance Measurement; Massachusetts Appeals Court Organizational Assessment; Adams County (PA) Court Facility Requirements; Chatham County (GA) Court Facility Requirements; Massachusetts Court Records Management Requirements; Appellate *CowTools* Performance Measurement System Development; Performance Review of Fulton County Clerk of Superior Court (GA); Operational Assessment of DeKalb County Recorder's Court (GA); and the Operational Assessment of Louisiana Supreme Court.

**NIAL RAAEN** is a court management consultant with extensive foreign and domestic experience. His areas of specialization include caseload management; court information systems needs assessment and implementation; software design and training; judicial education; strategic planning; collections and fiscal management; judicial structure and policy; drug courts; program evaluation; and change management. He has international experience with USAID funded rule of law projects in the Balkans, Asia, Africa, and the Middle East as a technical consultant, trainer, and evaluator. He works regularly with the NCSC on both domestic and international projects and has recently completed an operational assessment of the Taylorville, Utah Justice Court in suburban Salt Lake City. He is about to work on a study in Mahoning County, Ohio on consolidation of the limited jurisdiction courts in that county.

He served as Director of Trial Court Services for the Michigan Supreme Court, State Court Administrative Office (SCAO) from 2002 through 2007. He managed a multi-disciplinary team of 23 engaged in a wide variety of court improvement projects and programs in the State Court Administrative Office. The division is responsible for trial court performance monitoring, policy development, data collection and analysis, judicial resource recommendations, legislative review, and drafting of court rules affecting operations in 244 trial courts. While at the SCAO Mr. Raaen managed a comprehensive collections improvement project that convened state collections advisory committees composed of judges, clerks, and court administrators dedicated to improving the effectiveness of court collections. Mr. Raaen and his staff also proposed and drafted collections legislation, provided training and technical assistance to trial courts, collected collections data, and promoted best practices. He provided direct management assistance to courts and conducted audits of trial court operations. He oversaw the Michigan Drug Court program.

From 1988-1998 he served as Court Administrator/Clerk - 14A District Court, Washtenaw County (MI). He was responsible for management of all non-judicial functions and statutory duties as clerk of court for a multi-location court with a staff of 50. In the same court he previously served as a criminal magistrate and served as a probation officer from 1979 – 1984. He supervised individuals placed on probation for criminal offenses to ensure compliance with the terms of probation and referred offenders to appropriate treatment programs and services. From 1976 – 1979, he was a corrections case worker for the Washtenaw County Sheriff as a counselor responsible for supervision of offenders participating in work and educational release programs.

He holds the following degrees and certifications: Master of Public Administration - University of Michigan – 1991; Graduate Fellow – Institute for Court Management – 1990; Master of Social Work - University of Michigan – 1978; Bachelor of Arts - Vanderbilt University – 1975.

## **VI. LIKELIHOOD OF IMPLEMENTATION**

This project is intended to determine how and if we undertake steps to improve court organization in the limited jurisdiction courts of Washington—that is to say implementation is contingent. This project is crucial to our future course of reform and enjoys the full support of Chief Justice Barbara Madsen, the Regional Courts Work Group, and my office. We are confident that the study will meet our needs and that we will, through the BJA, act upon it.

## **VII. BUDGET**

The total cost of the project is \$55,000; \$50,000 in SJI funds and \$5,000 in cash match. In addition, we will provide an in-kind match of \$20,000 primarily in the form of staff participation in the project. A line item budget (Form C) and budget narrative are

Letter to Mr. Jonathan Mattiello

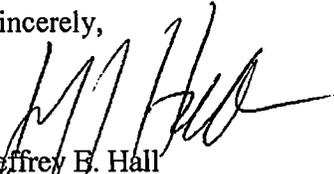
January 31, 2012

Page 8

enclosed, as is our affirmation of support and a letter from the NCSC affirming their participation.

We are confident that this project will be very beneficial to the Washington courts. We would appreciate your consideration of our application.

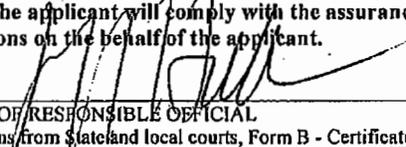
Sincerely,



Jeffrey E. Hall  
State Court Administrator

Enclosures

# STATE JUSTICE INSTITUTE APPLICATION

<b>1. APPLICANT</b> a. Organization Name <u>Washington Administrative Office of the Courts</u> b. Street/P.O. Box <u>1112 Quince Street SE, PO Box 41170</u> c. City <u>Olympia</u> d. State <u>WA</u> e. Zip Code <u>98504-1170</u> f. Phone Number <u>(360) 763-3385</u> g. Fax Number <u>(360) 856-5700</u> h. Web Site Address <u>www.courts.wa.gov</u> i. Name & Phone Number of Contact Person <u>Jeff Hall / (360) 357-2120</u> j. Title <u>State Court Administrator</u> k. E-Mail Address <u>jeff.hall@courts.wa.gov</u>	<b>2. TYPE OF APPLICANT (Check appropriate box)</b> <input type="checkbox"/> State Court <input type="checkbox"/> National organization operating in conjunction with State court <input type="checkbox"/> National State court support organization <input type="checkbox"/> College or university <input type="checkbox"/> Other non-profit organization or agency <input type="checkbox"/> Individual <input type="checkbox"/> Corporation or partnership <input type="checkbox"/> Other unit of government <input checked="" type="checkbox"/> Other <u>State Court Administrative Office in conjunction with a national support org.</u> (Specify) _____
<b>3. PROPOSED START DATE</b> _____ <u>June 1, 2012</u>	
<b>4. PROJECT DURATION (months)</b> <u>Not to exceed 12 months.</u>	
<b>5. APPLICANT FINANCIAL CONTACT</b> a. Organization Name <u>Administrative Office of the Courts</u> b. Street/P.O. Box <u>1112 Quince Street SE, PO Box 41170</u> c. City <u>Olympia</u> d. State <u>WA</u> e. Zip Code <u>98504-1170</u> f. Phone Number <u>(360) 753-3385</u> g. Fax Number <u>(360) 856-5700</u> h. Web Site Address <u>www.courts.wa.gov</u> i. Name & Phone Number of Contact Person <u>Darcy Dotson / (360) 705-5241</u> j. Title <u>Regional Courts of Limited Jurisdiction Analysis</u> k. E-Mail Address <u>darcy.dotson@courts.wa.gov</u> l. Organization EIN <u>916013419</u>	<b>6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:</b> Source <u>N/A</u> Date Submitted _____ Amount Requested _____ Disposition (if any) or Current Status _____
<b>7. a. AMOUNT REQUESTED FROM SJI \$</b> <u>50,000</u> <b>b. AMOUNT OF MATCH</b> Cash Match <u>\$ 5,000</u> In-kind Match <u>\$ 20,000</u> <b>c. TOTAL MATCH</b> <u>\$ 25,000</u> <b>d. OTHER CASH</b> <u>\$ 0</u> <b>e. TOTAL PROJECT COST</b> <u>\$ 75,000</u>	
<b>8. TITLE OF PROPOSED PROJECT</b> <u>Regional Courts of Limited Jurisdiction Analysis</u>	
<b>9. CONGRESSIONAL DISTRICT OF:</b> <u>Jaime Herrera Beutler, District 3</u> <span style="float: right;"><u>Project will involve a number of jurisdictions across the state, to be determined.</u></span> <small>Name of Representative; District Number</small> <span style="float: right;"><small>Project location (if different from applicant location): Name of Representative; District Number</small></span>	
<b>10. CERTIFICATION</b> On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on the behalf of the applicant.	
 SIGNATURE OF RESPONSIBLE OFFICIAL (For applications from State and local courts, Form B - Certificate of State Approval, must be attached)	<u>State Court Administrator</u> TITLE <u>January 31, 2012</u> DATE

STATE JUSTICE INSTITUTE

Certificate of State Approval

The Administrative Office of the Courts  
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled Regional Courts of Limited Jurisdiction Analysis  
prepared by the Administrative Office of the Courts  
Name of Applicant

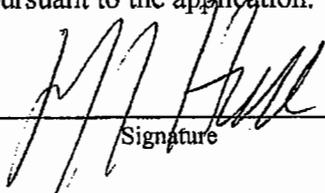
approves its submission to the State Justice Institute, and

agrees to receive and administer and be accountable for all funds awarded by SJI pursuant to the application;

hereby requests consideration of a reduction in cash match as requested by the applicant (**NOTE: only applicable to Project Grant applications**);

designates \_\_\_\_\_  
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by SJI pursuant to the application.

  
\_\_\_\_\_  
Signature

January 31, 2012  
Date

Jeff Hall  
Name

State Court Administrator  
Title

**STATE JUSTICE INSTITUTE**  
**PROJECT BUDGET**  
(TABULAR FORMAT)

**Applicant:** Washington Administrative Office of the Courts  
**Project Title:** Regional Courts of Limited Jurisdiction Analysis  
**For Project Activity from/to:** June 2012-June 2013  
**Total Amount Requested for Project from SJI:** \$50,000

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND FUNDS	TOTAL
<b>Direct Costs</b>							
Personnel							\$ -
Fringe Benefits							\$ -
Consultant / Contractual	\$ 50,000.00			\$ 1,560.00			\$ 51,560.00
Travel				\$ 3,440.00			\$ 3,440.00
Equipment							\$ -
Supplies							\$ -
Telephone							\$ -
Postage							\$ -
Printing / Photocopying							\$ -
Audit							\$ -
Other (specify)						\$ 20,000.00	\$ 20,000.00
<b>Subtotal, Direct Costs</b>	<b>\$ 50,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,000.00</b>	<b>\$ -</b>	<b>\$ 20,000.00</b>	<b>\$ 75,000.00</b>
<b>Subtotal, Indirect Costs</b>							\$ -
<b>Grand Total</b>	<b>\$ 50,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,000.00</b>	<b>\$ -</b>	<b>\$ 20,000.00</b>	<b>\$ 75,000.00</b>

Remarks:

**Application Budget Instructions**

If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond 12 months. However, a grand total project budget must also be included for multi-year projects. In addition to Form C, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category. If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75% of personnel and fringe benefit costs. If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

## BUDGET NARRATIVE

### REGIONAL COURTS OF LIMITED JURISDICTION ANALYSIS WASHINGTON ADMINISTRATIVE OFFICE OF THE COURTS

The total cost of the project is \$75,000. The Washington Administrative Office of the Courts (Court) is requesting \$50,000 in SJI funds. The Court will provide a cash match of \$5,000. There will be an in-kind match of \$20,000.

The budget is based on the following:

SJI Request:	\$50,000
The Court's Cash Match:	\$ 5,000
In-kind match:	\$20,000
<b>Total Budget:</b>	<b>\$75,000</b>

#### In-Kind Match

Project Staffing	
State Court Admin. (20 hrs @ \$80/hr, 1 person)	\$1,600
Sr. Management (8 hrs @ \$70/hr, 3 persons)	\$1,680
Sr. Program Analyst (80 hrs @ \$45/hr, 2 person)	\$7,200
Meeting & Interview Time	
State Court Admin. (12 hrs @\$80/hr, 1 person)	\$960
State Auditor (8 hours @ \$45/hr., 1 person)	\$360
Court/Local Gov't. Managers (6 hrs @ \$60/hr., 6 persons)	\$2,160
Misc. Staff (6 hrs @ \$45/hr., 8 persons)	\$2,160
Regional Courts Workgroup (6 hrs @ \$60/hr., 12 persons)	\$4,320
	\$20,440

<b>Consulting Personnel Costs:</b>	\$51,560
<b>Travel:</b>	\$3,440

#### Cost by Task:

Task 1: Initial Conference Call	\$ 1,500
Task 2: Site Visit	\$17,036
Task 3: Build Database	\$10,908
Task 4: Analytics	\$ 8,220
Task 5: Draft Report	\$14,492
Task 6: Final Report	\$ 2,844

#### Travel:

Site Visit	1 trip with 2 consultants (4 days/3 nights)
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\*Note: Travel expenses include airfare, hotel, per diem, and ground transportation and are based on the NCSC policy that utilizes federal policies as guidelines. The travel days include travel time.



*A nonprofit organization improving justice through leadership and service to courts*

Mary Campbell McQueen  
President

**Daniel J. Hall**  
Vice President  
Court Consulting Services  
Denver Office

January 31, 2012

Mr. Jonathan Mattiello  
Executive Director  
State Justice Institute  
11951 Freedom Drive  
Suite 1020  
Reston, Virginia 20190

Dear Mr. Mattiello:

The National Center for State Courts (NCSC) would be pleased to work with the Administrative Office of the Washington Courts to conduct an analysis of the efficiency of their limited jurisdiction courts.

The NCSC is prepared to help by providing the services of Nial Raaen and John Doerner, two senior court consultants who have experience in court reorganization and court financing. John Doerner is a CPA and was Manager of Audit and Operations Support for the Colorado Judicial Branch and Clerk and Court Administrator for the Colorado Court of Appeals. Nial Raaen as a top manager in the Michigan Administrative Office of Courts, oversaw a major court reorganization in that state and is very familiar with the data that is necessary for such an analysis.

We look forward to working with Washington to conduct this analysis. Thank you for your consideration. Should you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in cursive script that reads "Laura Klaversma".

Laura Klaversma  
Court Services Director

Headquarters  
300 Newport Avenue  
Williamsburg, VA 23185-4147  
(800) 616-6164

Court Consulting  
707 Seventeenth Street, Suite 2900  
Denver, CO 80202-3429  
(800) 466-3063

Washington Office  
2425 Wilson Boulevard, Suite 350  
Arlington, VA 22201-3326  
(800) 532-0204

[www.ncsc.org](http://www.ncsc.org)





**Board for Judicial Administration**  
**Legislative Report**  
**February 15, 2012**

**House of Origin Cut-off Update**

We are now over halfway through the 60-day regular session. Bills must have passed out of their "house of origin" by February 14<sup>th</sup> or they are "dead" for the remainder this session. Bills "necessary to implement the budget" are exempt from most deadlines, so some bills that have not moved yet could come back later when the Legislature begins work on the budget. The caseload forecast was scheduled for February 10 and the revenue forecast will be released on February 17<sup>th</sup>. It is anticipated that the House will publicly release their budget around February 20<sup>th</sup> or 21<sup>st</sup>, after making internal adjustments based on those forecasts, with the Senate version following shortly thereafter.

A summary status update of the bills of interest to the BJA follows below.

strike = dead bills

Bill	Description	Date	Status	Position	Hearings / Comments
HB 1245 5630	<b>Municipal court judges</b> Changing the election and appointment provisions for municipal court judges. H Judiciary - Leg Link	01/09/2012	Dead	Request	BJA will not pursue this bill this year. Mellani will so inform the sponsors and committee chairs.
HB 2177	<b>Child sexual exploitation</b> Protecting children from sexual exploitation. H Rules R - Leg Link	01/09/2012	Passed House	No Position	H- Public Safety & Emergency Preparedness 01/11/2012 at 13:30 BJA takes no position at this time. SCJA will inform BJA if the position should be reconsidered.
HB 2195	<b>Depositions &amp; discovery act</b> Enacting the uniform interstate depositions and discovery act. S Judiciary - Leg Link	01/23/2012	Senate Jud. 2/15	No Position	H- Judiciary 01/09/2012 at 13:30
		01/17/2012		Under Review	
		01/09/2012		Under Review	To be reconsidered next week. Mellani will inform the clerks of the bill.
HB 2196	<b>Collaborative law act</b> Adopting the uniform collaborative law act. H subst for - Leg Link	01/17/2012	Senate Jud. 2/17	Concerns	H- Judiciary 01/09/2012 at 13:30 BJA will support the WSBA's floor amendment to remove the provisions relating to the governance of the practice of law. Mellani will check with the supreme court regarding their interest in a court rule proposal.

Bill	Description	Date	Status	Position	Hearings / Comments
		01/09/2012		Concerns	BJA takes the position of concerns at this time but the bill is subject to further review next week after Nan has had the opportunity to weigh in.
HB 2357	<b>Sales &amp; use tax/mental health</b> Concerning sales and use tax for chemical dependency, mental health treatment, and therapeutic courts. H Ways & Means - Leg Link	01/23/2012	Dead	Support	H- Ways & Means 01/23/2012 at 15:30 Mellani will sign in at hearings
HB 2399	<b>State law library</b> Transferring jurisdiction of the state law library to the University of Washington. H SGTribalAff - Leg Link	01/23/2012	Dead	Watch	H- State Government & Tribal Affairs 01/25/2012 at 08:00 Referred by SCJA. LL and UW to take lead on this issue
HB 2423	<b>Bail for felony offenses</b> Addressing bail for felony offenses. H Pub Safety - Leg Link	01/23/2012	Dead	Support	H- Public Safety & Emergency Preparedness 01/25/2012 at 13:30 Mellani will sign in at hearing
HB 2535	<b>Juvenile gang court</b> Creating a juvenile gang court. H 2nd Reading - Leg Link	01/23/2012	Passed House	No Position	H- Early Learning & Human Services 01/24/2012 at 13:30 No position on bill, would like to see overarching enabling statute for therapeutic courts generally rather than myriad rules as each new specialty court is added.
		01/17/2012		Under Review	Trial court associations should look at this bill and the veterans court in relation to how therapeutic courts should proliferate, in general. BJA will review next week.
HB 2541	<b>Sealing juvenile records</b> Concerning the sealing of juvenile records. H 2nd ReadSCal - Leg Link	01/23/2012	Senate Human Services 2/17	No Position	H- Early Learning & Human Services 01/24/2012 at 13:30
		01/17/2012		Under Review	BJA would like to hear from the trial court associations and will review next week.
HB 2542	<b>Juvenile records access</b> Making juvenile records confidential. H Gen Gov Apps - Leg Link	01/23/2012	Dead	No Position	H- Early Learning & Human Services 01/24/2012 at 13:30 But support amendment to address concern about availability for risk assessment and future proceedings.
		01/17/2012		Under Review	BJA would like to hear from the trial court associations and will review next week.
HB 2547 6404	<b>Veterans' courts</b> Authorizing the establishment and use of veterans' courts. H Judiciary - Leg Link	01/23/2012	Dead	No Position	No position on bill, would like to see overarching enabling statute for therapeutic courts generally rather than myriad rules as each new specialty court is added.
		01/17/2012		Under Review	Trial court associations should look at this bill and the juvenile gang court in relation to how therapeutic courts should proliferate, in general. BJA will review next week.

Bill	Description	Date	Status	Position	Hearings / Comments
HB 2564 6321	<b>Sealing records/housing opps</b> Facilitating the sealing of certain unlawful detainer and protection order records to protect housing opportunities. H Judiciary - Leg Link	01/30/2012	Dead	Oppose	Sign in
		01/23/2012		Under Review	Ask for association and DD Committee feedback and review next week.
HB 2661	<b>Election of judges</b> Concerning the election of judges. H Judiciary - Leg Link	01/23/2012	Dead	Oppose	
HB 2668	<b>Bail practices</b> Addressing bail practices. H 2nd Reading - Leg Link	01/23/2012	Passed House	Support	H- Public Safety & Emergency Preparedness 01/25/2012 at 13:30 Mellani will sign in at hearing
HB 2711	<b>Language access providers</b> Narrowing the definition of language access providers. H Ways & Means - Leg Link	01/30/2012	Dead	Support	H- Labor & Workforce Development 01/30/2012 at 18:00 Support clarification of law regarding court interpreters. Sign in support on 2(10)(b)
S 4103.1	<b>Concerning the screening of tenants</b> - Leg Link	01/30/2012	Dead	Oppose	Sign in opposed if bill gets a hearing.
HJR 4203 8204	<b>Retirement age for judges</b> Eliminating the mandatory retirement age for judges. H Judiciary - Leg Link	01/09/2012	Dead	Support	Regarding 4203, 8204, 5147, 5323, 6025, 8200 - BJA supports but prefers the bill to extend retirement to the end of the current term. BJA is appropriately concerned about budget impacts so supports the policy but not necessarily the timing. BJA supports the DMCJA bill that will not have a fiscal impact. Mellani will so testify in Senate Judiciary.
SSB 5019	<b>Nonconviction records</b> Concerning the privacy of nonconviction records. S HumServ/Corr - Leg Link	01/11/2012	Dead	Oppose	S - Human Services & Corrections 01/13/2011 at 10:00 Upon consultation with JISC DD Committee, BJA would prefer the creation of a task force to work through the issues in this bill during the interim rather than rushing through it this session.
		01/09/2012		Oppose	Oppose as written but Mellani will make overture to proponents regarding possibility for negotiation.
SB 5055	<b>Probate/pers. representative</b> Regulating the notice of appointment of a personal representative in probate proceedings. S Judiciary - Leg Link	01/09/2012	Dead	No Position	S - Judiciary 01/14/2011 at 13:30 SCJA will take the lead on this bill.
SB 5147	<b>Retirement age for judges</b> Removing the mandatory retirement age for judges. S Judiciary - Leg Link	01/09/2012	Dead	Support	S - Judiciary 01/11/2012 at 13:30 Regarding 4203, 8204, 5147, 5323, 6025, 8200 - BJA supports but prefers the bill to

Bill	Description	Date	Status	Position	Hearings / Comments
					extend retirement to the end of the current term. BJA is appropriately concerned about budget impacts so supports the policy but not necessarily the timing. BJA supports the DMCJA bill that will not have a fiscal impact. Mellani will so testify in Senate Judiciary.
SB 5323	<b>Retirement of judges</b> Modifying retirement provisions for judges. S Judiciary - Leg Link	01/09/2012	Dead	Support	S - Judiciary 01/11/2012 at 13:30 Regarding 4203, 8204, 5147, 5323, 6025, 8200 - BJA supports but prefers the bill to extend retirement to the end of the current term. BJA is appropriately concerned about budget impacts so supports the policy but not necessarily the timing. BJA supports the DMCJA bill that will not have a fiscal impact. Mellani will so testify in Senate Judiciary.
SB 5630 1245	<b>Municipal court judges</b> Changing the election and appointment provisions for municipal court judges. S Rules X - Leg Link	01/09/2012	Dead	Request	S - Judiciary 02/18/2011 at 13:30 BJA will not pursue this bill this year. Mellani will so inform the sponsors and committee chairs.
SB 5989	<b>Child sexual exploitation</b> Restricting access to evidence in prosecutions of sexual exploitation of children. S Judiciary - Leg Link	01/23/2012	Dead	Concerns	Referred by SCJA. Concerns re conflict with court rule
SB 6025	<b>District judge retirement age</b> Eliminating the mandatory retirement provision for district judges. S 2nd Reading - Leg Link	01/09/2012	House Judiciary 2/16	Support	S - Judiciary 01/11/2012 at 13:30 Regarding 4203, 8204, 5147, 5323, 6025, 8200 - BJA supports but prefers the bill to extend retirement to the end of the current term. BJA is appropriately concerned about budget impacts so supports the policy but not necessarily the timing. BJA supports the DMCJA bill that will not have a fiscal impact. Mellani will so testify in Senate Judiciary.
SB 6071	<b>Vacating records</b> Concerning the vacation of records. S Judiciary - Leg Link	01/17/2012	Dead	No Position	S - Judiciary 01/18/2012 at 13:30
SB 6284 2680	<b>Civil traffic infractions</b> Reforming Washington's approach to certain nonsafety civil traffic infractions by authorizing a civil collection process for unpaid traffic fines and removing the requirement for law enforcement intervention for the failure to appear and pay a traffic ticket. S Rules 2 - Leg Link	01/23/2012	6284 passed Senate. 2680 is dead.	Under Review	S - Judiciary 01/25/2012 at 13:30 Ask Darby to come to BJA meeting
SB 6291					

Bill	Description	Date	Status	Position	Hearings / Comments
	<b>Sealing juvenile records</b> Concerning the sealing of juvenile records. S Rules 2 - Leg Link	01/23/2012	Dead	No Position	S - Human Services & Corrections 01/20/2012 at 08:00
		01/17/2012		Under Review	BJA would like to hear from the trial court associations and will review next week.
SB 6292 2SSB 6292	<b>Juvenile records access</b> Making juvenile records confidential. S Rules 2 - Leg Link	02/08/2012	Dead	No Position	Bill has been amended to eliminate fiscal impact, focuses instead on diversion.
		01/23/2012		No Position	S - Human Services & Corrections 01/20/2012 at 08:00 But support amendment to address concern about availability for risk assessment and future proceedings.
		01/17/2012		Under Review	BJA would like to hear from the trial court associations and will review next week.
SB 6321 SSB 6321 2564	<b>Sealing records/housing opps</b> Facilitating the sealing of certain unlawful detainer and protection order records to protect housing opportunities. S Rules 2 - Leg Link	02/08/2012	Dead	Watch	Bill has been amended to prohibit certain action by landlords rather than focusing on the court records.
		01/30/2012		Oppose	S - Judiciary 01/31/2012 at 10:00 Sign in
		01/23/2012		Under Review	Ask for association and DD Committee feedback and review next week.
		01/17/2012		Under Review	BJA would like to hear from the trial court associations and JISC DD Committee and will review next week.
SB 6389	<b>Crime victims' services acct</b> Creating the crime victims' services account. S Rules 2 - Leg Link	01/23/2012	Dead	Oppose	S - Human Services & Corrections 01/31/2012 at 13:30 Very complicated accounting, convoluted system
SB 6404 2547	<b>Veterans' courts</b> Authorizing the establishment and use of veterans' courts. S Judiciary - Leg Link	01/23/2012	Dead	No Position	No position on bill, would like to see overarching enabling statute for therapeutic courts generally rather than myriad rules as each new specialty court is added.
SB 6511	<b>Protection order petitions</b> Concerning court procedures for review of petitions for protection orders. S HumServ/Corr - Leg Link	02/08/2012	Dead	Oppose	S - Human Services & Corrections 02/02/2012 at 10:00 Bill is not moving. Chair Hargrove asked sponsor to convene informal workgroup during interim.
		01/30/2012		Oppose	Anne will draft letter for BJA
SJR 8200	<b>Retirement of judges</b> Amending the Washington state Constitution so that judges may retire at the expiration of his or her term of office after attaining the mandatory retirement age.	01/09/2012	Dead	Support	S - Judiciary 01/11/2012 at 13:30 Regarding 4203, 8204, 5147, 5323, 6025, 8200 - BJA supports but prefers the bill to

Bill	Description	Date	Status	Position	Hearings / Comments
	S Judiciary - Leg Link				extend retirement to the end of the current term. BJA is appropriately concerned about budget impacts so supports the policy but not necessarily the timing. BJA supports the DMCJA bill that will not have a fiscal impact. Mellani will so testify in Senate Judiciary.
SJR 8204 4203	<b>Retirement age for judges</b> Eliminating the mandatory retirement age for judges. S Judiciary - Leg Link	01/09/2012	Dead	Support	S - Judiciary 01/11/2012 at 13:30 Regarding 4203, 8204, 5147, 5323, 6025, 8200 - BJA supports but prefers the bill to extend retirement to the end of the current term. BJA is appropriately concerned about budget impacts so supports the policy but not necessarily the timing. BJA supports the DMCJA bill that will not have a fiscal impact. Mellani will so testify in Senate Judiciary.



**Reforming Driving While License  
Suspended Third Degree:**

**Helps Local Governments  
Alleviates Poverty  
Preserves Jobs**

Board for Judicial Administration, February 17, 2012

**Judge Ann Schindler, Division One**

According to the 2010 statistics released by the  
US Census Bureau:

Approximately 97.3 million Americans fall into  
the low income category; together with the 49  
million Americans counted as living below the  
poverty line, the low income and poor  
constitute 146.4 million, or 48% of the U.S.  
population.

## What is DWLS Third Degree?

- i. Failure to furnish proof of treatment or progress in a chemical dependency program (RCW 46.20.342(1)(c)(i))
- ii. Failure to provide proof of financial responsibility under chapter 46.29 RCW
- iii. Failure to comply with provisions in RCW 46.29 regarding uninsured accidents (RCW 46.20.342(1)(c)(iii))
- iv. Failure to respond to a notice of infraction, written promise to appear, or comply with the terms of a notice of infraction per RCW 46.20.289
- v. Committed an offense in another state that, if committed in WA, would not be grounds for suspension
- vi. A suspension due to DWLS-2 that was then eligible to have license reinstated, but did not (RCW 46.20.342(1)(c)(vi))
- vii. Received notice of infraction which results in a suspension under RCW 46.20.267 for intermediate drivers' licenses
- viii. Non-payment of child support (RCW 74.20A)

## DWLS 3° Policy Re: Failure to Pay

- Adopted in 1993 at the request of local government in hopes that ticket revenue would increase.
- Ticket revenue did not increase, for a variety of reasons.
- Criminal Justice costs soared.
  - More scarce police resources used for debt collection.
  - More arrests.
  - More jail bookings.
  - Prosecutor costs went up.
  - Court costs went up.
  - Public defense costs went up.

## DWLS 3°

**The most common reason for DWLS 3° filings is the failure to pay traffic infraction fines.**

There is no correlation between the failure to pay and public safety.

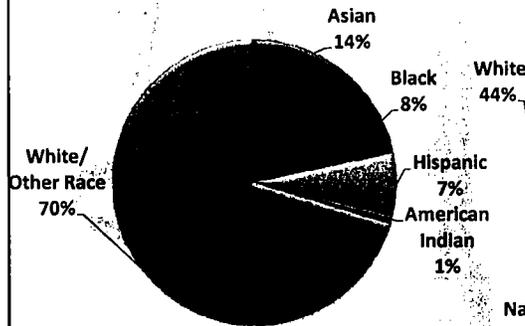
“[D]rivers suspended for non-driving reasons (failure to pay...) posed the lowest traffic safety risk among the suspended driver groups with a risk not much higher than validly-licensed drivers [(Gebers & DeYoung)].”

*Reasons for Drivers License Suspension, Recidivism and Crash Involvement Among Drivers with Suspended/Revoked Licenses*, USDOT National Highway Traffic Safety Administration (NHTSA), p. 1.(2009).

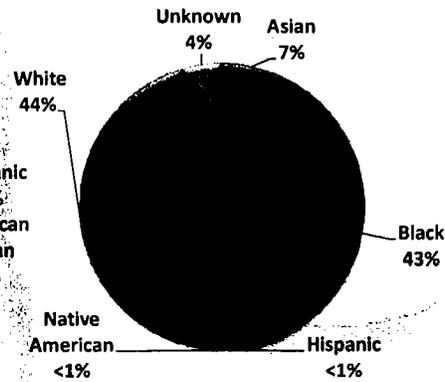
At the same time, drivers suspended for driving reasons were 3.5 times more likely than those suspended for non-driving reasons to be involved in an accident. *Id.* Executive Summary, p. vi.

There is racial disproportionality.

Seattle Population  
by Race\*



2009 DWLS-3  
Cases Filed



\*Population obtained from 2010 U.S. Census Data

It is unconstitutional to imprison people for their debts, and it perpetuates the cycle of poverty.

“Incarcerating people simply because they cannot afford to pay their legal debts not only is unconstitutional but it has a devastating impacts upon men and women, whose only crime, is that they are poor.” *In For a Penny: The Rise of America’s Debtors’ Prisons*, ACLU, October 4, 2010.

## Automobiles are the key to getting to work.

According to the 2010 American Community Survey 1-year Estimate for Washington:

- 83.5% of Washingtonians drive a car, truck or van to work.
- 5.5% of Washingtonians take public transit.
- 5.7% walk, bike, or other.
- 5.3% worked at home.

## Keep the working poor street legal.

“Cars [and the ability to drive them] are critical assets that facilitate one’s ability to maximize income.” *Building Economic Security in America’s Cities, New Municipal Strategies for Asset Building and Financial Empowerment*, page 39.

“[V]ehicles are important assets for individuals and families; they are critical for transportation to work, school, and childcare....a vehicle is essential to a household’s economic well-being.” *Building Economic Security in America’s Cities, New Municipal Strategies for Asset Building and Financial Empowerment*, page 45.

Forcing people to choose between driving suspended or working is not desirable.

“Suspending a driver’s license is not a desirable option for non-driving offenses and may force people to drive while their licenses are suspended or revoked.” *Reviewing the Issue of the Suspended and Revoked (S/R) Driver*, American Association of Motor Vehicle Administrators Law Enforcement Committee p. 3 (2005).

It is time for change.

“Given the significant administrative burden (both court and law enforcement) associated with prosecuting drivers found to be driving while suspended and the fact that drivers suspended for non-driving reasons appear to pose a comparatively lower safety risk (i.e., fewer violations and crashes while suspended) compared to those who are suspended based on driving reasons, the findings may provide a foundation for reconsidering how motor vehicle agencies, law enforcement and the courts deal with license suspension for non-driving reasons.”

*Reasons for Drivers License Suspension, Recidivism and Crash Involvement Among Drivers with Suspended/Revoked Licenses*, USDOT National Highway Traffic Safety Administration (NHTSA), p. 23 (2009).

### City of Seattle Cases Where DWLS 3 is the Most Serious Charge 2006

Jail Bookings	496
Public Defense Costs	\$96,351
Jail Costs	\$92,505
Prosecutor	\$110,000
<b>Total</b>	<b>\$298,856</b>

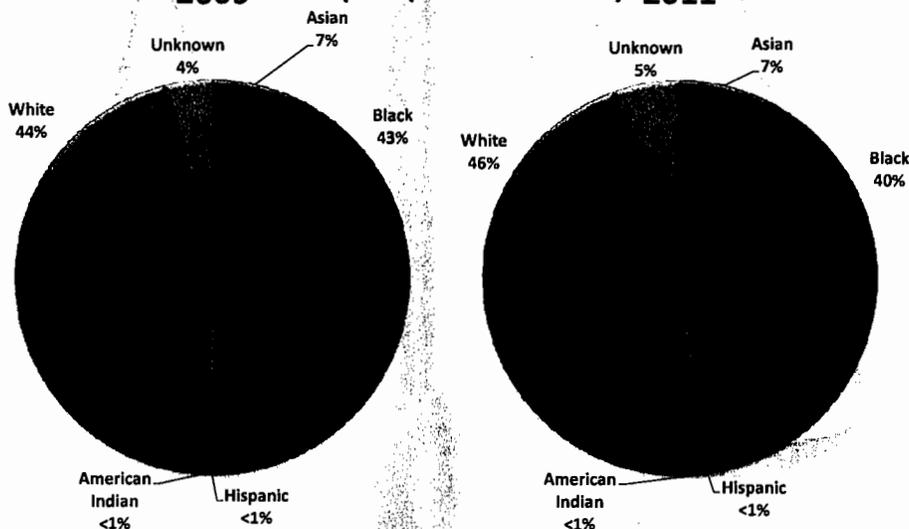
### Local Jurisdiction Savings Public Defense and Jail Costs

Year	Traffic Non-Alcohol Bookings/ DWLS 3	DWLS 3 Cases with Public Defense	Jail Bookings Cost	Public Defense Cost
2009	918/466	733	$\$221 \times 466 =$ \$102,986	$\$446 \times 733 =$ \$326,918
2011	488/248	255	$\$314 \times 248 =$ \$77,872	$\$447 \times 255 =$ \$113,985
<b>Total Savings Per Year</b>			<b>\$25,114</b>	<b>\$212,933</b>

## Statewide Savings Public Defense and Jail Costs

Year	DWLS3 Bookings	DWSL 3 Cases with Public Defense	Jail Bookings Cost	Public Defense Cost
2009	64,260	102,000	$\$75 \times 64,260$ \$4,819,500	$\$175 \times 102,000$ = \$17,850,000
2013	50,000	51,000	$\$100 \times 50,000$ = 5,000,000	$\$200 \times 51,000$ = \$10,200,000
Total Savings Per Year				\$7,650,000

## We can affect racial disproportionality. 2009 2011



\*Population obtained from 2010 U.S. Census Data

### **DWLS 3° Charges Will Still Be Filed When:**

- i. **Failure to furnish proof of treatment of progress in a chemical dependency program (RCW 46.20.342(1)(c)(i))**
- ii. **Failure to provide proof of financial responsibility under chapter 46.29 RCW**
- iii. **Failure to comply with provisions in RCW 46.29 regarding uninsured accidents (RCW 46.20.342(1)(c)(iii))**
- iv. **Failure to respond to a notice of infraction, written promise to appear, or terms of notice of infraction per RCW 46.20.289 for a moving violation**
- v. **Committed an offense in another state that, if committed in WA, would not be grounds for suspension**
- vi. **A suspension due to DWLS-2 that was then eligible to have license re-instated, but did not (RCW 46.20.342(1)(c)(vi))**
- vii. **Received notice of infraction which results in a suspension under RCW 46.20.267 for intermediate drivers' licenses**
- viii. **Non-payment of child support (RCW 74.20A)**

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6284

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State of Washington

62nd Legislature

2012 Regular Session

By Senate Transportation (originally sponsored by Senators Kline, Harper, Litzow, Kohl-Welles, Keiser, and Hargrove)

READ FIRST TIME 02/07/12.

1 AN ACT Relating to reforming Washington's approach to certain  
2 nonsafety civil traffic infractions by authorizing a civil collection  
3 process for unpaid traffic fines and removing the requirement for law  
4 enforcement intervention for the failure to appear and pay a traffic  
5 ticket; amending RCW 46.63.110, 46.20.391, 46.20.289, and 46.64.025;  
6 adding a new section to chapter 46.20 RCW; and providing an effective  
7 date.

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

9 **Sec. 1.** RCW 46.63.110 and 2010 c 252 s 5 are each amended to read  
10 as follows:

11 (1) A person found to have committed a traffic infraction shall be  
12 assessed a monetary penalty. No penalty may exceed two hundred and  
13 fifty dollars for each offense unless authorized by this chapter or  
14 title.

15 (2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is  
16 two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is  
17 five hundred dollars for each offense. No penalty assessed under this  
18 subsection (2) may be reduced.

1 (3) The supreme court shall prescribe by rule a schedule of  
2 monetary penalties for designated traffic infractions. This rule shall  
3 also specify the conditions under which local courts may exercise  
4 discretion in assessing fines and penalties for traffic infractions.  
5 The legislature respectfully requests the supreme court to adjust this  
6 schedule every two years for inflation.

7 (4) There shall be a penalty of twenty-five dollars for failure to  
8 respond to a notice of traffic infraction except where the infraction  
9 relates to parking as defined by local law, ordinance, regulation, or  
10 resolution or failure to pay a monetary penalty imposed pursuant to  
11 this chapter. A local legislative body may set a monetary penalty not  
12 to exceed twenty-five dollars for failure to respond to a notice of  
13 traffic infraction relating to parking as defined by local law,  
14 ordinance, regulation, or resolution. The local court, whether a  
15 municipal, police, or district court, shall impose the monetary penalty  
16 set by the local legislative body.

17 (5) Monetary penalties provided for in chapter 46.70 RCW which are  
18 civil in nature and penalties which may be assessed for violations of  
19 chapter 46.44 RCW relating to size, weight, and load of motor vehicles  
20 are not subject to the limitation on the amount of monetary penalties  
21 which may be imposed pursuant to this chapter.

22 (6) Whenever a monetary penalty, fee, cost, assessment, or other  
23 monetary obligation is imposed by a court under this chapter, it is  
24 immediately payable and is enforceable as a civil judgment under Title  
25 6 RCW. If the court determines, in its discretion, that a person is  
26 not able to pay a monetary obligation in full, and not more than one  
27 year has passed since the later of July 1, 2005, or the date the  
28 monetary obligation initially became due and payable, the court shall  
29 enter into a payment plan with the person, unless the person has  
30 previously been granted a payment plan with respect to the same  
31 monetary obligation, or unless the person is in noncompliance of any  
32 existing or prior payment plan, in which case the court may, at its  
33 discretion, implement a payment plan. If the court has notified the  
34 department that the person has failed to pay or comply and the person  
35 has subsequently entered into a payment plan and made an initial  
36 payment, the court shall notify the department that the infraction has  
37 been adjudicated, and the department shall rescind any suspension of  
38 the person's driver's license or driver's privilege based on failure to

1 respond to that infraction. "Payment plan," as used in this section,  
2 means a plan that requires reasonable payments based on the financial  
3 ability of the person to pay. The person may voluntarily pay an amount  
4 at any time in addition to the payments required under the payment  
5 plan.

6 (a) If a payment required to be made under the payment plan is  
7 delinquent or the person fails to complete a community restitution  
8 program on or before the time established under the payment plan,  
9 unless the court determines good cause therefor and adjusts the payment  
10 plan or the community restitution plan accordingly, the court (~~shall~~  
11 ~~notify the department of the person's failure to meet the conditions of~~  
12 ~~the plan, and the department shall suspend the person's driver's~~  
13 ~~license or driving privilege~~) may refer the unpaid monetary penalty,  
14 fee, cost, assessment, or other monetary obligation for civil  
15 enforcement until all monetary obligations, including those imposed  
16 under subsections (3) and (4) of this section, have been paid, and  
17 court authorized community restitution has been completed, or until the  
18 (~~department has been notified that the~~) court has entered into a new  
19 time payment or community restitution agreement with the person. For  
20 those infractions subject to suspension under RCW 46.20.289, the court  
21 shall notify the department of the person's failure to meet the  
22 conditions of the plan, and the department shall suspend the person's  
23 driver's license or driving privileges.

24 (b) If a person has not entered into a payment plan with the court  
25 and has not paid the monetary obligation in full on or before the time  
26 established for payment, the court (~~shall notify the department of the~~  
27 ~~delinquency. The department shall suspend the person's driver's~~  
28 ~~license or driving privilege~~) may refer the unpaid monetary penalty,  
29 fee, cost, assessment, or other monetary obligation to a collections  
30 agency until all monetary obligations have been paid, including those  
31 imposed under subsections (3) and (4) of this section, or until the  
32 person has entered into a payment plan under this section. For those  
33 infractions subject to suspension under RCW 46.20.289, the court shall  
34 notify the department of the person's delinquency, and the department  
35 shall suspend the person's driver's license or driving privileges.

36 (c) If the payment plan is to be administered by the court, the  
37 court may assess the person a reasonable administrative fee to be

1 wholly retained by the city or county with jurisdiction. The  
2 administrative fee shall not exceed ten dollars per infraction or  
3 twenty-five dollars per payment plan, whichever is less.

4 (d) Nothing in this section precludes a court from contracting with  
5 outside entities to administer its payment plan system. When outside  
6 entities are used for the administration of a payment plan, the court  
7 may assess the person a reasonable fee for such administrative  
8 services, which fee may be calculated on a periodic, percentage, or  
9 other basis.

10 (e) If a court authorized community restitution program for  
11 offenders is available in the jurisdiction, the court may allow  
12 conversion of all or part of the monetary obligations due under this  
13 section to court authorized community restitution in lieu of time  
14 payments if the person is unable to make reasonable time payments.

15 (7) In addition to any other penalties imposed under this section  
16 and not subject to the limitation of subsection (1) of this section, a  
17 person found to have committed a traffic infraction shall be assessed:

18 (a) A fee of five dollars per infraction. Under no circumstances  
19 shall this fee be reduced or waived. Revenue from this fee shall be  
20 forwarded to the state treasurer for deposit in the emergency medical  
21 services and trauma care system trust account under RCW 70.168.040;

22 (b) A fee of ten dollars per infraction. Under no circumstances  
23 shall this fee be reduced or waived. Revenue from this fee shall be  
24 forwarded to the state treasurer for deposit in the Washington auto  
25 theft prevention authority account; and

26 (c) A fee of two dollars per infraction. Revenue from this fee  
27 shall be forwarded to the state treasurer for deposit in the traumatic  
28 brain injury account established in RCW 74.31.060.

29 (8)(a) In addition to any other penalties imposed under this  
30 section and not subject to the limitation of subsection (1) of this  
31 section, a person found to have committed a traffic infraction other  
32 than of RCW 46.61.527 or 46.61.212 shall be assessed an additional  
33 penalty of twenty dollars. The court may not reduce, waive, or suspend  
34 the additional penalty unless the court finds the offender to be  
35 indigent. If a court authorized community restitution program for  
36 offenders is available in the jurisdiction, the court shall allow  
37 offenders to offset all or a part of the penalty due under this

1 subsection (8) by participation in the court authorized community  
2 restitution program.

3 (b) Eight dollars and fifty cents of the additional penalty under  
4 (a) of this subsection shall be remitted to the state treasurer. The  
5 remaining revenue from the additional penalty must be remitted under  
6 chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted  
7 under this subsection to the state treasurer must be deposited in the  
8 state general fund. The balance of the revenue received by the county  
9 or city treasurer under this subsection must be deposited into the  
10 county or city current expense fund. Moneys retained by the city or  
11 county under this subsection shall constitute reimbursement for any  
12 liabilities under RCW 43.135.060.

13 (9) If a legal proceeding, such as garnishment, has commenced to  
14 collect any delinquent amount owed by the person for any penalty  
15 imposed by the court under this section, the court may, at its  
16 discretion, enter into a payment plan.

17 (10) The monetary penalty for violating RCW 46.37.395 is: (a) Two  
18 hundred fifty dollars for the first violation; (b) five hundred dollars  
19 for the second violation; and (c) seven hundred fifty dollars for each  
20 violation thereafter.

21 **Sec. 2.** RCW 46.20.391 and 2010 c 269 s 2 are each amended to read  
22 as follows:

23 (1) Any person licensed under this chapter who is convicted of an  
24 offense relating to motor vehicles for which suspension or revocation  
25 of the driver's license is mandatory, other than vehicular homicide,  
26 vehicular assault, driving while under the influence of intoxicating  
27 liquor or any drug, or being in actual physical control of a motor  
28 vehicle while under the influence of intoxicating liquor or any drug,  
29 may submit to the department an application for a temporary restricted  
30 driver's license. The department, upon receipt of the prescribed fee  
31 and upon determining that the petitioner is eligible to receive the  
32 license, may issue a temporary restricted driver's license and may set  
33 definite restrictions as provided in RCW 46.20.394.

34 (2) (a) A person licensed under this chapter whose driver's license  
35 is suspended administratively due to failure to appear or pay a traffic  
36 ticket under RCW 46.20.289; a violation of the financial responsibility

1 laws under chapter 46.29 RCW; or for multiple violations within a  
2 specified period of time under RCW 46.20.291, may apply to the  
3 department for an occupational driver's license.

4 ~~(b) ((If the suspension is for failure to respond, pay, or comply  
5 with a notice of traffic infraction or conviction, the applicant must  
6 enter into a payment plan with the court.~~

7 ~~(e))~~ An occupational driver's license issued to an applicant  
8 described in (a) of this subsection shall be valid for the period of  
9 the suspension or revocation.

10 (3) An applicant for an occupational or temporary restricted  
11 driver's license who qualifies under subsection (1) or (2) of this  
12 section is eligible to receive such license only if:

13 (a) Within seven years immediately preceding the date of the  
14 offense that gave rise to the present conviction or incident, the  
15 applicant has not committed vehicular homicide under RCW 46.61.520 or  
16 vehicular assault under RCW 46.61.522; and

17 (b) The applicant demonstrates that it is necessary for him or her  
18 to operate a motor vehicle because he or she:

19 (i) Is engaged in an occupation or trade that makes it essential  
20 that he or she operate a motor vehicle;

21 (ii) Is undergoing continuing health care or providing continuing  
22 care to another who is dependent upon the applicant;

23 (iii) Is enrolled in an educational institution and pursuing a  
24 course of study leading to a diploma, degree, or other certification of  
25 successful educational completion;

26 (iv) Is undergoing substance abuse treatment or is participating in  
27 meetings of a twelve-step group such as Alcoholics Anonymous that  
28 requires the petitioner to drive to or from the treatment or meetings;

29 (v) Is fulfilling court-ordered community service responsibilities;

30 (vi) Is in a program that assists persons who are enrolled in a  
31 WorkFirst program pursuant to chapter 74.08A RCW to become gainfully  
32 employed and the program requires a driver's license;

33 (vii) Is in an apprenticeship, on-the-job training, or welfare-to-  
34 work program; or

35 (viii) Presents evidence that he or she has applied for a position  
36 in an apprenticeship or on-the-job training program for which a  
37 driver's license is required to begin the program, provided that a

1 license granted under this provision shall be in effect for no longer  
2 than fourteen days; and

3 (c) The applicant files satisfactory proof of financial  
4 responsibility under chapter 46.29 RCW; and

5 (d) Upon receipt of evidence that a holder of an occupational  
6 driver's license granted under this subsection is no longer enrolled in  
7 an apprenticeship or on-the-job training program, the director shall  
8 give written notice by first-class mail to the driver that the  
9 occupational driver's license shall be canceled. If at any time  
10 before the cancellation goes into effect the driver submits evidence of  
11 continued enrollment in the program, the cancellation shall be stayed.  
12 If the cancellation becomes effective, the driver may obtain, at no  
13 additional charge, a new occupational driver's license upon submittal  
14 of evidence of enrollment in another program that meets the criteria  
15 set forth in this subsection; and

16 (e) The department shall not issue an occupational driver's license  
17 under (b)(iv) of this subsection if the applicant is able to receive  
18 transit services sufficient to allow for the applicant's participation  
19 in the programs referenced under (b)(iv) of this subsection.

20 (4) A person aggrieved by the decision of the department on the  
21 application for an occupational or temporary restricted driver's  
22 license may request a hearing as provided by rule of the department.

23 (5) The director shall cancel an occupational or temporary  
24 restricted driver's license after receiving notice that the holder  
25 thereof has been convicted of operating a motor vehicle in violation of  
26 its restrictions, no longer meets the eligibility requirements, or has  
27 been convicted of or found to have committed a separate offense or any  
28 other act or omission that under this chapter would warrant suspension  
29 or revocation of a regular driver's license. The department must give  
30 notice of the cancellation as provided under RCW 46.20.245. A person  
31 whose occupational or temporary restricted driver's license has been  
32 canceled under this section may reapply for a new occupational or  
33 temporary restricted driver's license if he or she is otherwise  
34 qualified under this section and pays the fee required under RCW  
35 46.20.380.

36 **Sec. 3.** RCW 46.20.289 and 2005 c 288 s 5 are each amended to read  
37 as follows:

1           The department shall suspend all driving privileges of a person  
2 when the department receives notice from a court under RCW  
3 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to  
4 respond to a notice of traffic infraction for a moving violation,  
5 failed to appear at a requested hearing for a moving violation,  
6 violated a written promise to appear in court for a notice of  
7 infraction for a moving violation, or has failed to comply with the  
8 terms of a notice of traffic infraction or citation for a moving  
9 violation, or when the department receives notice from another state  
10 under Article IV of the nonresident violator compact under RCW  
11 46.23.010 or from a jurisdiction that has entered into an agreement  
12 with the department under RCW 46.23.020, other than for a standing,  
13 stopping, or parking violation, provided that the traffic infraction or  
14 traffic offense is committed on or after July 1, 2005. A suspension  
15 under this section takes effect pursuant to the provisions of RCW  
16 46.20.245, and remains in effect until the department has received a  
17 certificate from the court showing that the case has been adjudicated,  
18 and until the person meets the requirements of RCW 46.20.311. In the  
19 case of failure to respond to a traffic infraction issued under RCW  
20 46.55.105, the department shall suspend all driving privileges until  
21 the person provides evidence from the court that all penalties and  
22 restitution have been paid. A suspension under this section does not  
23 take effect if, prior to the effective date of the suspension, the  
24 department receives a certificate from the court showing that the case  
25 has been adjudicated.

26           NEW SECTION. **Sec. 4.** A new section is added to chapter 46.20 RCW  
27 to read as follows:

28           The department of licensing in consultation with the administrative  
29 office of the courts must adopt and maintain rules, by November 1,  
30 2012, in accordance with chapter 34.05 RCW that define a moving  
31 violation for the purposes of this act. "Moving violation" shall be  
32 defined pursuant to Title 46 RCW. Upon adoption of these rules, the  
33 department must provide written notice to affected parties, the chief  
34 clerk of the house of representatives, the secretary of the senate, the  
35 office of the code reviser, and others as deemed appropriate by the  
36 department.

1           **Sec. 5.** RCW 46.64.025 and 2006 c 270 s 4 are each amended to read  
2 as follows:

3           Whenever any person served with a traffic citation willfully fails  
4 to appear (~~(for a scheduled court hearing)~~) at a requested hearing for  
5 a moving violation or fails to comply with the terms of a notice of  
6 traffic citation for a moving violation, the court in which the  
7 defendant failed to appear shall promptly give notice of such fact to  
8 the department of licensing. Whenever thereafter the case in which the  
9 defendant failed to appear is adjudicated, the court hearing the case  
10 shall promptly file with the department a certificate showing that the  
11 case has been adjudicated. For the purposes of this section, "moving  
12 violation" is defined by rule pursuant to section 4 of this act.

13           NEW SECTION. **Sec. 6.** Except for section 4 of this act, this act  
14 takes effect June 1, 2013. If specific funding for the purposes of  
15 this act, referencing this act by bill or chapter number, is not  
16 provided by June 30, 2012, in the transportation appropriations act,  
17 this act is null and void.

--- END ---

## Multiple Agency Fiscal Note Summary

<b>Bill Number:</b> 6284 P S SB	<b>Title:</b> Civil traffic infractions
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### Estimated Cash Receipts

Agency Name	2011-13		2013-15		2015-17	
	GF- State	Total	GF- State	Total	GF- State	Total
Department of Licensing	0	570,225	0	1,955,100	0	1,955,100
<b>Total \$</b>	0	570,225	0	1,955,100	0	1,955,100

### Estimated Expenditures

Agency Name	2011-13			2013-15			2015-17		
	FTEs	GF-State	Total	FTEs	GF-State	Total	FTEs	GF-State	Total
Administrative Office of the Courts	Non-zero but indeterminate cost and/or savings. Please see discussion.								
Department of Licensing	1.0	0	396,549	4.0	0	480,078	4.0	0	480,078
<b>Total</b>	1.0	\$0	\$396,549	4.0	\$0	\$480,078	4.0	\$0	\$480,078

Local Gov. Courts *	Non-zero but indeterminate cost. Please see discussion.								
Local Gov. Other **	Non-zero but indeterminate cost. Please see discussion.								
Local Gov. Total									

### Estimated Capital Budget Impact

NONE

<b>Prepared by:</b> Jim Albert, OFM	<b>Phone:</b> (360) 902-0419	<b>Date Published:</b> Final 2/3/2012
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\* See Office of the Administrator for the Courts judicial fiscal note

\*\* See local government fiscal note

FNPID 31615

# Judicial Impact Fiscal Note

<b>Bill Number:</b> 6284 P S SB	<b>Title:</b> Civil traffic infractions	<b>Agency:</b> 055-Admin Office of the Courts
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**Part I: Estimates**

No Fiscal Impact

**Estimated Cash Receipts to:**

**Non-zero but indeterminate cost. Please see discussion.**

**Estimated Expenditures from:**

**Non-zero but indeterminate cost. Please see discussion.**

*The revenue and expenditure estimates on this page represent the most likely fiscal impact. Responsibility for expenditures may be subject to the provisions of RCW 43.135.060.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.

Legislative Contact: Katherine Taylor	Phone: 360-786-7434	Date: 02/01/2012
Agency Preparation: Charlotte Jensen	Phone: 360-705-5213	Date: 02/03/2012
Agency Approval: Dirk Marler	Phone: 360-705-5211	Date: 02/03/2012
OFM Review: David Dula	Phone: (360) 902-0543	Date: 02/03/2012

Request # -2

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact on the Courts

Proposed Substitute Summary:

Section 1 amends RCW 46.63.110. Whenever a monetary penalty or other monetary obligation is imposed, it is immediately payable and is enforceable as a civil judgment.

If a payment is delinquent, the court may refer the unpaid monetary penalty for civil enforcement until all monetary obligations have been paid.

For those infractions subject to suspension under the department's authority under RCW 46.20.289, the court notifies the department of the person's failure to meet the conditions of the plan, and the department suspends the person's driver's license or driving privileges. (The prior version referred to suspension under RCW 46.20.291.)

Section 2 is renumbered. (Section 4 in the prior version.)

Section 3 amends 46.20.289. RCW 46.63.070(6) is stricken from the list of statutes that requires DOL to suspend driving licenses after receiving a notice from the courts. DOL shall suspend a driver's license under RCW 46.63.110(6) or 46.64.025 when receiving a notice from the court that a person failed to respond or failed to appear at a requested hearing for a moving violation, or violated a written promise to appear or failed to comply with a notice of infraction for a moving violation.

Section 4 requires DOL, in consultation with WSP, OPD, and AOC, to adopt and maintain rules that define a moving violation by November 1, 2012.

Section 5 amends RCW 46.64.025. Whenever a person willfully fails to appear at a requested hearing for a moving violation, or fails to comply with a notice of traffic citation for a moving violation, the court shall provide notice to DOL.

#### Prior Version (S-6666.1) Summary

Section 1 amends RCW 46.20.342. The criteria in this section related to failure to respond, failure to appear, violation of a written promise to appear, or failure to comply changes to apply specifically to moving violations that are set out in section 7. The court will promptly give notice to the department of licensing when a person:

- Served with a traffic citation willfully fails to respond to a notice of traffic infraction for a moving violation
- Fails to appear at a requested hearing for a moving violation
- Violates a written promise to appear in court for a notice of a moving violation
- Fails to comply with the terms of a moving violation

Section 2 amends RCW 46.20.291. The department of licensing has authority to suspend a license for failure to respond to a notice of a traffic infraction for a moving violation, failure to appear at a requested hearing for a moving violation, violation of a written promise to appear in court for a moving violation, or failure to comply with the notice of traffic infraction or citation for a moving violation.

Section 3 amends RCW 46.63.110. Whenever a monetary penalty or other monetary obligation is imposed, it is immediately payable and is enforceable as a civil judgment. If a payment is delinquent, the court may refer the unpaid monetary penalty for civil enforcement until all monetary obligations have been paid. For those infractions subject to suspension under the department's authority under RCW 46.20.291, the court notifies the department of the person's failure to meet the conditions of the plan, and the department suspends the person's driver's license or driving privileges.

Section 4 amends RCW 46.20.391. An applicant for an occupation license whose driver license is suspended for failure to respond, pay, or comply with a notice of traffic infraction or conviction, is no longer required to enter into a payment plan with the court.

Section 7 sets out the crimes and traffic violations that define a moving violation.

## II. B - Cash Receipts Impact

The provisions of the proposed substitute bill do not change the cash receipt impact set out below.

Prior Version (S-6666.1)

Summary of Potential Annual Revenue Loss

State: \$794,297

Counties: \$537,156

Cities: \$489,911

In 2010, there were 94,989 filings for DWLS-3 and 40,030 convictions. It is not possible to determine the number of DWLS-3 violations that would be the result of a failure to pay or respond to a traffic infraction or misdemeanor resulting from a moving violation.

A Washington State Supreme Court decision in *City of Redmond v. Moore*, 151 Wn.2d 664 (2004) related to mandatory suspension of a driver's license resulted in a 53.3% reduction in misdemeanor traffic filings until 2006 when the Department of Licensing's suspension practices changed. It is assumed that a similar result will occur as a result of this legislation.

For purposes of this analysis, the following is an example of the potential impacts to revenue from DWLS-3 penalties. In 2010, there were 94,989 filings for DWLS-3 and 40,030 convictions. Based on the results of a past study, the average penalty assessed per DWLS-3 case was \$293 with an average payment of \$91(31%). In 2010, 52.3% of criminal traffic cases were filed in district courts and 47.7% were filed in municipal courts. The state receives 56.39% of this revenue and 43.61% remains with local governments.

Under the criteria of the proposed legislation, DOL would continue to receive notices from the court that could trigger license suspensions. However, we cannot predict the change in the number of notices that currently go to DOL. If there is a 50 percent reduction in the number of filings and a corresponding number of convictions, this could result in a potential loss of \$794,297 to the state, \$537,156 to the counties, and \$489,911 to local city governments, annually.

In addition to the revenue loss from DWLS-3 misdemeanor penalties, it is assumed that there will be additional revenue loss for failure to pay or failure to respond to a traffic infraction or citation. Traffic infraction revenue also includes distributions to the following special funds: Auto Theft, Trauma Care, Traumatic Brain Injury, Legislative Assessment, and the JIS Account.

## II. C - Expenditures

The provisions of the proposed substitute bill do not change the expenditure impact set out below.

Prior Version (S-6666.1)

It is not possible to determine the number of DWLS-3 violations that would be the result of a failure to pay or respond to a traffic infraction or misdemeanor resulting from a moving violation. Therefore, an accurate estimate of the affect this will have on limited jurisdiction caseloads cannot be developed.

For purposes of this judicial impact note, the following is an example of the potential impacts to court caseloads and staffing. There were 94,989 DWLS-3 filings in courts of limited jurisdiction and 449 DWLS-3 filings in superior courts in 2010. According to the Caseloads of the Courts of Washington for 2010, 52.3% of criminal traffic cases are filed in district courts and 47.7% are filed in municipal courts.

A 50 percent reduction in the number of DWLS-3 filings has statewide impact on:

District Courts - workload equivalent of 5.1 judges and 33.1 staff

Municipal Courts – workload equivalent of 4.6 judges and 35.5 staff;

Superior Courts – workload equivalent of 0.2 judges, 0.5 administrative staff, and 0.8 clerk staff.

These workload reductions have a corresponding annual savings of \$26,625 to the state, \$3,336,646 to the counties, and \$4,877,201 to the cities, not including capital costs, for a total annual savings of \$8,367,151 for salary, benefits, and operating expenses. This estimate only includes expenditures by Washington courts and does not take into account local defense, prosecution, law enforcement, or jail costs.

These savings can only be realized if the number of judicial officers is reduced together with a corresponding reduction in staff. Based on current staffing levels, budget cuts in most jurisdictions, and the current judicial needs gap according to the objective workload analysis under RCW 2.56.030(11), it is unlikely that actual staffing reductions would occur. Rather, it is more likely that judges and staff would redirect their efforts to provide adequate time and attention to other cases before the court and to reducing caseload backlogs. The number of superior and district court judge positions in each county is established by statute. Positions cannot be eliminated during the term of office.

Based on the Staffing and Judicial Needs Estimates for 2010, there is a disparity between the number of judges in the courts of limited jurisdiction and superior courts and the estimated need in these courts to handle current judicial workload. The report reflects a need for 11.74 additional district court judges, 17.37 municipal court judges, and 67 superior court judges. It is estimated that this legislation would reduce, but not eliminate, the gap between judicial needs shown by the objective workload analysis and the number of judges.

#### Judicial Information System Modifications

This bill requires modifications to the Judicial Information System related to DOL notifications and collection options. These changes are estimated to take 51 hours at a one-time cost of \$6,120 in FY 2013.

### **Part III: Expenditure Detail**

### **Part IV: Capital Budget Impact**

## STATE EXPENDITURE SUMMARY

<b>Bill #</b>	PSSB 6284							
<b>Bill Title</b>	Civil Traffic Infractions (DWLS-3)							
<b>State Expenditure Total:</b>								
Account #	Account Title	Type	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
001	General Fund	State	6,120	-	-	-	-	-

<b>Administrative Office of the Courts Expenditures:</b>								
Account #	Account Title	Type	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
001	General Fund	State	6,120	-	-	-	-	-
<b>Expenditures by Object:</b>								
Salaries and Wages								
Employee Benefits								
Personal Service Contracts								
Goods and Services			6,120					
Travel								
Capital Outlays								

<b>Superior Court Judge Salaries/Benefits Expenditures:</b>								
Account #	Account Title	Type	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
001	General Fund	State	-	-	-	-	-	-
<b>Expenditures by Object:</b>								
Salaries and Wages								
Employee Benefits								

# Individual State Agency Fiscal Note

<b>Bill Number:</b> 6284 P S SB	<b>Title:</b> Civil traffic infractions	<b>Agency:</b> 240-Department of Licensing
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**Part I: Estimates**

No Fiscal Impact

**Estimated Cash Receipts to:**

ACCOUNT		FY 2012	FY 2013	2011-13	2013-15	2015-17
Highway Safety Account-State	106-1		570,225	570,225	1,955,100	1,955,100
<b>Total \$</b>			570,225	570,225	1,955,100	1,955,100

**Estimated Expenditures from:**

		FY 2012	FY 2013	2011-13	2013-15	2015-17
FTE Staff Years		0.0	2.0	1.0	4.0	4.0
<b>Account</b>						
Highway Safety Account-State	106	0	396,549	396,549	480,078	480,078
-1						
<b>Total \$</b>		0	396,549	396,549	480,078	480,078

**Estimated Capital Budget Impact:**

NONE

*The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.*

Check applicable boxes and follow corresponding instructions:

- If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- Capital budget impact, complete Part IV.
- Requires new rule making, complete Part V.

Legislative Contact: Katherine Taylor	Phone: 360-786-7434	Date: 02/01/2012
Agency Preparation: Don Arlow	Phone: (360) 902-3736	Date: 02/03/2012
Agency Approval: Sam Knutson	Phone: (360) 902-3644	Date: 02/03/2012
OFM Review: Jim Albert	Phone: (360) 902-0419	Date: 02/03/2012

Request # 6284 P S S-1

## Part II: Narrative Explanation

### II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

### II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

### II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

## Part III: Expenditure Detail

### III. A - Expenditures by Object Or Purpose

	FY 2012	FY 2013	2011-13	2013-15	2015-17
FTE Staff Years		2.0	1.0	4.0	4.0
A-Salaries and Wages		78,462	78,462	308,328	308,328
B-Employee Benefits		32,419	32,419	127,934	127,934
E-Goods and Services		257,068	257,068	43,816	43,816
J-Capital Outlays		28,600	28,600		
<b>Total:</b>	\$0	\$396,549	\$396,549	\$480,078	\$480,078

### III. B - Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2012	FY 2013	2011-13	2013-15	2015-17
Customer Srvs Spec 2	35,652		1.5	0.8	3.0	3.0
Fiscal Analyst 2	44,448		0.5	0.3	1.0	1.0
<b>Total FTE's</b>	80,100		2.0	1.0	4.0	4.0

### III. C - Expenditures By Program (optional)

Program	FY 2012	FY 2013	2011-13	2013-15	2015-17
Mgmt & Support Services (100)		45,691	45,691	148,940	148,940
Information Services (200)		245,916	245,916	7,264	7,264
Programs & Services (600)		104,942	104,942	323,874	323,874
<b>Total \$</b>		396,549	396,549	480,078	480,078

## Part IV: Capital Budget Impact

NONE

## Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

## Part II: Explanation

This bill removes the driver's license suspension imposed when a driver fails to appear, respond, or comply (FTA) for non-moving traffic violations, unless the FTA occurs in another state that is a member of the Nonresident Violator Compact (NRVC) or a jurisdiction with which Washington has entered into an agreement to accomplish the purposes of the NRVC (currently Oregon).

NOTE: This bill has an assumed effective date of December 1, 2012. We estimate that the needed modifications to our information technology systems will be completed April 2013, which is later than the effective date of the bill.

### II. A – Brief Description of What the Measure Does that Has Fiscal Impact

Section 2 amends RCW 46.20.289 to eliminate the need to enter into a payment plan to obtain an Occupational Driver's License (ODL).

Section 3 amends RCW 46.20.289 to restrict FTA driver's license suspensions to moving violations and violations from NRVC/Agreement states.

Section 4 creates a new section in chapter 46.20 RCW that requires DOL to work with the Washington State Patrol, the Administrative Office of the Courts and the Office of Public Defense to adopt rules defining moving violations by November 1, 2012.

Section 6 requires the court to notify the department whenever a person fails to respond for an infraction identified in section 7 (this is an assumption; Section 6 does not cite any section of the legislation).

Section 6 provides that except for Section 4, the bill takes effect 30 days after DOL has adopted the rules required in Section 4.

### II. B – Cash Receipt Impact

This bill will have an impact on cash receipts. Analysis of our records indicate that there were 181,799 suspensions for FTA in Fiscal Year 2011. At the end of Fiscal Year 2011, there were 37,098 non-moving violation FTA suspensions still in effect and 109,582 moving violation FTA suspensions still in effect, meaning 35,119 drivers reinstated. DOL assumes that the same ratio (25.3%) of moving to non-moving violations applies to the number of reinstatements, yielding 8,882 individuals per year (following full implementation) that would not reinstate. These individuals would have paid a \$75 reissue fee following a determination of compliance with the court. Under the provisions of this bill that fee will no longer be paid by the non-moving violation FTA cohort.

Because drivers would no longer be required to enter into a payment plan, the program estimates that 15% of those with a moving violation (16,437) would now apply for an ODL. These individuals will pay a \$100 application fee.

Cash receipts impact	FY 12	FY 13	11-13 Total	13-15 Total	15-17 Total
Non-moving violation FTA cohort		(5,181)	(5,181)	(17,764)	(17,764)
Reissue fee		\$75	\$75	\$75	\$75
Cash receipts impact		(\$388,575)	(\$388,575)	(\$1,332,300)	(\$1,332,300)
Moving violation FTA cohort		63,923	63,923	219,164	219,164
15% ODL application rate		9,588	9,588	32,874	32,874
ODL application fee		\$100	\$100	\$100	\$100
Cash receipts impact		\$958,800	\$958,800	\$3,287,400	\$3,287,400
<b>Total cash receipts impact</b>		<b>\$570,225</b>	<b>\$570,225</b>	<b>\$1,955,100</b>	<b>\$1,955,100</b>

## II. C – Expenditures

Note: Information Services expenditures and resultant revenue impacts may vary if leveraged with other technology development activities being proposed for the Department. For purposes of this fiscal note, estimated expenditures and revenue impacts are determined on a standalone basis using standard contractor rates.

This bill will require modifications to DOL's information technology systems, including the Drivers Headquarters System. Modifications will require 14 months of contracted programmer time at \$15,660 per month. Ten percent contingency has been included. This will be a one-time expense.

There would be additional costs to DOL for lockbox processing, and to accounting services to process the payment of fees from the applicants, reconcile the deposit batch report from US Bank to the application fees paid, and manually post revenue to revenue systems. Assumption is that all of the new applications and fees will be sent through the mail. US Bank Lockbox costs are estimated at \$0.30 per payment and estimated cost is \$4,930 per fiscal year for the 16,437 ODLs. Accounting costs in the revenue accounting unit is for 1.0 Fiscal Analyst 2 FTE. These expenses are reduced in Fiscal Year 2013 due to the assumed effective date, but will be ongoing expenses in future biennia.

It takes on average 15 minutes to process an ODL application. A Customer Services Specialist 2 has 88,320 minutes available per year to process workflow. The new ODL application workload will require 3.0 Customer Services Specialist 2 FTEs. These expenses are reduced in Fiscal Year 2013 due to the assumed effective date, but will be ongoing expenses in future biennia.

There will be a reduction in printing and postage costs since notices of suspension will no longer be sent to people that under current law are subject to a non-moving violation FTA suspension. Suspension letters are sent by first class mail at a cost of \$0.44 each. Those savings will be \$16,694 per year following full implementation.

## Part III: Expenditure Detail

### III. A – Expenditures by Object or Purpose

	FY 12	FY 13	11-13 Total	13-15 Total	15-17 Total
FTE Staff Years		2.0	1.0	4.0	4.0
Salaries and Wages		78,462	78,462	308,328	308,328
Employee Benefits		32,419	32,419	127,934	127,934
Goods and Services		257,068	257,068	43,816	43,816
Equipment		28,600	28,600		
<b>TOTAL</b>		<b>396,549</b>	<b>396,549</b>	<b>480,078</b>	<b>480,078</b>

**III. A (1) – Detail of Expenditures by Sub-Object for Goods & Services**

<b>Object E Breakdown:</b>	<b>FY 12</b>	<b>FY 13</b>	<b>11-13 Total</b>	<b>13-15 Total</b>	<b>15-17 Total</b>
EA Office Supplies		1,500	1,500	6,000	6,000
EB Postage		(9,522)	(9,522)	(32,646)	(32,646)
EB Phone/Install/Usage		6,300	6,300	4,320	4,320
ED Facility/Lease Costs		11,967	11,967	47,864	47,864
EF Printing		(216)	(216)	(742)	(742)
EG Training		1,064	1,064	4,256	4,256
EL Interagency DP Svcs		696	696	2,784	2,784
EN Personnel Services		530	530	2,120	2,120
ER Application Programmers		241,164	241,164		
EY Software Maintenance		1,120	1,120		
EZ Other Goods & Svcs		2,465	2,465	9,860	9,860
<b>Total Goods &amp; Svcs</b>		<b>257,068</b>	<b>257,068</b>	<b>43,816</b>	<b>43,816</b>

**III. A (2) – Detail of Expenditures by Fund**

Additional information about assumptions and impacts is available directly from the Department of Licensing at 902-3644.

**III. B – FTE Detail**

**EXPENDITURE DETAIL – STAFF**

<b>Job Classification</b>	<b>Salary</b>	<b>FY 12</b>	<b>FY 13</b>	<b>11-13 Total</b>	<b>13-15 Total</b>	<b>15-17 Total</b>
Fiscal Analyst 2	44,448		0.5	0.3	1.0	1.0
Customer Svcs Spec 2	35,652		1.5	0.8	3.0	3.0
<b>Total FTEs</b>		<b>0.0</b>	<b>2.0</b>	<b>1.0</b>	<b>4.0</b>	<b>4.0</b>

**III. B – Expenditures by Program (optional)**

<b>Program</b>	<b>FY 12</b>	<b>FY 13</b>	<b>11-13 Total</b>	<b>13-15 Total</b>	<b>15-17 Total</b>
100 - Mgmt & Support Services		45,691	45,691	148,940	148,940
200 - Information Services		245,916	245,916	7,264	7,264
300 - Customer Relations					
600 - Programs & Services		104,942	104,942	323,874	323,874
700 - Business & Professions					
<i>Total</i>	-	396,549	396,549	480,078	480,078

**Part IV: Capital Budget Impact**

None

**Part V: New Rule Making Required**

Section 4 requires DOL to work with the Washington State Patrol, the Administrative Office of the Courts and the Office of Public Defense to adopt rules defining moving violations by November 1, 2012. There are no additional expenditures related to rulemaking.

# LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

<b>Bill Number:</b> 6284 P S SB	<b>Title:</b> Civil traffic infractions
---------------------------------	---

## Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

### Legislation Impacts:

- Cities: Reduction in prosecution, defense, and jail costs
- Counties: Same as above
- Special Districts:
- Specific jurisdictions only:
- Variance occurs due to:

## Part II: Estimates

- No fiscal impacts.
- Expenditures represent one-time costs:
- Legislation provides local option:
- Key variables cannot be estimated with certainty at this time:      Number of charges

### Estimated revenue impacts to:

None

### Estimated expenditure impacts to:

Indeterminate Impact

## Part III: Preparation and Approval

Fiscal Note Analyst: David Elliott	Phone: (360) 725 5033	Date: 02/03/2012
Leg. Committee Contact: Katherine Taylor	Phone: 360-786-7434	Date: 02/01/2012
Agency Approval: Darleen Muhly	Phone: (360) 725-5030	Date: 02/03/2012
OFM Review: Jim Albert	Phone: (360) 902-0419	Date: 02/03/2012

## **Part IV: Analysis**

### **A. SUMMARY OF BILL**

*Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.*

Section 1 would amend 46.63.110 RCW so monetary obligations made by courts would be enforceable as civil judgments, and would require the courts to notify Department of Licensing (DOL) of infractions subject to suspension under 46.20.289 RCW.

Section 2 would amend 46.20.391 RCW to remove language related to payment plans.

Section 3 would amend 46.20.289 RCW to specify that DOL shall suspend licenses for failure to respond or failure to appear when the violation is a moving violation.

### **B. SUMMARY OF EXPENDITURE IMPACTS**

*Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.*

This bill would result in reduced, but indeterminate, costs for prosecuting and defending the charge of Driving with License Suspended in the third degree (DWLS3) and reduced jail expenses from fewer jail sentences. The expenditure reduction could be as high as \$36,429,442 depending on how many license suspensions are the result of moving violations as opposed to other reasons such as failure to pay child support. The definition of "moving violation" will be determined by a rule making process described in Section 4 of the bill.

In 2010, 94,989 filings and 40,030 convictions for DWLS-3 occurred in district and municipal courts. It is not clear how many fewer DWLS3 cases would be charged. The estimates provided represent a maximum reduction. In order to illustrate the agency note, the Administrative Office of the Courts (AOC) provided an estimated reduction of 50 percent of cases (47,495 cases) per year, which could lead to a reduction in convictions as well (20,015 per year): In order to illustrate the potential impact, the Local Government Fiscal Note program (LGFN) is following the AOC lead to estimate expenditure reductions.

AOC records show that 52.3 percent of criminal traffic cases are filed in district courts (operated by counties) and the remaining 47.7 percent are filed in municipal courts (operated by cities). This means that approximately 25,000 of the reduced cases are county responsibility and the remaining 23,000 reduced cases are city responsibility. Costs associated with processing these misdemeanor cases include prosecuting, defending, and investigating the charge and jail costs for any sentences. The expenditure reduction estimate ranges from \$479 for a simple case without a trial or jail sentence to \$2,668 for a case that goes to trial and ends up with a jail sentence.

Using the AOC example, the total reduction in expenditure is estimated at \$36,429,442, for prosecution, defense, and jail costs.

Jail Costs -- According to AOC data on misdemeanors in 2009, there were 44,738 sentences for DWLS3. It is not known how many are the result of circumstances related to the bill. A person convicted of the DWLS3 misdemeanor would serve their sentence in jail (a local cost). The average sentence is 61.9 days with all but 3.3 days suspended. The daily jail bed rate is \$80, according to the LGFN 2011 jail cost survey (weighted by population). The cost of a 3.3-day sentence would be \$264 (3.3 days x \$80 a day = \$264).

Using the AOC example of 50 percent of the misdemeanor charges, this could lead to a reduction of 20,015 sentences to jail. Using the \$264 estimated cost of a sentence, this could reduce expenditures by \$5,283,960. (20,015 sentences x \$264 per sentence = \$5,283,960) for jail costs shared 52.3 percent county and 47.7 percent city.

#### **BACKGROUND ON FELONY AND MISDEMEANOR ENFORCEMENT COSTS:**

Prosecution costs -- The average cost for prosecuting a misdemeanor is approximately \$328 per case (LGFN 2010 prosecutor survey). Using the AOC example of 50 percent of the misdemeanor charges, this would lead to a reduction of \$15,578,360 for 47,495 fewer \$328 prosecutions. These costs would be shared between the counties and cities.

Public defender costs -- The cost for misdemeanor public defense representation ranges from approximately \$151 per case to \$2,089 per case with a trial. Approximately 90 percent of cases qualify for public defender representation with 11 percent expected to go to trial. Using the AOC example of 50 percent of the misdemeanor charges, this would lead to a reduction of 42,746 fewer defenses. (47,495 cases x 90 percent rate of public defense = 42,746). The potential expenditure reduction is estimated to be \$15,567,122 (\$5,744,644 for 38,044 cases with a \$151 defense and no trial and \$9,822,478 for the 4,702 cases with a trial). This saving would be shared by the counties and cities.

Note on public defense -- Because public defense varies greatly in Washington State, LGFN uses a range of costs for defense depending on the county providing the defense. Larger counties have offices of public defense that are similar in size and capability to the county prosecutor's office. These offices have resources and salary parity comparable to the prosecuting attorney and have access to investigators

and other resources at county expense. Many counties contract with local law firms and nonprofit defense agencies on a variety of basis. Some counties pay per case, some per hour, some pay trial costs on a per-diem basis while others pay on a per-hour basis. More is paid for felony cases than misdemeanor cases. Finally, some counties hire local attorneys on a case-by-case basis, either on a per-hour or per-case basis.

PLEASE NOTE: Court impacts, including judicial costs, clerk costs, and court fees, are described in fiscal notes prepared by AOC. Local government fiscal notes include county expenditures for indigent defenders, county prosecutors and jail costs.

### **C. SUMMARY OF REVENUE IMPACTS**

*Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.*

No revenue impacts are expected other than the potential court impacts and court fine revenue impacts that could affect cities and counties; these are detailed in the AOC fiscal note. AOC addresses court-related fiscal impacts; local government fiscal notes cover defense, prosecution and jail-related costs.

#### **SOURCES CITED FOR EXPENDITURES AND REVENUES:**

Administrative Office of the Courts (AOC) fiscal note  
Sentencing Guidelines Commission (SGC) fiscal note  
LGFN 2010 prosecutor costs survey  
LGFN 2009 jail cost survey (weighted by population)  
LGFN 2008 public defender costs survey  
LGFN 2010 City law enforcement costs survey  
LGFN 2010 County law enforcement cost survey



## JUDICIAL BRANCH PLANNING

### Summary of Advisory Group Discussions

(DRAFT PENDING REVIEW AND APPROVAL)

Over the course of three meetings the Judicial Branch Strategic Planning Process Advisory Group (Advisory Group) discussed the necessity for a strategic planning initiative within the Washington judicial branch and how such an initiative might be organized and effectuated. The discussions produced general consensus on the following points:

- A. The judicial system of Washington is presented with a series of critical trends and conditions that will affect the ability of the courts to provide access to justice – to timely and affordably resolve disputes – for the next decade or more:

The capacity of the courts to carry out their work has become severely undermined due to reductions in state and local budgets in the face of growing and increasingly difficult caseloads.

There is scant evidence that the national and state economies will rebound significantly in the near term. Fiscal resources of state and local governments will foreseeably remain stressed for at least the balance of the current decade.

Trends related to Washington's population growth and distribution, including a growing elder population, an increasingly diverse cultural mix, decreasing family formation, deepening and widening poverty, and ongoing unemployment and wage stagnation will implicate the size, composition and complexity of court caseloads.

The same trends will stress the capacity of state and local governments to provide for critical services for these populations, such as education, law enforcement, health and social services, infrastructure and others. Further, residents with legal problems of all sorts – civil, juvenile, family, and criminal – and will lack adequate resources to deal with them.

The availability of attorneys provided at public expense to process cases in the courts -- including prosecutors, public defenders, and attorneys providing indigent legal services – is already inadequate and will likely be severely limited for years to come. Similarly access to other services, such as counseling and drug treatment, will be severely inadequate.

The above trends and conditions, taken together, threaten to bring the judicial system of Washington to a state of continuing crisis and effective dysfunction, a “train wreck,” as growing caseloads overwhelm the ability of judges and diminished court staffs to timely resolve cases.

On a positive note ongoing improvements and expansion of information technologies will continue to create opportunities for increased effectiveness and efficiency in the administration of justice, including integration with systems of agencies that are institutional court users.

- B. These conditions will place courts in an untenable situation for years to come, facing ever increasing demands with diminishing resources. The judicial system of Washington cannot reasonably expect relief, and should not merely hope conditions improve, but must take affirmative steps to prepare for and respond to these circumstances.

A comprehensive effort should be undertaken to confront the challenges facing Washington’s judicial system and to create strategies to effectively respond to them. To be effective the response must be comprehensive, forward-looking, and practical, and must enjoy broad support by key constituencies throughout the justice system.

The capacity of the branch to marshal such a response is constrained by political contexts inherent in the structure of Washington's judicial system. Washington has a non-unified court system with primary reliance on local funding. This decentralized structure, as well as Washington's history and culture, emphasizes local authority and autonomy rather than state-level coordination and agility. In this context a high level of cooperation among multiple actors would be necessary to support a coordinated strategic response.

Any initiative created should be organized from the beginning in a manner that fosters agreement and mutual commitment among the multiple jurisdictions and levels of court, as well as with key stakeholder groups. The initiative should be built on a sound foundation that emphasizes legitimacy, authority, trust and mutual interests. It should challenge the leadership of courts and key stakeholders to work together in developing a vision of Washington's judicial system in the decades to come.

The purpose of the initiative should not be understood as purporting to direct the long-term plans and activities of entities within its scope, but rather to create common understanding of shared challenges and to build consensus on strategic goals. Similarly, the initiative should relate to and be coordinated with, but not purport to authoritatively direct, those justice system partners that are essential to the functioning of the courts. The distinct missions of the component entities must be respected within the larger framework. The outcome should be a shared vision and values, and strategic goals and objectives that are practical and able to be implemented at the state and local levels.

The effort should not be created under the sole authority of the Chief Justice or within the purview of the Board for Judicial Administration, but should be created under a joint agreement and structure entered into by all major actors and key stakeholders.

- C. The Advisory Group recommends that a meeting be convened by the Chief Justice to discuss this concept with leaders of key stakeholder groups.

Leadership of the following entities should be invited to a half-day meeting: Court of Appeal, Superior Court Judges' Association, District and Municipal Court Judges' Association, Board for Judicial Administration, Administrative Office of the Courts, Office of Public Defense, Office of Civil Legal Aid, Judicial Conduct Commission, Washington State Bar Association, the clerks of court, counties and municipalities. (List still under development.)

Participants should be presented with an overview of the trends and conditions outlined above and discuss their implications. They should be asked to consider committing their organizations to join into a mutual strategic planning effort.

Participants should be advised that representatives of the Advisory Group are available to meet with their organizations, if desired, to present the issue to them for discussion.



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## Rules (BJAR)

### Preamble

The power of the judiciary to make administrative policy governing its operations is an essential element of its constitutional status as an equal branch of government. The Board for Judicial Administration is established to adopt policies and provide strategic leadership for the courts at large, enabling the judiciary to speak with one voice.

### Rule 1. Board for Judicial Administration

The Board for Judicial Administration is created to provide effective leadership to the state courts and to develop policy to enhance the administration of the court system in Washington State. Judges serving on the Board for Judicial Administration shall pursue the best interests of the judiciary at large.

### Rule 2. Composition

- a. **Membership.** The Board for Judicial Administration shall consist of judges from all levels of court selected for their demonstrated interest in and commitment to judicial administration and court improvement. The Board shall consist of five members from the appellate courts (two from the Supreme Court, one of whom shall be the Chief Justice, and one from each division of the Court of Appeals), five members from the superior courts, one of whom shall be the President of the Superior Court Judges' Association, five members of the courts of limited jurisdiction, one of whom shall be the President of the District and Municipal Court Judges' Association, two members of the Washington State Bar Association (non-voting) and the Administrator for the Courts (non-voting).
- b. **Selection.** Members shall be selected based upon a process established by their respective associations or court level which considers demonstrated commitment to improving the courts, racial and gender diversity as well as geographic and caseload differences.
- c. **Terms of Office.**
  1. Of the members first appointed, one justice of the Supreme Court shall be appointed for a two-year term; one judge from each of the other levels of court for a four-year term; one judge from each of the other levels of court and one Washington State Bar Association member for a three-year term; one judge from the other levels of court and one Washington State Bar Association member for a two-year term; and one judge from each level of trial court for a one-year term. Thereafter, voting members shall serve four-year terms and the Washington State Bar Association members for three year terms commencing annually on June 1. The Chief Justice, the President Judges and the Administrator for the Courts shall serve during tenure.
  2. Members serving on the BJA shall be granted equivalent pro tempore time.

### Rule 3. Operation

- a. **Leadership.** The Board for Judicial Administration shall be chaired by the Chief Justice of the Washington Supreme Court in conjunction with a Member Chair who shall be elected by the Board. The duties of the Chief Justice Chair and the Member Chair shall be clearly articulated in the by-laws. The Member Chair shall serve as chair of the Long-range Planning Committee. Meetings of the Board may be convened by either chair and held at least bimonthly. Any Board member may submit issues for the meeting agenda.
- b. **Committees.** Ad hoc and standing committees may be appointed for the purpose of facilitating the work of the Board. Non-judicial committee members shall participate in non-voting advisory capacity only.
  1. The Board shall appoint at least three standing committees: Long-range Planning, Core Missions/Best Practices and Legislative. Other committees may be convened as determined by the Board.
  2. The Chief Justice and the Member Chair shall nominate for the Board's approval the chairs and members of the committees. Committee membership may include citizens, experts from the private sector, members of the legal community, legislators, clerks and court administrators.
- c. **Voting.** All decisions of the Board shall be made by majority vote of those present and voting provided there is one affirmative vote from each level of court. Eight voting members will constitute a quorum provided at least one judge from each level of court is present. Telephonic or electronic attendance shall be permitted but no member shall be allowed to cast a vote by proxy.

#### Rule 4. Duties

- a. The Board shall establish a long-range plan for the judiciary;
- b. The Board shall continually review the core missions and best practices of the courts;
- c. The Board shall develop a funding strategy for the judiciary consistent with the long-range plan and **RCW 43.135.060**;
- d. The Board shall assess the adequacy of resources necessary for the operation of an independent judiciary;
- e. The Board shall speak on behalf of the judicial branch of government and develop statewide policy to enhance the operation of the state court system;
- f. The Board shall have the authority to conduct research or create study groups for the purpose of improving the courts.

#### Rule 5. Staff

Staff for the Board for Judicial Administration shall be provided by the Administrator for the Courts.

Amended January 6, 2000

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## **BOARD FOR JUDICIAL ADMINISTRATION BYLAWS**

### **ARTICLE I Purpose**

The Board for Judicial Administration shall adopt policies and provide leadership for the administration of justice in Washington courts. Included in, but not limited to, that responsibility is: 1) establishing a judicial position on legislation; 2) providing direction to the Administrative Office of the Courts on legislative and other administrative matters affecting the administration of justice; 3) fostering the local administration of justice by improving communication within the judicial branch; and 4) providing leadership for the courts at large, enabling the judiciary to speak with one voice.

### **ARTICLE II Membership**

Membership in the Board for Judicial Administration shall consist of the Chief Justice and one other member of the Supreme Court, one member from each division of the Court of Appeals, five members from the Superior Court Judges' Association, one of whom shall be the President; five members from the District and Municipal Court Judges' Association, one of whom shall be the President. It shall also include as non-voting members two members of the Washington State Bar Association appointed by the Board of Governors; the Administrator for the Courts; and the Presiding Chief Judge of the Court of Appeals, the President-elect judge of the Superior Court Judges' Association and the President-elect judge of the District and Municipal Court Judges' Association.

### **ARTICLE III Officers and Representatives**

The Chief Justice of the Supreme Court shall chair the Board for Judicial Administration in conjunction with a Member chair. The Member chair shall be elected by the Board and shall serve a two year term. The Member chair position shall be filled alternately between a voting Board member who is a superior court judge and a voting Board member who is either a district or municipal court judge.

### **ARTICLE IV Duties of Officers**

The Chief Justice Chair shall preside at all meetings of the Board, performing the duties usually incident to such office, and shall be the official spokesperson for the Board. The Chief Justice chair and the Member chair shall nominate for the Board's approval the chairs of all committees. The Member chair shall perform the duties of the Chief Justice chair in the absence or incapacity of the Chief Justice chair.

### **ARTICLE V Vacancies**

If a vacancy occurs in any representative position, the bylaws of the governing groups shall determine how the vacancy will be filled.

#### **ARTICLE VI** **Committees**

Standing committees as well as ad hoc committees and task forces of the Board for Judicial Administration shall be established by majority vote.

Each committee shall have such authority as the Board deems appropriate.

The Board for Judicial Administration will designate the chair of all standing, ad hoc, and task force committees created by the Board. Membership on all committees and task forces will reflect representation from all court levels. Committees shall report in writing to the Board for Judicial Administration as appropriate to their charge. The Chair of each standing committee shall be asked to attend one BJA meeting per year, at a minimum, to report on the committee's work. The terms of standing committee members shall not exceed two years. The Board for Judicial Administration may reappoint members of standing committees to one additional term. The terms of ad hoc and task force committee members will have terms as determined by their charge.

#### **ARTICLE VII** **Executive Committee**

There shall be an Executive Committee composed of Board for Judicial Administration members, and consisting of the co-chairs, a Judge from the Court of Appeals selected by and from the Court of Appeals members of the Board, the President Judge of the Superior Court Judges' Association, the President Judge of the District Municipal Court Judges' Association, and non-voting members to include one Washington State Bar Association representative selected by the Chief Justice, President-elect judge of the Superior Court Judges' Association, President-elect judge of the District and Municipal Court Judges' Association and the Administrator for the Courts.

It is the purpose of this committee to consider and take action on emergency matters arising between Board meetings, subject to ratification of the Board.

The Executive Committee shall serve as the Legislative Committee as established under BJAR 3(b)(1). During legislative sessions, the Executive Committee is authorized to conduct telephone conferences for the purpose of reviewing legislative positions.

#### **ARTICLE VIII** **Regular Meetings**

There shall be regularly scheduled meetings of the Board for Judicial Administration at least bi-monthly. Reasonable notice of meetings shall be given each member.

#### **ARTICLE IX** **Special Meetings**

Special meetings may be called by any member of the Board. Reasonable notice of special meetings shall be given each member.

#### **ARTICLE X** **Quorum**

Eight voting members of the Board shall constitute a quorum provided each court level is represented.

**ARTICLE XI**  
**Voting**

Each judicial member of the Board for Judicial Administration shall have one vote. All decisions of the Board shall be made by majority vote of those present and voting provided there is one affirmative vote from each level of court. Telephonic or electronic attendance shall be permitted but no member shall be allowed to cast a vote by proxy.

**ARTICLE XII**  
**Amendments and Repeal of Bylaws**

These bylaws may be amended or modified at any regular or special meeting of the Board, at which a quorum is present, by majority vote. No motion or resolution for amendment may be considered at the meeting in which they are proposed.

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Washington  
State  
Commission  
on Justice,  
Efficiency  
and Accountability

August 1999

# Washington State Commission on Justice, Efficiency and Accountability

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# Foreword

**"Justice is the ligament  
which holds civilized  
beings and civilized  
nations together.  
Wherever her temple  
stands, there is security,  
happiness and progress...  
And whoever labors on  
this edifice, whoever  
clears its foundations,  
strengthens its pillars or  
contributes to raise it  
still higher in the skies  
connects themselves with  
that which is and must be  
as durable as human  
society itself."**

Daniel Webster  
1866

Over 100 years ago Daniel Webster, the great American educator and folk philosopher, courageously suggested that judges themselves should be the architects of a court system - a system built with the bricks and mortar of justice, efficiency and accountability. That principle of self determination is the cornerstone of our report and the effort to equip judges with the tools to manage our courts is the foundation of our recommendations.

Various commissions and task forces have struggled over the last quarter of a century to explore ways to improve the operation of our courts. But even though many of these efforts resulted in extensive recommendations which we agree would improve our courts, change has been limited.

Dean Roscoe Pound, former Dean of Harvard Law School and father of judicial reform, observed that -

*"Grave obstacles stand in the way of improvement. The present system works well enough in the average rural community, and legislators from those communities see no need of change. The instinct of lawyers to scrutinize with suspicion all projects to reform has always retarded the progress. Imperfection of our legislative methods will hold back statutory improvements.*

*Popular suspicion of lawyers . . . will impede the adoption of durable methods. . .*

*But these obstacles will hinder little in the end, if our projects have a sound basis in thorough, impartial research."*

In recommending the best system for equipping the judiciary to set a course for our courts, the Commission recognized the need to establish a governance structure which would encourage dialogue among the various court levels, initiate impartial studies leading to soundly-based recommendations for change and incorporate the participation of other elected officials and the public. Once in place, the re-created Board for Judicial Administration and its committees composed of legislators, lawyers, court managers and the public will "advance the effective operation to the Washington state court system."

Applying the principle of self direction to a system composed of separately elected officials funded by a variety of methods and agencies requires determination and cooperation. Suspicions are not always vocalized and status quo is comfortable. The Commission's recommendations are intended to eliminate Pound's obstacles and equip the judiciary to achieve Webster's justice.

*Douglas P. Belghle, Chair  
Commission on Justice, Efficiency and Accountability  
August 1999*

# Summary of Recommendations

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## **1. Mission of the BJA**

The Mission of the Board for Judicial Administration should be revised to emphasize a governance versus "representative" purpose.

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## **2. BJA Leadership**

2.1 The Chief Justice of the Washington state Supreme Court should chair the Board for Judicial Administration. The co-chair should be elected from the membership.

2.2 The duties of the chair and co-chair should be clearly articulated in the bylaws, including the co-chair's role as chair of the long-range planning committee.

2.3 The chair in consultation with the co-chair should establish the meeting agenda and meetings should be held bi-monthly. The chair and co-chair should each have independent authority to convene meetings of the BJA.

---

## **3. Standing Committees**

3.1 At least three standing committees should be created: Long-range Planning (including funding issues); Core Mission/Best Practices; and Legislative.

3.2 Other committees such as Civil Process, Domestic Relations or Jury Improvement should be convened on an "as needed" basis.

3.3 The chair, with the concurrence of the co-chair, shall nominate for the Board's approval the members and chairs of the various Board committees. Committee membership should be open to citizens and experts from the private sector.

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## **4. Judicial Participation**

In order to encourage Judges' participation on the Board for Judicial Administration and its committees, members should be granted equivalent pro tempore time.

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## **5. Staff Support**

The Office of the Administrator for the Courts should continue to provide staff to the Board for Judicial Administration.

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## **6. Board Membership**

6.1 In order to reinforce the governance versus representative role of the Board for Judicial Administration, the membership of the Board for Judicial Administration should be revised. Membership should include:

Appellate Courts  
Supreme Court - 2 (one being the Chief Justice)  
Court of Appeals - 3  
Superior Courts - 5 (one being the President)  
District & Municipal Courts - 5  
(one being the President)  
Washington state Bar Association - 2 (non-voting)  
State Court Administrator (non-voting)

6.2 Members should serve four-year staggered terms based upon a selection process established by their respective associations. President judges should serve for their term of office.

6.3 The Board for Judicial Administration members should be selected for their demonstrated interest in improving the courts and reflect ethnic and gender diversity as well as geographic and caseload differences.

## Summary of Recommendations

*continued*

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### **7. Voting**

7.1 All Board for Judicial Administration decisions will be made, whenever possible, by consensus. Final decisions should be made on the basis of majority vote of those present and voting with the requirements that there be at least one affirmative vote from each level of court.

7.2 Eight voting members will constitute a quorum, provided each court level is represented. Telephone or electronic attendance should be permitted but no proxy representation should be allowed.

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### **8. Best Practices**

8.1 The Board for Judicial Administration should recognize the court performance standards and charge the Core Mission/Best Practices standing committee with the integration of these standards into daily court operations.

8.2 The Board for Judicial Administration should develop an education program for judges and courts on the usage of court performance standards to improve court operations.

8.3 The Board for Judicial Administration should establish within the Core Mission/Best Practices standing committee a clearinghouse for sharing best practices ideas.

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### **9. Core Functions of Courts**

9.1 The Board for Judicial Administration standing committee on Core Mission/Best Practices should conduct a more comprehensive study of the core and noncore function of the courts.

9.2 The standing committee shall conduct an evaluation of the core mission of courts on an annual basis and report its findings to the Board for Judicial Administration.

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### **10. Adequate Resources for Courts**

10.1 The Board for Judicial Administration shall assume the responsibility for assessing the adequacy of resources that are available to the Washington state Court system to fulfill its mission.

10.2 The assessment of resources required for the Washington state Court system must involve an ongoing assessment of the core mission and best practices used by courts.

10.3 The Board for Judicial Administration should develop an overall funding strategy for the judiciary, consistent with the long-range plan including consideration of Initiative 62.

10.4 The Board for Judicial Administration should evaluate the desirability of the state assuming greater responsibility for funding mandated judicial services.

# Introduction

**"Our constitutional scheme for judicial independence and accountability is imprecise and untidy."**

**Stephen Breyer  
Associate Justice  
United States Supreme Court**

As an outgrowth of their long-range planning meetings in 1996, the Superior Court Judges' and the District and Municipal Court Judges' Associations asked the Board for Judicial Administration (BJA) to undertake a long-range planning process for court funding. Later that year the president-judges of the judicial associations met with focus groups comprised of presiding judges from both levels of trial courts to discuss funding issues including the state's assumption of funding non-discretionary services. At the direction of then Chief Justice Barbara Durham, these efforts culminated in the BJA forming the Commission on Justice, Efficiency and Accountability in 1997.

Over the last year and a half, the full Commission and four subcommittees have held more than 27 meetings. Additionally, the Commission chair and various subcommittee chairs met with the Board for Judicial Administration and the governing boards of the Superior Court Judges' Association, the District and Municipal Court Judges' Association, and County Clerks in the summer of 1998. Several members of the Commission participated in a session at the 1998 Washington Judicial Conference reporting on their work and future plans. The judges attending this session were given an opportunity to comment and ask questions about the Commission's progress. Comments received from the participants were distributed and discussed at the conference's closing session. These comments were also reviewed by the Commission and its subcommittees. Individual members of the court community were kept informed of the Commission's work through a quarterly newsletter to all judges, commissioners, clerks, administrators, members of the Commission and subcommittees and members of the public who expressed an interest in the Commission's work. An e-mail address was established to provide another avenue for comment on the Commission's activities.

The JEA Commission developed the following mission statement:

*To advance the effective operation of the Washington state Court System by preparing a comprehensive Washington state Court Business Plan that: 1) Identifies the mission and strategic direction for the Washington state Court System, including its core functions; 2) Assesses the adequacy of the Washington state Court System's structure, organization, business practices and recommends an improvement plan; 3) Identifies a preferred model of court funding and provides a detailed strategy for implementing the model; and 4) Recommends a detailed work plan for implementing the improvement and funding plans and subsequently assessing the effectiveness of the plans.*

## Introduction

*continued*

The Commission reviewed past court planning efforts in Washington state as well as the Courts of Limited Jurisdiction Assessment Survey which contained over 100 recommendations for ways to improve the operation of the courts of limited jurisdiction. In an education session, Arthur Andersen Consulting presented the components of effective business planning. A representative from the California Judicial Council reviewed that state's multi-year funding proposal. Dr. Ron Harrison, a management consultant, helped the Commission apply management principles effectively used by other government organizations and the private sector. Reports were presented on the *Trial Court Performance Standards* and the pilot project involving their use in the superior courts in Spokane, Thurston and Whatcom Counties.

# Historical Perspective on Court Improvement Efforts

In recent years, a variety of efforts have been undertaken to explore ways to improve the operation of Washington courts. Typically, these efforts have been led by a "blue ribbon" commission appointed to study a particular problem within the court system. Such commissions have been responsive in nature; once their analysis is completed, however, they have dissolved leaving someone else to implement the recommendations. Although many of these efforts resulted in extensive recommendations for ways to improve the court system, implementation of those recommendations has been limited.

The *Judicial Administration Commission* was formed by the Legislature in 1984 and chaired by Justice James M. Dolliver. The Commission was convened to "evaluate the existing structure of Washington's judicial system, the jurisdiction of each level of court, and the existing means of administering and financing the state's courts and related court services, including probation, family court, court reporting, and juvenile services." The Commission recommended concurrent civil jurisdiction between superior and district courts be eliminated, state funding of superior and district court judges and indigent defense, definition of the responsibilities of presiding judges, and a task force to consider problems of civil court congestion and delay.

The *Commission on Washington Trial Courts* was formed in 1990 by Chief Justice Keith Callow, and chaired by Mr. Bill Gates. The Commission conducted an extensive examination of the trial court reform and concluded that neither "adequate support or organization" existed in the civil and criminal justice system. The Commission recommended the Board for Judicial Administration evaluate models for enhancing the management of the Washington judicial system, strengthening the authority of presiding judges, allowing pro tem judges to sit without consent from parties, and set minimum standards for limited jurisdiction courts.

*Washington Courts 2000* was convened by the Board for Judicial Administration (BJA) in 1992. Chaired by Mr. Bill Gates, the committee recommended expanded membership on BJA from the trial courts, court management groups and citizens, and a majority vote approach to decision making.

*The Courts of Limited Jurisdiction Assessment Survey* was initiated by Chief Justice Barbara Durham and completed in 1997. The

## Historical Perspective On Court Improvement Efforts

continued

assessment made over 100 recommendations for operational improvements in district and municipal courts. General recommendations concern the need for judicial system leadership, strengthening the independence of the judiciary, increased state funding, and minimum court operational standards.

In part, the focus of the JEA Commission was re-shaped by its review of the past commissions and study groups which were charged with finding ways to improve the judicial system. One participant suggested the true objective of the JEA should be to set in place a mechanism for *continuous process improvement* so that ad hoc commissions would no longer be necessary. Against the backdrop of numerous past efforts, the JEA began to discuss how to design a structure to enable the judiciary to plan and initiate its own agenda for the future, in an ongoing, rather than reactionary way.

When the reports of previous commissions are reviewed, they present a composite picture of the court system in Washington. Common themes emerged that offered the JEA Commission, particularly the governance subcommittee, an overview of the environment in which the judiciary functions:

- **Threats to judicial discretion and independence**

The perception that judicial independence is at risk is reflected in numerous documents, including the 1998 Assessment of the Courts of Limited Jurisdiction and a 1994 survey of Washington judges. The perception is regularly reinforced by the Legislature by the introduction and passage of bills that seek to direct the business of the courts.

- **Governance and leadership**

In a 1994 survey, 91 percent of judges stated their view that the BJA should coordinate long-range planning and problem solving within the judiciary. The report of the Assessment of Courts of Limited Jurisdiction notes... "the major problems facing the courts of limited jurisdiction can be traced to a lack of effective leadership."

- **Decentralized court system**

When given opportunities to constitutionally reform the judicial system, Washington state citizens have consistently expressed their preference for decentralized, locally autonomous courts. However, recent threats to judicial independence and the growing demands

## Historical Perspective On Court Improvement Efforts

*continued*

placed upon courts have prompted courts to consider ways the judicial branch can become more cohesive in its relationship with the other branches of government - and speak with a single voice -within the context of a decentralized court system. Washington judges have similarly voiced consistent preference for a two-tiered trial court system. In recent years, however, trial court judges have recognized the desirability to operate in coordination on issues of mutual interest.

### • **Access to Justice**

In a 1994 survey of judges, 89 percent said they believe the public finds our courts "intimidating and confusing." Pro se litigants were seen by 93 percent of the responding judges as the source of an increasing demand for services. The growth of diverse cultures in the general population presents additional communication challenges for courts in their efforts to make services accessible to all citizens.

### • **Inadequate resources for courts**

Status-quo budgets in the face of increasing demands on the criminal and civil justice system have led courts to cut corners and reduce services. In the 1994 survey of judges, 81 percent reported that criminal caseloads are transforming the judicial system into criminal law courts, with increased restrictions on the time to resolve civil disputes. Additionally, unfunded mandates diminish the ability of courts to "keep-up."

### • **Public confidence in government**

Public confidence in government institutions has eroded in recent years. In an atmosphere of skepticism and distrust, there is an unprecedented need for courts to be accountable, "user-friendly" and employ sound management practices. Quality assurance through performance measures, professional standards, or other methods for ensuring high levels of professional conduct is insufficient.

### • **Elected judiciary**

An elected judiciary necessitates that judges balance the public's need for information with their own professional obligation to remain neutral and impartial. Judges are called upon to make tough, sometimes unpopular decisions on individual cases, and to exercise innovative leadership in the administration of their courts, while also periodically running for election. The interrelationship of these dynamics is significant.

## Historical Perspective On Court Improvement Efforts

*continued*

- **Rapidly changing environment**

While it is not expected or desirable for courts to frequently change the way they do business as a result of societal pressures, litigants expect courts to resolve their disputes in a responsive way. Some have suggested that specialty courts (family, drug, teen, etc.) may be a reflection of the court system's difficulty in adopting new strategies for effectively resolving disputes. Technology has introduced new expectations that judges will make use of dramatically increasing sources of information in their job as decision-makers. They must be able to access and rely upon data from courts across the state, and they must ensure that court staff are proficient and reliable in using technology to manage the court.

# JEA Subcommittees

Based upon generally accepted business planning principles, the Commission initially established three subcommittees: Core Mission - to identify the existing responsibilities and roles of the courts; Best Practices - to consider ways for courts to assess their business practices and recognize innovation; and Funding - to evaluate various options for seeking additional state revenue while preserving local administration of justice. As the Commission proceeded with its review of previous studies, a fourth subcommittee, Governance, was appointed to evaluate the judiciary's governance and leadership structure.

## **Best Practices Subcommittee**

The Commission charged the Best Practices Subcommittee with the responsibility of assessing the adequacy of the structure, organization, and business practices of the Washington state Court System to fulfill its mission over the next decade, and to recommend an improvement plan for each level of the court system to effectively accomplish its portion of the mission in a cost-effective manner.

The subcommittee took the charge from the Commission and adopted the following mission statement: "To recommend ways for courts to improve the administration of justice for the citizens of Washington." How courts can provide higher levels of service and responsiveness to meet the increasing needs was a major topic of the subcommittee's deliberations.

The subcommittee utilized various resources during its deliberations including:

- *Courts That Succeed: Six Profiles of Successful Courts*;
- *ABA Standards Relating to Court Organization, 1990 Edition*;
- Courts of Limited Jurisdiction Assessment Survey Report;
- Minimum Services for Courts of Limited Jurisdiction, promulgated by the District and Municipal Court Judges' Association;
- Trial Court Performance Standards; and
- Appellate Court Performance Standards.

The subcommittee discussed the definition of best practices and efficiency, especially in relationship to courts. The subcommittee agreed on the following definition of efficiency. Without compromising the quality of the just result, the objective is to: 1) increase timeliness, 2) decrease cost, 3) enhance accessibility for appropriate cases and litigants, 4) increase case management, and 5) improve customer satisfaction.

## **Core Mission Subcommittee**

The Core Mission Subcommittee was charged with identifying the roles and responsibilities of the courts. The subcommittee conducted a search of the Washington Constitution, Revised Code of Washington, court rules and orders to compile a list of expectations and the mandatory functions courts must perform. The subcommittee then endeavored to identify primary functions or missions and those which could possibly be performed by some other agency or branch of government.

Following the fall conference session at which judges commented on the summary of what courts do compiled by the subcommittee, the subcommittee met to review those comments received on the summary. It also further identified functions by court level and what areas might be handled by other entities if they are not handled by the courts.

## **Funding Subcommittee**

This subcommittee grappled with finding a solution to the perpetual problem of adequately funding courts within a more broadly underfunded judicial system, particularly, identifying a more fair sharing of all costs between state and local revenue. This subcommittee compiled several funding approaches to support five specific non-discretionary areas of trial court expenses to be borne by the state: indigent defense, judicial salaries, jury fees, expert witness fees and interpreter fees.

Ultimately, the JEA Commission approved the Funding Subcommittee's recommendation contained in the Court Funding and Improvement Act of 1999, otherwise known as SB 5035 and HB 1026. As introduced, the legislation sought to establish a special fund for courts to implement innovative projects, provide 100 percent state funding for district court judicial salaries, benefits for superior court judges and state assumption of costs for trial court indigent defense and juries. Even though the bill failed to pass the legislature, the chair of Senate Ways and Means requested the Chief Justice to convene a meeting with legislative leadership regarding funding needs of the courts and report back to the next legislative session.

### **Governance Subcommittee**

The Governance Subcommittee recommended ways to strengthen the leadership structure of the judiciary - to enable the third branch to manage external influences and initiate change effectively.

The Governance Subcommittee began its work by reviewing how the judicial system sets strategic direction for the courts. The subcommittee concluded that given the current constraints of the BJA's operating procedures and the fact that most current planning focuses on a specific problem identified by a specific group, changes needed to be made to the BJA's structure and operating procedures.

The Governance Subcommittee reviewed the work of previous commissions that were charged with examining the leadership structure of the Washington judiciary. The subcommittee evaluated the statutorily established role of the Office of the Administrator for the Courts and its effectiveness in supporting the judiciary. The structure and role of other leadership groups within the judicial branch, such as the Judicial Information System Committee and the Board for Court Education were also considered as effective leadership models. Finally, the subcommittee invited previous members of the Board for Judicial Administration to provide the subcommittee with their observations and suggestions for improving the effectiveness of BJA.

# Recommendations and Commentary

## 1

### **Mission of the BJA**

The mission of the Board for Judicial Administration should be revised to emphasize a governance versus "representative" purpose.

The full Commission reviewed and extensively discussed the four subcommittee reports (see Appendix A) at a two-day retreat on May 20 and 21, 1999.

The Commission concluded that changes in the governance and leadership structure of the Washington judiciary were essential to effective future direction of the state court system and made the following findings and recommendations.

#### **COMMENTARY:**

The Commission determined that an essential component of an effective organization is its ability to initiate and execute its own agenda. The only way for a decentralized organization like the Washington state judiciary to cast a single vision is through an effective governance structure authorized to adopt policies and provide strategic leadership. The Board for Judicial Administration will not have any inherent executive or legislative powers over individual judges. Thus it must be recognized that "governance" as used in this report must be understood to mean policy making and developing strategic leadership, vital functions, both wholly wanting at the present time.

While the Board for Judicial Administration was created to bring the various judicial constituencies together to formulate policy on issues of mutual interest, the Board has historically represented the various judicial stakeholder groups (Supreme Court, Court of Appeals, Superior Courts and the District and Municipal Courts). The current representative mind set results in the Board's diffused allegiance and reluctance to attack controversial issues. When interviewed, past Board representatives observed that trial court judges basically fear Supreme Court control, either in terms of state funding or through the Office of the Administrator for the Courts. The Board for Judicial Administration has been viewed as an instrumental of the Chief Justice acting on behalf of the Supreme Court. Even though the Board for Judicial Administration rules articulates a "policy" or governance purpose, its actual role appears, at times, to be "advisory" to the Supreme Court. The Commission considered whether or not to recommend abolishing versus revitalizing the Board for Judicial Administration including changing the name of the Board.

# 1

*continued*

## **Mission of the BJA**

# 2

## **BJA Leadership**

**2.1 The Chief Justice of the Washington state Supreme Court should chair the Board for Judicial Administration. The co-chair should be elected from the membership.**

**2.2 The duties of the chair and co-chair should be clearly articulated in the bylaws, including the co-chair's role as chair of the long-range planning committee.**

**2.3 The chair in consultation with the co-chair should establish the meeting agenda and meetings should be held bi-monthly. The chair and co-chair should each have independent authority to convene meetings of the BJA.**

After lengthy discussions, the Commission determined that restructuring the existing Board would produce the most effective result. The Board for Judicial Administration's mission and the court rule creating it should redefine its allegiance to a larger community - the judiciary at large - and clearly articulate a governance versus advisory role. The structure of the Board for Judicial Administration must enable the judiciary to speak with one voice without squelching dissent or pretending unanimity. Toward that end, the new mission statement should provide for continuity of membership and criteria for appointment emphasizing accountability to the judiciary at large.

### **COMMENTARY:**

While the Washington Constitution establishes a hierarchy of courts for the purpose of appeal, responsibility for policy must reside within the Board for Judicial Administration if the judiciary is to function as an effective branch of government. The position of Chief Justice carries honorific as well as actual governance responsibilities (RCW 2.56). The chair's job requires skilled handling of process and an ability to fairly, but firmly, lead a group to confront and welcome diversity of opinion. After discussion, the Commission agreed that the Chief Justice should continue to be designated as chair of the Board for Judicial Administration.

The Commission also determined that conferring additional authority on the "co-chair" will increase the trial court judges' confidence in the role of the Board for Judicial Administration. Electing a co-chair from the Board's membership contributes to developing greater trust among court levels. Additionally, designating the co-chair to lead the long-range planning process further reinforces the Board's policy role and extends the message of speaking with one voice.

Bi-monthly, daylong meetings would allow Board committees to pursue their objectives and focus policy issues for Board action. In addition, moving Board meetings to Mondays rather than Fridays would allow a weekend for members to review materials.

Finally, the Commission determined that the Board should report annually at the Washington Judicial Conference.

# 3

## Standing Committees

**3.1 At least three standing committees should be created: Long-range Planning (including funding issues); Core Mission/Best Practices; and Legislative.**

**3.2 Other committees such as Civil Process, Domestic Relations or Jury Improvement should be convened on an "as needed" basis.**

**3.3 The chair, with the concurrence of the co-chair, shall nominate for the Board's approval the members and chairs of the various Board committees. Committee membership should be open to citizens and experts from the private sector.**

# 4

## Judicial Participation

**In order to encourage judges' participation on the Board for Judicial Administration and its committees, members should be granted equivalent pro tempore time.**

# 5

## Staff Support

**The Office of the Administrator for the Courts should continue to provide staff to the Board for Judicial Administration.**

### COMMENTARY:

Committees should assist the Board in achieving its mission and implementing the approved long-range plan. Committees can work simultaneously to identify problems and formulate solutions for Board action. Each committee should study, deliberate, formulate and finally, recommend a course of action to the Board for Judicial Administration. Committee work should result in recommendations for consideration and adoption by the Board. Committees should do pre-Board work. If the Board is to deliberate and adopt policy positions, it will do a better job if presented with options.

The committees should produce alternative/implication reports for the Board's consideration. The Long-range Planning Committee should include representatives from the Judicial Information System Committee, the Court Management Council and the Board for Court Education. The Board for Judicial Administration should use committee reports, surveys and studies to form its decisions. As part of the long-range planning effort, the Board should review and comment on the OAC Business Plan.

### COMMENTARY:

The size of courts and judicial workload severely limits the ability of judges to serve on the Board for Judicial Administration and its committees. Necessary changes in statutes or court rules should establish the ability for judges to be granted equivalent pro tempore time to allow for participation in the Board's work. The Office of the Administrator for the Courts should be directed to include the Board for Judicial Administration pro tempore costs in its operating budget.

### COMMENTARY:

Providing staff support to the Board for Judicial Administration and its committees should be included in the Office of the Administrator for the Courts' Business Plan as a core mission. The Office of the Administrator for the Courts should be responsible for the timely distribution of the agenda, minutes and materials prior to Board meetings.

# 6

## **Board Membership**

**6.1 In order to reinforce the governance versus representative role of the Board for Judicial Administration, the membership of the Board for Judicial Administration should be revised. Membership should include:**

**Appellate Courts**

**Supreme Court - 2**

**(one being the Chief Justice)**

**Court of Appeals - 3**

**Superior Courts - 5**

**(one being the President)**

**District & Municipal Courts - 5**

**(one being the President)**

**Washington state Bar**

**Association - 2 (non-voting)**

**State Court Administrator**

**(non-voting)**

**6.2 Members should serve four-year staggered terms based upon a selection process established by their respective associations. President judges should serve for their term of office.**

**6.3 The Board for Judicial Administration members should be selected for their demonstrated interest in improving the courts and reflect ethnic and gender diversity as well as geographic and caseload differences.**

### **COMMENTARY:**

If the judiciary is to "speak with one voice" the Board for Judicial Administration must truly represent the overall system interests rather than the agenda of individual court levels. The Judicial Information System Committee (JISC) was identified as a governance model that works well and is supported by all the various constituent groups within the court system.

Members should be selected by their affiliate associations and have explicit responsibility to the judiciary as a whole, not to their respective constituencies. Each court level should determine how to select its representatives with an attempt to achieve diversity. The BJA bylaws should be amended to remove any reference to association officers.

Board for Judicial Administration members should serve four-year staggered terms with the ability to be reappointed. In addition, the Commission discussed adding two public, non-voting members and two non-voting members of the Court Management Council, one being a County Clerk. The Commission deferred the decision to the restructured BJA and noted that public members, county clerks and court administrators should be appointed to the various Board committees and work groups.

# 7

## Voting

**7.1 All Board for Judicial Administration decisions will be made, whenever possible, by consensus. Final decisions should be made on the basis of majority vote of those present and voting with the requirements that there be at least one affirmative vote from each level of court.**

**7.2 Eight voting members will constitute a quorum, provided each court level is represented. Telephone or electronic attendance should be permitted but no proxy representation should be allowed.**

# 8

## Best Practices

**8.1 The Board for Judicial Administration should recognize the court performance standards and charge the Core Mission/Best Practices standing committee with the integration of these standards into daily court operations.**

### COMMENTARY:

The existing unilateral "right of veto" perpetuates the balkanized, representative nature of the Board for Judicial Administration. Preferably, all positions would be reached by consensus but final decisions could be determined by a majority vote after significant deliberation.

The adoption of majority vote is a dramatic departure from past procedures. The requirement of including one or more judges from each court level in any vote provides a meaningful check and balance. Also, as a practical matter it is unlikely that any issue will be badly or arbitrarily decided because of the recognition, shared by all, that ultimately the decisions of the Board for Judicial Administration and the effectiveness of the Board itself must rest on the twin piers of their intrinsic merit and a broad consensus support from constituent judges.

### COMMENTARY:

The Commission recommends the BJA accept the Trial Court Performance Standards (TCPS) as listed in Appendix B to serve as an aspirational goal for all courts. The TCPS and the measurement tools associated with the standards are a valuable management and planning tool for judicial leaders who, increasingly, are being held accountable for the performance of courts. Benefits of the TCPS include: 1) the development of a common language to describe and communicate court functions and activities; 2) a framework for understanding the work of the courts; and 3) a means for individual courts to self-assess, self-improve, and improve accountability. The framers of the Trial Court Performance Standards indicate that, "The use of the standards as a basis for cross-court comparisons or as part of a national or regional accreditation of State courts is not intended or recommended." The standards are also "not intended, nor are they appropriate, for gauging the performance of individual judges."

The Commission recommends the BJA Core Mission/Best Practices Standing Committee identify the cost and obstacles that come with implementing best practices. Obtaining initial seed money to implement innovative procedures and subsequently evaluating the procedure to determine if it is indeed a best practice is one of the obstacles identified. Limitations of judicial and staff resources both at the state and local level are also obstacles in implementing the TCPS.

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## Best Practices

**8.2 The Board for Judicial Administration should develop an education program for judges and courts on the usage of court performance standards to improve court operations.**

**8.3 The Board for Judicial Administration should establish within the Core Mission/Best Practices standing committee a clearinghouse for sharing best practices ideas.**

It is important to acknowledge that there is not one best practice for all courts. The size of the court, the geographic area the court serves, and the demographics of the community are some of the things which might impact the best practices of a court. The best practices that are recommended need to ensure the quality of justice is not diminished but rather enhanced by the best practice.

**COMMENTARY:**

The Commission recommends a BJA-sponsored education program to review the Trial Court Performance Standards (TCPS) with a leadership team from each court. The objective of the program would be: 1) to provide information and training on the use of the measurement system associated with the standards as developed by the National Center for State Courts; and 2) to assist courts in integrating the standards and measurement system into the daily court operations. Such a session was recommended by a participant at the Commission session at the 1998 Washington Judicial Conference. It was also clear from the feedback of the participants that such an education program would be helpful as many indicated they did not know much about the performance standards and measurement system.

**COMMENTARY:**

The Commission recommends the establishment of a clearinghouse to evaluate proposals for innovative programs and best practices; assist in funding them; assess results of pilot programs; and disseminate these programs within the court community.

Innovative programs and best practices would be referred to the clearinghouse for recognition as a best practice. The standing committee would prepare a written description of the project, review any evaluations of the project, and if none, develop and conduct an evaluation of the project. An annual report of projects funded and/or certified as best practices would be prepared and disseminated to judges, court managers, and legislators.

## **Core Mission**

**9.1 The Board for Judicial Administration standing committee on Core Mission/Best Practices should conduct a more comprehensive study of the core and noncore function of the courts.**

**9.2 The standing committee shall conduct an evaluation of the core mission of courts on an annual basis and report its findings to the Board for Judicial Administration.**

### **COMMENTARY:**

The Commission recommends a standing committee of the Board for Judicial Administration use the case categorization developed by the Core Mission Subcommittee as a starting point for a more comprehensive study of the core and noncore functions of the courts. That subcommittee emphasized in its final report to the full Commission that it had to this point only segregated functions, as either core or noncore functions, which courts are required to perform by either the constitution or the legislature. This is only a first step in examining what courts do. A true assessment of the functions must now follow using the criteria set forth herein.

The standing committee, in the interest of improving the administration of justice, should accept the categorization of case types proffered by the Core Mission Subcommittee to determine: 1) why courts do what they do; 2) whether courts should be performing a particular function; and 3) what efficiencies could result from implementing changes with respect to functions which courts perform. In undertaking an exploration of these issues, there should be an examination of: 1) the real mission of the courts, justice and the highest and best use of resources available to the judiciary; and 2) what process should be used to identify what ought to be the core mission of the courts, regardless of the present statutory or constitutional scheme setting forth what functions courts are to perform. The recommendation should also: 1) identify the entity which would assume the responsibility for performing the function if it were transferred from the judiciary; 2) prioritize the functions which courts would continue to perform; 3) use the established list of priorities in funding discussions with the legislature; and 4) factor access to justice considerations into this assessment.

### **COMMENTARY:**

Improvement in the judicial process will be facilitated by a continuing evaluation of whether functions performed by the courts are appropriate, would be more efficiently performed by another entity or are no longer needed. This evaluation process must be conducted on an annual basis to ensure that courts are vigilant in putting resources to the best use. The annual report shall be made to the Board for Judicial Administration.

The Commission strongly believes the utility of this assessment can only be preserved if the review conducted is comprehensive and timely. In addition to having the assessment conducted on a scheduled recurring basis, attention should be given to ways in which technology can be used to enhance the performance of the courts.

# 10

## **Adequate Resources for Courts**

**10.1 The Board for Judicial Administration shall assume the responsibility for assessing the adequacy of resources that are available to the Washington state Court system to fulfill its mission.**

**10.2 The assessment of resources required for the Washington state Court system must involve an ongoing assessment of the core mission and best practices used by courts.**

**10.3 The Board for Judicial Administration should develop an overall funding strategy for the judiciary, consistent with the long-range plan including consideration of Initiative 62.**

### **COMMENTARY:**

In 1997 the Board for Judicial Administration sponsored focus group discussions throughout the state asking judges to identify problems in the court system. The lack of adequate resources emerged as one of the major issues facing the courts. It was noted that in many counties the law enforcement and jail costs were eroding the ability to meet the resource needs of the courts. Criminal matters consume nearly all of the available court resources. In most, if not all locations, civil cases are delayed for months and sometimes for years before a trial date is confirmed. The trial judges participating in the focus groups identified two specific issues: 1) they felt the state should share in the costs of courts to a greater degree; and 2) they felt the counties should be relieved of costs that are mandated by public law.

### **COMMENTARY:**

Commission members concluded that adequate funding for the courts is directly linked to the ability of courts to be accountable for their operations. While efficiency should never take priority over quality, courts must demonstrate their commitment to continual improvement and finding better ways to be responsive to their customers.

### **COMMENTARY:**

With the approval of the Commission, legislation titled "The Court Improvement Act of 1999" was drafted and introduced into the 56th legislature. The Act embodied the principles of local option and state funding for judicial salaries, as well as state responsibility for other non-discretionary court programs. The legislation was sponsored in both houses of the legislature by the Chairs of the Judiciary committees. After hearings and numerous amendments, neither bill was passed by the legislature.

However, the Act did stimulate significant discussion about court funding. Legislative leaders have requested the Chief Justice to convene a work group to continue the work initiated by this Commission. Clearly the legislative leaders believe the Board for Judicial Administration should appoint a standing committee to develop a continuing plan for court funding. To quote one leader of the legislature "I, like you, have been concerned about the lack of funding for the state's trial courts and the corresponding impact on access to justice for some time now. I am pleased that more people are now becoming engaged in looking for solutions to these problems, and I would like these efforts to continue."

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**Adequate  
Resources  
for Courts**

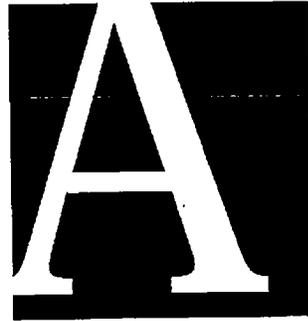
**10.4** The Board for Judicial Administration should evaluate the desirability of the state assuming greater responsibility for funding mandated judicial services.

**Conclusions****COMMENTARY:**

The Commission recognized that judges have differing views about the most appropriate sources of stable and adequate funding for the court system. The work initiated with the 1997 focus groups should continue - judges should be given opportunities to consider options for greater state assistance while preserving local autonomy.

The Commission determined that evolution was preferable to revolution and small steps ultimately arrive at the same destination. But every journey begins with a single step. These recommendations identify steps the judiciary must take to become an effective organization setting its own agenda. Effective governance is essential to an effective judiciary.

# Appendix





# Best Practices Subcommittee

## Final Report

### Introduction

The Commission charged the Subcommittee with the responsibility of assessing the adequacy of the structure, organization, and business practices of the Washington state Court System to fulfill its mission over the next decade, and to recommend an improvement plan for each level of the court system to effectively accomplish its portion of the mission in a cost-effective manner.

The Subcommittee adopted the following mission statement: "To recommend ways for courts to improve the administration of justice for the citizens of Washington." How courts can provide higher levels of service and responsiveness to meet the increasing needs was a major topic of the Subcommittee's conversations.

The membership of the Subcommittee included five superior court judicial officers: Judges Susan Cook, Michael Donohue, Larry McKeeman, and Commissioner Fred Aronow. There were two representatives of the District and Municipal Court Judges' Association: Judges James Riehl and Greg Tripp. There were four county clerks on the Subcommittee: Joyce Denison, Lorena Hollis, JoAnne McBride, and Siri Woods. Three superior court administrators were on the Subcommittee: David Hardy, N.F. Jackson, and Michael Planet. There were three district court administrators on the Subcommittee: Maury Baker, Linda Bell, and Theresa Doty. Lish Whitson represented the Bar Association. The other members of the Subcommittee included: Bruce Dammeler, Doug Martin, Jim Mahoney, Mary Pat Treuthart, and James Vache.

### Process of Review

The Best Practices Subcommittee held meetings on the following dates: February 23, 1998; March 27, 1998; April 17, 1998; May 29, 1998; June 26, 1998; July 24, 1998; August 28, 1998; and September 25, 1998.

The Subcommittee utilized various resources during its deliberations including:

*Courts That Succeed: Six Profiles of Successful Courts;*  
*ABA Standards Relating to Court Organization, 1990 Edition;*  
*Courts of Limited Jurisdiction Assessment Survey Report;*  
*Minimum Services for Courts of Limited Jurisdiction, promulgated*

*continued*

## **Process of Review**

*continued*

## **Subcommittee Findings and Recommendations**

by the District and Municipal Court Judges Association; Trial Court Performance Standards; and Appellate Court Performance Standards.

The Subcommittee discussed the definition of best practices and efficiency, especially in relationship to courts. The Subcommittee agreed on the following definition of efficiency. Without compromising the quality of the just result, the objective is to: (1) increase timeliness, (2) decrease cost, (3) enhance accessibility for appropriate cases and litigants, (4) increase case management, and (5) improve customer satisfaction.

The Subcommittee determined that courts need benchmarks and measurement tools to ensure efficiency and promote best practices. It also recognized that funding for courts is limited and used for the day-to-day functioning of the courts. There is little extra money available to try new innovative approaches. Therefore, the Subcommittee adopted the following recommendations.

1. The Best Practices Subcommittee recommends that the Commission on Justice, Efficiency, and Accountability adopt, in concept, the Trial Court Performance Standards promulgated by the United States Justice Department, Bureau of Justice Assistance, as Court Performance Standards for the state of Washington as Guiding Principles for Washington state Courts at every court level. The Commission should recommend the adoption, in concept, of these standards by the governing bodies of each level of the courts in Washington state. The Court Performance Standards are listed in Appendix B.

2. The Best Practices Subcommittee also recommends the establishment of a Court Improvement Clearinghouse to evaluate proposals for innovative programs and best practices, which comply with the Guiding Principles for Washington state Courts; assist in funding them; assess results of pilot programs; and promulgate those programs to the court community. The Court Improvement Clearinghouse concept is described in Attachment A.

*continued*

## Conclusions

The findings and recommendations of the Subcommittee are submitted for the consideration of the Commission on Justice, Efficiency, and Accountability. The Subcommittee members appreciate the opportunity to provide the Commission with the views of the representatives of the judiciary, court management, Bar, academia, and the public.

*Michael E. Donohue*  
*Chair, Best Practices Subcommittee*

## Actions needed to implement recommendations

### **Best Practices Subcommittee**

<b>Recommendation</b>	<b>Action</b>	<b>Responsible for Action</b>
Adopt the Trial Court Performance Standards (TCPS) as Guiding Principles	Pass Resolution adopting TCPS	Board for Judicial Administration
Establish Court Improvement Clearinghouse	Establish Clearinghouse	Board for Judicial Administration
	Request funding for projects	Board for Judicial Administration

# Court Improvement Clearinghouse

## *Draft Proposal*

### **PURPOSE**

The Court Improvement Clearinghouse is proposed as a means for identifying innovative programs and "best practices" in the Washington State courts, providing funding to evaluate and implement innovative programs which courts can apply for, and monitoring these programs as they grow and expand to other courts.

### **STRUCTURE AND ORGANIZATION**

The Court Business Advisory Committee, supported by the Office of the Administrator for the Courts (OAC) Court Services and/or Research and Information Services, would be the "staff committee." Recommendations would be forwarded to the Board for Judicial Administration (BJA) and Court Management Council (CMC) for approval.

### **FUNDING**

The Court Improvement Clearinghouse should be funded from state appropriations, federal grant moneys, and a private endowment. The endowment would be created through the efforts of private volunteers to raise private funds from individuals, foundations, and corporations. The Clearinghouse would use these moneys as grants to initiate new programs in state courts using established criteria.

### **PROCEDURES**

1. Innovative programs and best practices are referred to the clearinghouse for adoption as a best practice. Referrals can be made by:
  - Judges and staff from courts who have implemented a program, or
  - Members of the bar, academia, or public who have heard of or seen an innovative program.
2. Judges and staff from courts may apply for funding to implement an innovative program. Funding would be made available only to state courts.
3. The clearinghouse reviews the referral or request for funding and sends it to the staff group to:
  - Prepare a written description of the project,
  - Review any evaluations of the project, and
  - Develop and conduct an evaluation of the project.
4. Following the review, staff will present a report and recommendation to the clearinghouse as to whether the program should be adopted as a "best practice" or the requested funding should be provided. Criteria to be applied in making the recommendation will include:
  - Whether the project has measurable performance indicators,
  - Whether the project has been demonstrated to be cost effective, and
  - Whether the project is transferable to other courts.
5. The clearinghouse will recommend to the BJA and the CMC that the project be adopted as a best practice and is eligible for court improvement funds.
6. OAC disseminates information to courts on how to apply for funding to implement court improvement projects.
7. OAC prepares and disseminates an annual report of projects funded and/or certified best practices to judges, court managers, and legislators.

# Core Mission Subcommittee

## Final Report

### Introduction

The mission statement for the Core Mission Subcommittee is:

*Many organizations suffer from the "Christmas tree syndrome" in which more and more responsibilities are hung on the original structure until it bends or breaks under the added weight. The judicial branch of government is no exception. Its responsibilities have multiplied over time as legislators, citizens, attorneys and conscientious judges have looked for ways to resolve an ever-increasing number and variety of disputes. We have reached the point where we must ask ourselves which of these responsibilities and roles properly belong in the judicial system. This subcommittee will evaluate the responsibilities the Constitution and laws require our courts to discharge as well as those we have voluntarily accepted or imposed on ourselves over time. We will then make recommendations for refining the role the judiciary should be expected to successfully fulfill.*

The purpose of courts is to resolve disputes. In order to keep courts focused on this purpose, the Core Mission Subcommittee attempted to delineate core and noncore court functions; that is, to separate nonessential functions from those functions which courts perform in order to carry out their essential purposes or because the Constitution or the Legislature requires the courts to perform. The subcommittee recognizes that not all levels of court function in the same way. Even at the same level of court, there will be variations in practice and different meanings applied to the same terms by courts around the state. For instance, how one district court handles probation services may differ significantly from the practice or custom in other counties. This may also be true for superior courts in areas such as calendaring and family court services. These differences are not reflected in this summary of court functions.

In addition to defining core and noncore functions, we have reviewed all court functions to assess whether they might be accomplished less expensively or more efficiently by other entities such as administrative law judges or court commissioners and to determine how much value there is in having courts perform them. In many cases, as this

subcommittee has, the Commission will have to verify the burden on the justice system against the need for the high quality of decision making that courts can offer.

This document is intended to assist the full Commission and other subcommittees in making recommendations to improve the efficiency of the courts. We anticipate that it will be used as a starting point for making decisions and recommendations and will therefore continue to evolve. Not all members of the subcommittee agreed on all points in the report, but it does represent a consensus of those participating in the meetings.

The following persons served on the Core Mission Subcommittee:

Honorable Susan R. Agid, Chair  
Court of Appeals, Division I

Honorable Rebecca M. Baker  
Stevens/Ferry/Pend Oreille Counties Superior Court

Honorable Craig J. Matheson  
Benton/Franklin Counties Superior Court

Honorable R. Joseph Wesley  
King County Superior Court

Honorable David Frazier  
Whitman County District Court

Honorable Barbara L. Linde  
King County District Court, Seattle Division

Honorable William C. Stewart  
Hoquiam Municipal Court

Honorable Patricia A. Chester  
Stevens County Clerk

Honorable Pam Daniels  
Snohomish County Clerk

Honorable Gloria Perchynski  
Ferry County Clerk

Honorable Siri Woods  
Chelan County Clerk

Ms. Sheryl Willert  
Attorney at Law, Seattle

Ms. Deborah Norwood  
State Law Librarian

## **Process of Review**

The Core Mission Subcommittee began meeting in March 1998 and met three more times until November 1998. In addition to these meetings, the subcommittee circulated working discussion drafts for comment and reviewed the comments received at the 1998 Fall Judicial Conference. The subcommittee chair, together with the other two subcommittee chairs, met with the leadership of the judicial associations and the county clerks to discuss our charge and the progress we were making as well as participating in the plenary discussion at the 1998 Fall Judicial Conference at which the work of the Commission on Justice, Efficiency and Accountability was discussed.

During its meetings the subcommittee drafted and revised a summary of what courts do which was broken down by the areas in which courts function. The final version of this document is included here in the section entitled "Findings and Recommendations".

The subcommittee consulted various resources including:  
WA Const. art. IV  
RCW Title 2—Courts of Record  
RCW Title 3—District Courts—Courts of Limited Jurisdiction  
1994 WA State Judicial Survey  
1994 Court Managers' Survey  
Judicial Council of CA—Profile—Committees—Training  
and Education—AOC  
Trial Court Performance Standards with Commentary  
ABA Standards Relating to Court Organization  
NCSC National Conference on the Future of the Judiciary

## **Findings and Recommendations**

The subcommittee separated the functions performed by the courts into these six function areas:

- civil cases
- criminal cases
- non-criminal cases involving the government
- reviewing cases on appeal
- administration
- regulating the practice of law

Functions are further segregated by delineating them as either core or noncore and noting the level of court performing each of the functions or hearing a particular type of case. Finally, each function category, except hearing appeals and regulating the practice of law, concluded with a listing of those areas which the subcommittee thinks could be handled by another entity.

*continued*

## **Findings and Recommendations**

*continued*

### Function 1: Deciding civil cases between private litigants (Courts of Original Jurisdiction).

This function involves applying laws to achieve a just resolution of a disagreement between two parties, neither of which generally is a governmental entity.

This function involves cases involving property rather than life or liberty.

This function is sometimes performed, at least in part, by non-governmental entities such as non-judicial resolution of disputes, including alternative dispute resolution centers, private arbitration and private mediation.

The steps involved in this function include: discovery, motions, contempt, ex parte practice, jury trials, bench trials, final decisions, and enforcement of judgments.

#### **Categories of cases include:**

Torts (Superior and District Courts)

Contracts (Superior and District Courts)

Property rights (title to property, landlord-tenant issues, liens)  
(Superior Court for property rights affecting title and District Court for landlord-tenant issues)

Family law (marriage, dissolution, adoption, paternity)  
(Superior Courts)

Probate/Guardianship/Settlement of minor's claims (Superior Courts)

Name Changes (Superior and District Courts)

Impound Hearings (District Courts)

Small Claims Appeals (de novo) (Superior Courts)

Private Writs/Injunctions (Superior Courts)

Custodial Habeas Corpus (Superior Courts)

Antiharassment/Protection Orders (Superior and District Courts)

Courts that handle these matters through trial:

Superior courts

District courts (including small claims departments)

Municipal courts

Functions performed by courts but not necessarily at the core of this function include: arbitration, settlement conferences, mediation, court facilitators, monitoring guardianships, family court services, wedding ceremonies.

*continued*

## **Findings and Recommendations**

*continued*

Areas which might be handled by another entity (arranged according to those having the lowest impact on the courts' caseload to those having the highest):

Small claims (District Court)  
Performing weddings (All Court Levels)  
Name changes (except minors) (Superior and District Courts)  
Emancipation petitions (Superior Courts)  
Impound hearings (District Court)  
Monitoring guardianships (Superior Court)  
Family law (except matters involving children) (Superior Court)

### **Function 2: Deciding criminal cases.**

This function involves resolving cases where the government accuses persons and the justice system's role is to determine guilt, impose punishment, and set restitution.

It involves issues of life and liberty (incarceration, conditions of release, etc.), adult and juvenile, as well as payments for restitution, fees and fines.

The steps involved in this function include all types of warrants, authorizing interceptions of communication, competency hearings, pre-trial appearances (e.g., probable cause, assigning counsel, arraignments, bond hearings), extradition (Superior Court), discovery, motions, bench trials, jury selection/trials, determinations of guilt/acquittal, decline hearings (Superior Court), post-trial matters (e.g., sentencing, attorneys fees in successful self-defense cases, sentencing and probation violations), contempt, special inquiry proceedings (Superior Court). (Unless indicated otherwise, these functions are performed by Municipal, District and Superior Courts.)

Functions performed by courts but not necessarily at the core of this function: coroner's inquests (RCW 36.24.160) (District and Superior Courts), diversion (Juvenile—Superior Court and Alternative Disposition—Municipal and District Courts), probation, counseling, detention, probation supervision. (Unless indicated otherwise, these functions are performed by Municipal, District and Superior Courts.)

Areas which might be handled by another entity:  
Detention (Delegate first)  
Probation supervision and counseling (Municipal and District Courts) (Delegate second)

*continued*

## **Findings and Recommendations**

*continued*

Indigency screening for court-appointed counsel  
Returning firearms to felons  
Coroner's Inquest (Study standardization of practices)  
Diversion (Already out of court system except some staff monitoring)

### **Function 3: Deciding non-criminal cases involving the government.**

These functions generally involve less governmental intrusion than in criminal cases but more intrusion than in general civil cases involving only private litigants. They may include restrictions which involve loss of liberty or civil rights.

Mental commitment hearings (Superior Courts)  
Alcohol commitment hearings (Superior Courts)  
Sexual predator commitment hearings (Superior Courts)  
Juvenile court matters: (Superior Courts)  
    Children in Need of Services (CHINS) and  
    At Risk Youth (ARY) cases  
    Dependency petitions  
    Termination of parental rights/guardianship  
    Truancy  
Civil infractions (Municipal and District Courts)  
    Traffic  
    Natural resource  
    Commercial vehicle  
    Boating  
Restraining orders (Municipal, District and Superior Courts)  
Property seizure/forfeiture/impoundment [drug-related (Superior Court), DUI-related (Municipal, District and Superior Courts), firearms (Municipal, District and Superior Courts), animals (District Courts)]  
Paternity (Superior Court)  
Eminent domain (Superior Court)  
Enforcement of regulations/election/recall cases (Superior Court)  
Nuisance abatement (Superior Court)  
Taxpayers suits (Superior Court)  
Writs involving the government (Superior and Appellate Courts)  
Sexually transmitted disease hearings (Superior Court)

*continued*

## **Findings and Recommendations**

*continued*

Areas which might be handled by another entity:

Truancy (Has resulted in high increase in workload. Delegating should be given highest priority.)

Civil infractions (Incentives should be explored to encourage people to pay fines early or otherwise ensure compliance to eliminate the need to use the court system to have fines reduced.)

### **Function 4: Reviewing cases on appeal.**

Superior court decisions being reviewed in appellate courts (RAP)

Limited jurisdiction court decisions being reviewed in superior and appellate courts (e.g., RALJ, RAP, small claims de novo trials)

Agency actions being reviewed in superior court (e.g., WAPA, LUPA, L&I)

PRPs and reference hearings (Court of Appeals and Superior Courts)

Federal court certification of questions to Supreme Court

### **Function 5: Administration.**

#### **Core Functions**

Employ staff

Supreme Court Clerk's Office

Prepare and implement budgets

Receive, transmit and account for funds

Provide security

Prepare, maintain and store records of case activity and judicial operations

Coordinate and share data (JIS)

Maintain state law library (Supreme Court)

Develop operational policies, including calendar management

Propose, review and adopt rules governing judicial matters

Reporting requirements (e.g., errors and omissions in the law, wiretap reports, PDC, sentencing and caseload statistics)

Jury Management (e.g., orientation, excusing from service)

Reporter of Decisions

#### **Noncore functions currently performed by the court system**

Pursue adequate funding for court operation

Educate judges and judicial staff

Assist the Legislature and public in getting information from and about the court system, including judicial impact of legislation

Participate in the Legislature's enactment of laws

*continued*

**Findings and Recommendations**

*continued*

Issue ethics advisory opinions  
Maintain county law libraries  
Managing GAL programs (Superior Court)  
Building and space management  
Individual caseload management (except speedy trials in criminal cases)  
Meetings of professional organizations and others related to the court operations and funding (e.g., executive and legislative branches, prosecutors, defense counsel, law enforcement, public, DOL, DOC, jails, and media)

Areas which might be handled by another entity (arranged according to those having the highest impact to the lowest):

Security  
Maintaining county law libraries  
Jury administration (e.g., summoning pool)  
Supreme Court Clerk (Const. allows legislature to make elected office)  
Receiving, transmitting and accounting for funds  
Building and space management  
In all areas efficiency can be improved. Explore ways to establish centralization or standardization.

**Function 6: Regulating attorneys**  
**(primarily through the Bar Association)**

The Supreme Court sets the qualifications for admission of attorneys and oversees the Bar Association's activities, which includes licensing and lawyer discipline.

The Supreme Court oversees the programs under which non-attorneys can undertake activities usually reserved for attorneys: Limited Practice Officers (for real estate transactions), Non-attorney Judges and Court Commissioners (GR 8).

**Conclusion**

The findings and recommendations of the subcommittee are submitted for the consideration of the Commission on Justice, Efficiency and Accountability. The subcommittee members appreciate the opportunity to provide the commission with the views of the representatives of the judiciary, clerks and Bar.

I also appreciate having the opportunity to chair this subcommittee. I recognize the hard work and commitment which the subcommittee members have put into this undertaking. This report is a collaborative product of all of the members of the subcommittee and would not have been generated without the efforts of the individual members of the subcommittee.

*Respectfully submitted,  
Susan R. Agid*

**Actions needed to implement recommendations**

**Core Mission Subcommittee**

<b>Recommendation</b>	<b>Action</b>	<b>Responsibility</b>
1) <i>Deciding civil cases between private litigants</i> • Small Claims • Performing Weddings • Name changes (except minors) • Emancipation petitions • Impound hearings • Monitoring guardianships • Family law (except involving minor)	RCW Chap. 12.40 RCW 26.04.050 RCW 4.24.130 RCW Chap. 13.64 RCW Chap. 46.55 RCW Chaps. 11.88 & 11.92 RCW 26.12.010	Legislature
2) <i>Deciding Criminal Cases</i> • Detention • Probation supervision and counseling • Indigency screening for court appointed counsel • Returning firearms to felons • Coroner's Inquest	RCW 9.94A.270, 10.64.120  RCW 10.101.20  RCW 9.41.047, 9.41.098 RCW 36.24.160	Legislature
3) <i>Deciding non-criminal cases involving the government</i> • Truancy • Civil Infractions	RCW 28A.225.090 RCW Chap. 7.80	Legislature

# Funding Subcommittee

## Final Report

### Subcommittee Charge/Mission Membership

The Commission charged the subcommittee with the responsibility of assessing the adequacy of the resources including funding of the Washington state Court System to fulfill its mission over the next decade and to recommend a funding strategy. In 1997 the Board for Judicial Administration sponsored focus group discussions throughout the state asking judges to identify problems in the court system. The lack of adequate resources emerged as one of the major issues facing the courts. It was noted that in many counties the law enforcement and jail costs were eroding the ability to meet the resource needs of the courts. Criminal matters consume nearly all of the available court resources. In most, if not all locations civil cases are delayed for months and sometimes for years before a trial date is confirmed. The trial judges participating in the focus groups identified two specific issues: first they felt the state should share in the costs of courts to a greater degree; and secondly, they felt the counties should be relieved of costs that are mandated by public law.

The membership of the subcommittee included the following; Judges Ken Grosse, Faith Ireland, Gary Utigard, Robert McBeth, and Sara Derr; State Representatives Helen Sommers and Tom Huff; State Senator Jim West; County Executive Robert Drewel; Mayor Earl Tilly; Governor's General Counsel Everett Billingslea; Court Administrator Bob Carlberg; Governmental Relations Directors Tom McBride, Michael Shaw, and Debbie Wilke. Other interested persons attended one or more of the meetings. Judge Grosse served as chair of the subcommittee.

### Process of Review

The subcommittee held public meetings on the following dates: January 15, 1998; March 26, 1998; April 20, 1998; and May 11, 1998. The committee made liberal use of e-mail and telephone conversations through June, July and August before making its final report to the full commission in September 1998. As noted previously, focus groups identified inadequate funding as a singularly important issue. The subcommittee reexamined data collected from the focus groups and from various governmental entities on court related costs. Both the state and local government levels produced extensive expenditure detail for the entire justice network. From the data examination it became clear the total costs of court operations was hundreds of millions of dollars per year. Local governments were the predominate source of funding for the trial courts. The

*continued*

## **Process of Review**

*continued*

## **Subcommittee Findings and Recommendations**

state funds the Supreme Court and the Court of Appeals and only half of the salary and benefits of Superior Court Judges. Cities and counties provide all of the remaining costs for Superior, District and Municipal Courts. Fixed assets and facilities costs were not part of the subcommittee's analysis. Funding "court operations" became the focus of the work. Defining "court operations" was not easy. Eventually the group identified mandated services as the core to "court operations" and those services included judicial salaries and benefits, indigent defense, jury service, expert witnesses, and interpreters. The five services were deemed mandated by the constitution or other laws. In addition the group concluded local governments have little lawful ability to reduce the costs of those services. Further failure to provide the mandated court operations has a direct and deleterious impact upon access to justice. Finally the members concluded that, in fact, some of the five services were not available in all Washington trial courts.

The subcommittee discussed various options of funding trial court costs for judicial salaries and benefits, indigent defense, juries, expert witnesses, and interpreters.

The subcommittee determined the five identified areas for funding were in essence mandated costs for all courts. Therefore, the subcommittee concluded the following:

- 1. Funding associated with the five mandated services is currently inadequate and inconsistent from county to county.** Most counties are unable to fund the needed judicial salaries, therefore, too few judges are available. Also in many counties indigent defense costs have replaced other essential services or the reverse is true and indigents do not benefit from counsel. Experts are not called because their services are beyond the ability of some local governments to fund. Great pressure is brought to avoid a trial because costs of juries and interpreters are beyond the budget. Civil matters are frequently not heard in a public court where the record is public and the rulings can serve the definition of law. The wealthy obtain the service of a private judge to render judgment. For those who cannot afford a private judge for their civil matter, they face months and even years before their issue is resolved.
- 2. The funding is not only inadequate but inconsistent; therefore, access to justice varies from county to county.** Often plea negotiations are required because of inadequate resources. In one county

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## **Subcommittee Findings and Recommendations**

*continued*

the prosecutor was not able to file charges based upon the evidence but based upon what the budget would support. Judges frequently cannot impose incarceration for a convicted criminal because of the costs. Trials are delayed because of the expenses associated with interpreters and/or expert witnesses.

**3. The state should assume the costs of the five enumerated cost centers for all courts.** The statewide cost of the five mandated services is one hundred million dollars per year at the current level of service. To fund the services at the appropriate level would likely exceed one hundred and eighty million dollars per year. Local governments simply cannot meet such an obligation.

**4. Legislation is essential to address the fundamental funding requirements.** Such legislation should provide local options for state funding with the approval of the local judiciary and the local legislative body. All judicial salaries and benefits should be paid with state funds. A fund should be created at the state to pay for the costs associated with jury service, expert witnesses, interpreters and indigent defense for all trial courts.

**5. Any funding proposal for the five mandated services can only be considered a beginning.** Significant additional resources are needed to adequately support the courts in Washington. Court facilities, support staff, technology, and redesign are essential for the courts to meet contemporary standards. Most trial court facilities were constructed at the turn of the century; they are inadequate in most counties. Minimal security for those who use and work in courthouses is not available. Few, if any, trial courts are served by sufficient support staff; only a few are served with full-time security staff, and none have adequate clerical support. In most court facilities, jurors are compelled to mix with witnesses and parties to trials because of poor construction and design. In one of the urban counties a storage closet serves as judge's chambers, and clerks work in windowless rooms too small to accommodate a normal desk. In several counties, the judge holds court in hallways and other inappropriate locations. Municipal courts seldom provide even inadequate court services. They are looked upon as revenue centers and some judges have been dismissed because they failed to raise sufficient revenue for the city.

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**Conclusions**

The findings and recommendations of the subcommittee were submitted to the Commission on Justice, Efficiency, and Accountability, along with a draft legislative proposal. The subcommittee members appreciated the opportunity to provide the Commission with the views of the representatives of the judiciary, legislature, court management, Governor, cities, counties, and the public.

With the approval of the Commission, legislation titled "The Court Improvement Act of 1999" was drafted and introduced into the 56th legislature. The Act embodied the principles from finding number 4 and was sponsored in both houses of the legislature by the Chairs of the Judiciary committees. After hearings and numerous amendments, neither bill was passed by the legislature.

However, the Act did stimulate significant discussion about court funding. Legislative leaders have requested the Chief Justice convene a work group to continue the work initiated by this commission. Clearly the legislative leaders believe the Board for Judicial Administration should appoint a standing committee to develop a continuing plan for court funding. To quote one leader of the legislature "I, like you have been concerned about the lack of funding for the states trial courts and the corresponding impact on access to justice for some time now. I am pleased that more people are now becoming engaged in looking for solutions to these problems, and I would like these efforts to continue."

*Judge Kenneth Grosse  
Chair, Funding Subcommittee*

**Actions needed to implement recommendations**

**Funding Subcommittee**

<b>Recommendation</b>	<b>Action</b>	<b>Responsibility</b>
State funding of five non discretionary categories (judicial salaries; jury costs; interpreter costs; trial court indigent defense costs; and expert witness costs)	Introduce Legislation	Board for Judicial Administration, counties
Reduce inconsistent funding among counties	Establish funding standards	Board for Judicial Administration
State assumption of court costs	Enact court funding legislation	Legislature
Identify total resource needs of all courts	Establish minimum standards for court services and identify resources necessary to provide said services	Board for Judicial Administration; Office of the Administrator for the Courts

# Governance Subcommittee

## Final Report

### Introduction

Since the introduction in 1967 of a constitutional amendment to reform the state court system, Washington's judiciary has been evaluated, studied, probed and prodded. Most recently, four "blue ribbon" commissions convened to recommend various ways to improve the judiciary (Judicial Administration Commission (1985); Washington Courts 2000 (1992); the Walsh Commission (1996); and the Court of Limited Jurisdiction Assessment Survey (1997)). A review of those commission's reports reveals surprisingly similar concerns and recommendations, but little change.

How can the court system respond to change? How can the judiciary effectively solve problems? How can the judiciary speak with one voice?

The Governance workgroup was convened to consider these questions and recommend positive solutions.

Members of the workgroup are:

Mr. Paul Steere, Chair  
Judge Susan Agid  
Mr. Douglas Beigle  
Judge Michael Donohue  
Judge C. Kenneth Grosse  
Dr. Ronald Harrison, facilitator  
Mr. Walt Howe  
Judge Robert E. McBeth  
Ms. Sandy Widlan, Reporter

### Process

The subcommittee began its work by discussing the following questions:

**How does Washington's judicial system set strategic direction for the courts?**

- Current planning is typically focused on specific problem areas as identified by a specific group, such as the District and Municipal Court Judges' Association (DMCJA) or the Superior Court Judges' Association (SCJA):
- Attention is usually focused on problem areas in an uncoordinated way, that is one group or association usually undertakes planning in isolation from other groups. The current statutory authorities for

*continued*

## **Process**

*continued*

the trial court associations are narrow and limited to one court level.

- Although the Board for Judicial Administration (BJA) might be a logical governing body to undertake comprehensive planning, it is constrained by the requirement that it only act with unanimous consent from members. This may have a chilling effect on issues that are brought to the table.
- The BJA does not see itself as having a mandate to act as the strategic planning group for the judicial system.
- The personality and interests of the Chief Justice have largely driven the activities of the BJA.

### **What is working well within the Washington judicial system?**

- Courts keep operating. Judges are dedicated to their work – cases get resolved. The system is not corrupt. Generally, good decision-making occurs.
- The system responds to crisis when it happens
- OAC "works." It is the only entity that has, at the core of its mission, the improvement of the courts.

### **What is not working well within the Washington judicial system?**

- As pressure builds within the system to do more with less, there is no way for the judiciary to exert control. Courts cannot continue to take on everything the legislature mandates.
- Funding is critically inadequate to perform quality work.
- While some say the system is broken, many would agree that there is no system from day to day to assure that it won't break down. The judicial system does not have a mechanism to assess and articulate what its status is, and what changes must be made.
- The judicial system is reactive by character.
- Complex organizations and corporations do not view the courts as well equipped to decide certain types of complicated issues. As a consequence, business may go elsewhere (JAMS, corporate headquarters move out of state, etc.)
- Judicial resources available for civil cases are continually restricted due to the demands of the criminal caseload.
- Unfunded mandates diminish the ability of courts to "keep up." Recent enactments in domestic violence laws, and new responsibilities to adjudicate truancies are examples.

*continued*

## **Process**

*continued*

- Public confidence in governmental institutions, including courts, appears to be weak. (The group noted however, that among the branches of government, new responsibilities are often placed in the judicial branch because of the expectation that courts can "get the job done.")
- There is no mechanism to allow and encourage capability of the judiciary to speak with a singular voice to the other branches and other outside entities.
- Specialty courts (family, drug, teen, etc.) may be emerging because of the system's inability to adapt to changes.
- Court customers depend on judges to be well qualified to preside over complex cases (patent, land-use, bio-technical, etc.), while the mechanisms for developing specialization among judges are not well-developed
- Quality assurance through performance evaluation, professional standards, or other methods for ensuring high levels of professional conduct is lacking.

Next, the group discussed possible alternatives for creating an authority within the judicial branch whose responsibility would be to systematically plan for the court system.

- The trial court associations are viewed more as professional organizations, rather than leadership or "change-oriented" groups. Consequently, they may be unable to play a more strategic planning role.
- Although the Supreme Court is at the "top" of the judicial system from a case-flow perspective, it does not necessarily follow that the Court has the interest or capability to play a strategic planning role on behalf of the judiciary. Although Supreme Court rule-making authority is clear, the role of the Court with respect to leadership and management authority is less clearly established.
- Creating a structure that would involve presiding judges might promote a method for system-wide attention to problems and strategic planning.
- Redefining the BJA so that it is not viewed as a "top-down" dominated organization is desirable. Also, redefining its membership so that it becomes more representational of courts, as opposed to merely reflecting the leadership of the trial court professional organizations, might be an important consideration.

*continued*

## **Process**

*continued*

- In the definitional stages of finding a structure for strategic planning, the relationship of the OAC to the governing body becomes an important issue.

- The building of trust, through a consensus approach to problem solving, is seen as critical to real change. Judges must have a way to be heard and to contribute to the development of changes. There is a distinction between the absolute authority of individual judges in their role as decision-maker, versus the system's need to define an overarching authority that can plan and lead the administration of justice.

The Judicial Information System Committee (JISC) was identified as a leadership model that works well for the judiciary for the following reasons:

- It has a mission, structure, and rules for operating that are clearly identified.
- It incorporates all constituent groups within the court system.
- It is firmly supported by judicial leaders from the Supreme Court down.
- It has direct, continuing staff support that does not get fragmented on other work.
- It deliberately sets priorities for action that do not change unless the whole group agrees. A process for considering unplanned projects exists, but the overall business plan drives consideration of these.

If the judiciary is to lead rather than follow, it needs to move to the other end of the parade. Instead of following agendas, the judiciary must initiate the agenda.

The only way for a decentralized organization like the Washington state judiciary to become proactive is through an effective governance structure authorized to adopt policies, cast a single vision and provide strategic leadership. The subcommittee's recommendations embody the essential components for creating an effective governance structure.

## **Recommendations**

1. The "mission" of the Board for Judicial Administration should be revised to emphasize a governance versus "representative" purpose.

**COMMENTARY:**

Without restating the obvious, the subcommittee determined that an essential component of an effective organization is its ability to initiate and execute its own agenda.

While the Board for Judicial Administration was created to bring the various judicial constituencies together to formulate policy on issues of mutual interest, the Board has historically represented the various judicial stakeholder groups (Supreme Court, Court of Appeals, Superior Courts and the District and Municipal Courts). The current representative mind set results in the Board's diffused allegiance and reluctance to attack controversial issues. When interviewed, past Board representatives observed that trial court judges basically fear Supreme Court control, either in terms of state funding or through the Office of the Administrator for the Courts. The Board for Judicial Administration is viewed as an instrumentality of the Chief Justice acting on behalf of the Supreme Court. Even though the Board for Judicial Administration rule articulates a "policy" or governance purpose, its actual role appears, at times, to be "advisory" to the Supreme Court. The subcommittee considered whether or not to recommend abolishing versus restructuring the Board for Judicial Administration including changing the name of the Board. John Carver in "Boards that Make a Difference," advises, "when a function has been assembled from bits of historical practice more than it has been designed, it cannot so gracefully incorporate wisdom, but must patch it on here and there."

After lengthy discussions, the subcommittee determined that restructuring the existing Board would produce the most effective result. The Board for Judicial Administration's mission should redefine its allegiance to a larger community - the judiciary at large - and clearly articulate a governance versus advisory role. The structure of the Board for Judicial Administration must enable the judiciary to speak with one voice without squelching dissent or pretending unanimity. Toward that end, the new mission statement should provide for continuity of membership and criteria for appointment emphasizing accountability to the judiciary at large.

## **Recommendations**

*continued*

**2. The Chief Justice of the Washington state Supreme Court should chair the Board for Judicial Administration. The vice-chair should be re-designated as "president" and elected from the membership.**

**The duties of the chair and the president should be clearly articulated in the bylaws, including the president's role as chair of the long-range planning committee.**

### **COMMENTARY:**

In order to be effective, the Board for Judicial Administration needs to behave as a holistic organization. While, the Washington Constitution establishes a hierarchy of courts for the purpose of appeal, responsibility for policy must reside within the Board for Judicial Administration if the judiciary is to function as an effective branch of government. The position of Chief Justice carries honorific as well as actual governance responsibilities (RCW 2.56). The chair's job requires skilled handling of process and an ability to fairly but firmly lead a group to confront and welcome diversity of opinion. After discussion, the subcommittee agreed that the Chief Justice should continue to be designated as chair of the Board for Judicial Administration.

The subcommittee believes that redesignating the position of "vice chair" to "president" is one way of building the trial court judges' confidence in the role of the Board for Judicial Administration. Electing a president from the Board's membership contributes to developing greater trust among court levels. Additionally, designating the president to lead the long-range planning process, further reinforces the Board's policy role and extends the message of speaking with one voice.

**3. At least four standing committees should be created: Long-range Planning; Core Mission/Best Practices; Funding; and Legislative. Other committees such as Civil Process, Domestic Relations or Jury Improvement should be convened on an "as needed" basis. The membership should be open to citizens and experts from the private sector with the Chief Justice and vice-chair nominating committee chairs for the Board's approval.**

### **COMMENTARY:**

Board committees are established to aid in the process of governance (Carver 1990). Committees should assist the Board in achieving its mission and implementing the approved long-range plan. Commit-

*continued*

## **Recommendations**

*continued*

tees can work simultaneously to identify problems and formulate solutions for Board action. Each committee should work as a mini-board, studying, deliberating, formulating and finally, recommending a course of action for the Board for Judicial Administration. Committee work results in recommendations for consideration and adoption by the Board. If the Board is to deliberate and adopt policy positions, it will do a better job if presented with options.

The Chief Justice in consultation with the president will appoint people to chair the standing committees. The committees should produce alternative/implication reports for the Board's consideration. The Board for Judicial Administration should use committee reports, surveys and studies to inform its decisions as a holistic board.

**4. In order to encourage judges' participation on the Board for Judicial Administration and its committees, members should be granted equivalent pro tempore time.**

### **COMMENTARY:**

The size of courts severely limits the ability of some judges to serve on the Board for Judicial Administration and its committees. Necessary statutory or court rules should establish the ability for judges to be granted the equivalent pro tempore time. The Office of the Administrator for the Courts should be directed to include the Board for Judicial Administration pro tempore costs in its operating budget.

**5. The Chief Justice along with the president should establish the meeting agenda and meetings should be held bi-monthly to allow for intervening subcommittee work. The Office of the Administrator for the Courts should continue to provide staff to the Board for Judicial Administration.**

### **COMMENTARY:**

The Board for Judicial Administration must begin to shift its attention from immediate monthly agendas to the year's agenda. The Board must organize its agenda looking at "the big picture" or long-range plan.

The long-range plan leads to a more specific, short-term agenda. The Board can then establish objectives and measure effectiveness. Objectives yield a sequence of single meeting agendas and committee work.

*continued*

## **Recommendations**

*continued*

Bi-monthly, day long meetings would allow the subcommittees to pursue their objectives and focus the policy issues for the Board for Judicial Administration's consideration. In addition, moving the Board meetings to a Monday would allow a weekend for members to review materials.

Providing staff support to the Board for Judicial Administration and its committees should be included in the Office of the Administrator for the Courts' business plan as a core mission. The Office of the Administrator for the Courts should be responsible for the timely distribution of agenda, minutes and materials prior to Board meetings.

**6. In order to reinforce the governance versus representative role of the Board for Judicial Administration, the membership of the Board for Judicial Administration should be revised. Membership should include:**

<b>Chief Justice</b>	
<b>Administrator for the Courts</b>	
<b>Court of Appeals</b>	<b>3 judges</b>
<b>Superior Court</b>	<b>4 judges</b>
<b>District/Municipal Courts</b>	<b>4 judges</b>
<b>Washington state Bar Association</b>	<b>2 non-voting</b>

**The Board for Judicial Administration members should be selected for their demonstrated interest in improving the courts and reflect diversity as well as geographic and caseload differences. Members should serve four year staggered terms.**

### **COMMENTARY:**

If the judiciary is to "speak with one voice" the Board for Judicial Administration must truly represent the overall system interests rather than the agenda of individual court levels. The Judicial Information System Committee (JISC) was identified as a leadership model that works well and is supported by all the various constituent groups within the court system.

Each court level should determine how to select their representatives with an attempt to achieve diversity. The bylaws should be amended to remove any reference to association officers.

Board for Judicial Administration members should serve four year staggered terms with ability to be reappointed.

**7. All Board for Judicial Administration policy positions should be determined by majority vote.**

*continued*

## **Recommendations**

*continued*

### **COMMENTARY:**

The existing unilateral "right of veto" perpetuates the balkanized representative nature of the Board for Judicial Administration. Preferably, all positions would be by majority vote after significant deliberation. However, recognizing the mistrust among the levels of courts, a workable alternative might provide that any position vote would require a "super majority" (2/3).

*"Little steps, for little feet."*

*- Paul Steere*

## **Conclusion**

The subcommittee determined that evolution was preferable to revolution and small steps ultimately arrive at the same destination. But every journey begins with a single step. These recommendations identify steps the judiciary must take to become an effective organization setting its own agenda. Effective governance is essential to an effective judiciary.

## Actions needed to implement recommendations

**Governance Subcommittee**

<b>Recommendation</b>	<b>Action</b>	<b>Responsibility</b>
1) "Governance" Mission for the BJA	Amend BJAR Amend BJA Bylaws Article I	Supreme Court BJA
2) BJA Leadership (chair; president; duties)	Amend BJAR 2(2) Amend BJA Bylaws Article III (officers & reps.) Article IV (duties of officers)	Supreme Court BJA
2.3) Meetings; agenda	Amend BJAR 2(3) Amend BJA Bylaws Article VII (regular Meetings) Article IX (special mtgs.)	Supreme Court BJA
3) Standing committees/ subcommittees • Long-range planning • Core mission/best practices • Funding • Legislative	Amend BJA Bylaws Article VI (committees) Article VII (Executive Committee)	BJA
4) Pro Tempore time	New section RCW 2.08 RCW 2.06 [see RCW 3.34.130(2)(d)]	Legislature
6) Membership	Amend BJAR 2(a); (b); (c) Amend BJA Bylaws Article II (membership) Article III (officers & reps.) Article V (vacancies)	Supreme Court BJA
7) Voting	Amend BJAR 2(d)5 Amend BJA Bylaws Article XI (voting) Article XIII (amendment and repeal of bylaws)	Supreme Court BJA
8) Best Practices	Amend BJA Bylaws Article VI (committees)	BJA
9) Core Functions	Amend BJA Bylaws Article VI (committees)	BJA
10) Adequate Resources	Amend BJAR Amend BJA Bylaws Article I	Supreme Court BJA



# Appendix

# B



# Court Performance Standards

## *Guiding Principles*

### **ACCESS TO JUSTICE**

#### *Standard 1.1 Public Proceedings.*

The court conducts its proceedings and other public business openly.

#### *Standard 1.2 Safety, Accessibility,*

*and Convenience.* Court facilities are safe, accessible, and convenient to use.

*Standard 1.3 Effective Participation.* The court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

*Standard 1.4 Courtesy, Responsiveness, and Respect.* Judges and other court personnel are courteous and responsive to the public, and accord respect to all with whom they come in contact.

#### *Standard 1.5 Affordable Costs of Access.*

The costs of access to court proceedings and records—whether measured in terms of money, time, or the procedures that must be followed—are reasonable, fair, and affordable.

### **EXPEDITON AND TIMELINESS**

*Standard 2.1 Case Processing.* The court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

*Standard 2.2 Compliance with Schedules.* The court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

*Standard 2.3 Prompt Implementation of Law and Procedure.* The court promptly implements changes in law and procedure.

### **EQUALITY, FAIRNESS, AND INTEGRITY**

#### *Standard 3.1 Fair and Reliable Judicial Process.*

Court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

*Standard 3.2 Juries.* Jury lists are representative of the jurisdiction from which they are drawn.

*Standard 3.3 Court Decisions and Actions.* Courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.

*Standard 3.4 Clarity.* The court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

#### *Standard 3.5 Responsibility for Enforcement.*

The court takes appropriate responsibility for the enforcement of its orders.

#### *Standard 3.6 Production and Preservation of*

*Records.* Records of all relevant court decisions and actions are accurate and properly preserved.

### **INDEPENDENCE AND ACCOUNTABILITY**

#### *Standard 4.1 Independence and Comity.*

The court maintains its institutional integrity and observes the principle of comity in its governmental relations.

#### *Standard 4.2 Accountability for Public Resources.*

The court responsibly seeks, uses, and accounts for its public resources.

#### *Standard 4.3 Personnel Practices and Decisions.*

The court uses fair employment practices.

*Standard 4.4 Public Education.* The trial informs the community about its programs.

*Standard 4.5 Response to Change.* The court anticipates new conditions and emergent events and adjusts its operations as necessary.

### **PUBLIC TRUST AND CONFIDENCE**

*Standard 5.1 Accessibility.* The public perceives the court and the justice it delivers as accessible.

*Standard 5.2 Expeditious, Fair, and Reliable Court Functions.* The public has trust and confidence that basic court functions are conducted expeditiously and fairly, and that court decisions have integrity.

*Standard 5.3 Judicial Independence and Accountability.* The public perceives the court as independent, not unduly influenced by other components of government, and accountable.

THE LONG-RANGE STRATEGIC PLAN  
FOR THE BOARD FOR JUDICIAL ADMINISTRATION

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WASHINGTON  
COURTS

# INTRODUCTION

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In August 1999, the final report of the Washington State Commission on Justice, Efficiency and Accountability (JEA) recommended a fundamental restructuring of the Board for Judicial Administration. In January 2000, the Supreme Court amended the Board for Judicial Administration Rules and the Board for Judicial Administration amended their by-laws effecting the changes recommended by the Commission.

The Long Range Plan for the Board for Judicial Administration has as its basis the Board for Judicial Administration Rules (BJAR) and the By-Laws of the Board for Judicial Administration. Taken together, those documents outline the vision, mission, and issues the Board for Judicial Administration is charged with addressing.

"The only way for a decentralized organization like the Washington state judiciary to cast a single vision is through an effective governance structure authorized to adopt policies and provide strategic leadership." – Commission on Justice, Efficiency and Accountability

"The power of the judiciary to make administrative policy governing its operations is an essential element of its constitutional status as an equal branch of government. The Board for Judicial Administration is established to adopt policies and provide strategic leadership for the courts at large, enabling the judiciary to speak with one voice." – BJAR Preamble

This Long Range Plan is designed to formalize that vision as well as to create a platform for on-going operational deployment of the goals, objectives and tasks. While this document must be viewed in the context of planning for the judiciary as a whole, the focus is the specific strategies that the Board for Judicial Administration will employ to achieve its long range goals.

# VISION, MISSION, AND ISSUES

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## VISION

THE BOARD FOR JUDICIAL ADMINISTRATION WILL BECOME THE LEADER AND VOICE OF THE WASHINGTON STATE COURTS.

## MISSION

TO ENHANCE THE JUDICIARY'S ABILITY TO SERVE AS AN EQUAL, INDEPENDENT AND RESPONSIBLE BRANCH OF GOVERNMENT.

## ISSUES

- I. PROVIDE EFFECTIVE LEADERSHIP AND A UNIFIED VOICE FOR THE JUDICIARY
- II. FOSTER INTER-BRANCH RELATIONS
- III. DEVELOP AND MAINTAIN THE JUDICIAL LONG RANGE PLAN
- IV. ENSURE RESOURCES AND FUNDING FOR THE WASHINGTON COURTS
- V. ADVANCE THE ADMINISTRATION OF JUSTICE
- VI. PRESERVE THE INDEPENDENCE OF THE JUDICIARY
- VII. PROMOTE PUBLIC TRUST AND CONFIDENCE IN THE JUDICIARY

# ISSUE I.

## PROVIDE EFFECTIVE LEADERSHIP AND A UNIFIED VOICE FOR THE JUDICIARY

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The vision for the Board for Judicial Administration is that the Board serves as a unifying voice and provides strategic leadership to the judiciary. This can only be achieved with the consent and active participation of the judges' affiliate associations. One of the key issues facing the Board for Judicial Administration is to earn and maintain the trust of these associations and to act in the best interest of the judiciary while remaining mindful of the needs of its constituent groups. The goals under this issue focus the efforts of the Board for Judicial Administration on communication and developing a trusting relationship within the judiciary.

### GOAL 1.1 THE JUDICIAL BRANCH WILL SPEAK WITH ONE VOICE

*COMMENTARY:* The cornerstone of the Commission on Judicial Efficiency and Accountability's findings and recommendations was to unify the judiciary through reorganization of the Board for Judicial Administration and the concept that the judiciary "speak with one voice." Speaking with one voice requires commitment, discipline, and a connection among and between the judges of the state and the Board for Judicial Administration.

The overarching desired outcome is that those listening to the judiciary will hear a single message and develop trust and confidence that when they hear that message, it can be relied upon and has the support of the entire judiciary.

"The structure of the Board for Judicial Administration must enable the judiciary to speak with one voice without squelching dissent or pretending unanimity."

"If the judiciary is to 'speak with one voice' the Board for Judicial Administration must truly represent the overall system interests rather than the agenda of individual court levels."

"Members should be selected by their affiliate associations and have explicit responsibility to the judiciary as a whole, not to their respective constituencies."

"Also, as a practical matter it is unlikely that any issue will be badly or arbitrarily decided because of the recognition, shared by all, that ultimately the decisions of the Board for Judicial Administration and the effectiveness of the Board itself must rest on the twin piers of their intrinsic merit and a broad consensus support from constituent judges."

Commission on Judicial Efficiency and Accountability

This does not mean that individual voices will not be heard. Rather, because the Board for Judicial Administration is a deliberative body, allowing time for members to report to and receive feedback from their colleagues, it is expected that the Board for Judicial Administration will produce results that are supportable by the overwhelming majority of individual judges and their constituent associations, boards, and commissions. The expectation is that judges, having had the opportunity to provide their input, will recognize the overarching benefit to the judiciary of speaking with one voice, even if their personal point of view did not prevail.

Nor does this mean that the Board for Judicial Administration will be the only voice of the judiciary. Inherent in the concept of speaking with one voice is the result of "many voices saying the same thing." If the judiciary is to be truly effective as a collective organization, the messages sent from all judges must be consistent.

**Objective:**

**Provide a conduit through the BJA to promote the interest and consistently express the positions of the judiciary.**

**Task:**

1. The Administrative Office of the Courts (AOC) will create a judicial communication plan. The plan will provide a process to facilitate focused communication regarding issues that arise affecting the administration of the Washington courts. Communication efforts should be tailored to each specific issue, but should generally follow the process outlined in the plan.

**GOAL 1.2**

**THE BOARD FOR JUDICIAL ADMINISTRATION WILL FOSTER COORDINATION AND COMMUNICATION WITHIN THE JUDICIAL BRANCH**

*COMMENTARY:* Consistency of the message within and from the judiciary can only be achieved if members are informed, supported, and coordinated. The Board for Judicial Administration and the judiciary must therefore enhance and maintain a structure for communication and coordination of ideas and activities.

**Objective:**

**Promote communication within the judiciary to facilitate dissemination of information and allow for feedback, input, and coordination of effort.**

**Tasks:**

1. AOC, together with the judges' association boards, will continue to refine and improve the process of judicial review and commentary regarding legislative positions. The web-based legislation tracking system will be enhanced and made available for viewing by judges.
2. The BJA will continue to support the creation of trial court coordination councils. Grant funding will be made available for projects that facilitate communication and coordination among trial court levels and with local justice system agencies.
3. The BJA will encourage the upgrading of the Washington Courts website to provide an easily accessed forum for the exchange and dissemination of court innovations, best practices, ideas, and educational topics.

**GOAL 1.3**

**THE BOARD FOR JUDICIAL ADMINISTRATION WILL FOSTER AND DEVELOP LEADERSHIP WITHIN THE JUDICIAL BRANCH**

*COMMENTARY:* The judiciary's success in earning the public's trust and confidence is dependent upon the presence of strong and recognized leaders at all levels of court. General Rule 29 adopted in April of 2002 defined the position of presiding judge as one of leadership. The Board for Judicial Administration has established the Presiding Judges' Conference to support and develop the leadership skills of judges serving in that position. In doing so, the judiciary has begun to develop a structure that fosters the development of judges as leaders in their courts, communities, as members of judicial branch partner organizations, as representatives of the judiciary, and as elected members of state and local government.

**Objective:**

**Provide education for judges that focuses on the development of leadership skills and provide tools to be used in the daily management and administration of their courts.**

**Tasks:**

1. The Presiding Judges' Conference will continue to refine and improve the educational content of the Conference. The focus will be on enhancing leadership, management, and communication skills.
2. AOC will provide a leadership seminar for judges.
3. Investigate/develop ways to encourage judges to participate in judicial branch leadership activities.

## **ISSUE II.**

# **FOSTER INTER-BRANCH RELATIONS**

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To preserve the integrity of the judicial branch, the courts must remain above the “political fray.” However, the exercise of restraint by the judiciary often results in the perception that judges are disinterested or aloof. This can lead to a significant knowledge gap among the three branches of government.

### **GOAL 2.1**

**PROMOTE AND FACILITATE WORKING RELATIONSHIPS WITH THE EXECUTIVE AND LEGISLATIVE BRANCHES OF STATE GOVERNMENT BASED ON MUTUAL RESPECT AND COMMUNICATION**

*COMMENTARY:* The courts must interact with the executive and legislative branches on issues of keen interest and pertinence to the administration of justice without involvement in the political process. This goal encompasses defining the nature and scope of appropriate inter-branch relations for the judiciary, communicating to the other branches the nature and extent of the restraints on judicial participation in the political process and finally the exercise, within the defined boundaries, of those relations.

### **Objective:**

**Define and communicate the scope of appropriate inter-branch relations for the judiciary.**

### **Tasks:**

1. The BJA will develop a legislative bench book focusing on the nature and extent of judicial participation in the political and legislative process. The bench book will be made available to the judiciary and to members of the executive and legislative branches.
2. The BJA will re-institute informal, topical lunch meetings and pre-session dinners with executive and legislative branch leadership. These meetings will focus on building relationships and improving communication between the branches, as well as providing education regarding current judicial branch issues and court processes.
3. The BJA will encourage judges to offer their local legislators guided courthouse tours.

4. The BJA will research the impact of local government inter-branch relations and communications on funding variability across courts relative to available fiscal resources.
5. Submit a research proposal to the Washington State Center for Court Research and conduct research project if approved.

## **ISSUE III.**

# **DEVELOP AND MAINTAIN THE LONG RANGE PLAN FOR THE JUDICIARY**

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The judges' associations and various committees each have a role in developing and implementing judicial initiatives within their specific sphere of interest. Collectively, their efforts constitute the agenda of the judiciary. The Board for Judicial Administration is charged with presenting the collective agenda as a cohesive plan. In doing so, the judiciary will project a strong image of thoughtful and deliberate action to the public and other constituencies.

### **GOAL 3.1**

#### **WORK WITH JUDICIAL REPRESENTATIVES TO DEVELOP AND MAINTAIN A COMPREHENSIVE JUDICIAL LONG RANGE PLAN**

*COMMENTARY:* Initial efforts to develop a Long-Range Plan for the judiciary focused on developing a comprehensive inventory of activities including a brief description of the context or impetus for each activity. General agreement was also attained on the major issues facing the judiciary. The focus of the completed Long-Range Strategic Plan will be to build upon the previous work using the framework of this Plan and to articulate the specific goals which current and future activities support.

#### **Objective:**

**Create a long range plan that will collect and formalize the goals, objectives, and tasks supported by current and planned judicial activity.**

#### **Tasks:**

1. The BJA will expand the Long-Range Planning Committee to include judicial partner representatives.
2. The expanded Committee will decide on a process to coordinate the compilation of the Judicial Long-Range Plan.

**GOAL 3.2****EDUCATE THE PUBLIC AND JUDICIAL BRANCH CONSTITUENCIES AND PARTNERS**

*COMMENTARY:* A long-range plan serves two purposes: 1) it directs and focuses the efforts and activities of an organization and 2) it communicates to others what an organization is doing and can be expected to do. It also tells others that an organization knows what it is doing and why. This goal informs the court community and their external partners and constituencies about the activities of the judiciary and demonstrates to them that the judiciary operates with directed purpose based on carefully formulated goals.

**Objective:**

**Inform the judicial branch, judicial branch partners, the legislative and executive branches, and the public of the Long-Range Plan goals.**

**Tasks:**

1. The BJA Long-Range Planning Committee will publish the Long-Range Plan on the Washington Courts website.
2. The Public Trust and Confidence Committee will inform and educate the public on the goals contained in the plan as part of their communication strategy.
3. The BJA Long-Range Planning Committee will provide an overview of the plan goals at the judicial, presiding judge, and court manager conferences.

**GOAL 3.3****DEMONSTRATE THAT THE JUDICIARY CAN BE RELIED UPON TO EXECUTE THE LONG RANGE PLAN**

*COMMENTARY:* The development and distribution of a long range plan creates expectations of performance and execution. Actual performance and execution fosters respect and trust: respect for the organization's ability to do what it says it will do and trust that an organization can be relied upon in future endeavors. To develop the trust and respect of the court community and their external partners and constituencies the judiciary must demonstrate and communicate success in completing tasks that result in meeting objectives in support of stated goals.

**Objective:**

**Demonstrate the ability to successfully meet the objectives and complete the tasks that support the plan's stated goals.**

**Tasks:**

1. AOC will create a milestone chart to track progress. The chart will include a task list, responsibility, target dates, and status.
2. AOC will publish an annual progress report based on the milestone chart.

## **ISSUE IV.**

# **ENSURE RESOURCES AND FUNDING FOR THE WASHINGTON COURTS**

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The issue of adequate resources for the states' trial courts has long been at the forefront of the judicial branch agenda. Nearly every task force and commission in the past 30 years examining the work of the courts has addressed court funding. These task force and commission reports have been fairly consistent in identifying the nature of the problem and of the solutions. As partial solutions are enacted, new problems emerge making trial court funding an issue that will require constant and vigilant effort to improve funding and safeguard adequate funding once it is secured.

### **GOAL 4.1**

#### **DEFINE THE RESOURCES THE COURTS ARE CURRENTLY UTILIZING**

*COMMENTARY:* The courts currently have no ability to readily and accurately account for and describe local government expenditures in support of Washington's trial courts in general or for discrete functions. Efforts to define and secure adequate resources can only succeed when compared and contrasted to a current base.

#### **Objective:**

**Provide a mechanism that will precisely account for local government trial court expenditures.**

#### **Task:**

1. The BJA will create an ad hoc committee including judges, court administrators, and local government finance officers, to determine the feasibility of creating a new and discrete trial court accounting and reporting process.

**GOAL 4.2****DEFINE THE RESOURCES NECESSARY TO OPERATE THE COURTS EFFECTIVELY**

*COMMENTARY:* With the exception of the objective workload analysis methodology employed to estimate judicial officer need, staffing, program, and other funding standards do not exist for trial court budgeting in Washington State. With few exceptions (criminal indigent defense attorney caseload standards, probation caseload standards), national standards do not exist for courts. In order to make the case for adequate funding of the Washington courts, reasoned and accepted staffing, program, and other funding standards must be developed.

**Objective:**

**Create a methodology to define standards which will determine trial court program and expense levels.**

**Task:**

1. AOC will determine the feasibility of defining funding standards related to trial court programs and expenses.

**GOAL 4.3****SECURE ADEQUATE, STABLE AND LONG TERM FUNDING FOR THE WASHINGTON COURTS**

*COMMENTARY:* Equal and timely access to justice is dependent on adequate, stable funding of the courts and is essential to the public's trust and confidence in the judicial branch of government. If justice is to be equitably administered and services are to be consistently provided statewide, the functioning of the courts cannot rise and fall with the peaks and valleys of a local economy.

**Objective:**

**Secure a stable and adequate funding stream for the Washington courts.**

**Task:**

1. The BJA has created a Court Funding Implementation Committee to implement fully the recommendations of the Trial Court Funding Task Force contained in its report, Justice in Jeopardy, released on December 15, 2004 including:
  - Shifting a fair share of those trial court expenses to the state that are mandated by statute or by the state's constitution: judges' salaries at all levels of court, language interpreters, juror costs, witness fees, juvenile dependency representation,

- Increasing the overall funding of the trial courts to enable courts to meet their constitutional and statutory responsibilities. Supporting legislation creating new general fund resources if the legislature deems it necessary to fund additional state expenses identified above and to ensure adequate trial court funding.
  - Creating local court improvement accounts to ensure that a portion of the benefit from the shift of responsibility from county to state government inures to the benefit of the courts.
  - Conducting an analysis of the PSEA account to provide for more effective collection and division of court penalties and legislative assessments.
2. The BJA will continue to build upon the Justice in Jeopardy implementation strategy initiated in the 2005 legislative. In 2005, the legislative strategy included the introduction of legislation to increase trial court filing fees combined with requests for state funding of selected expenditures that were identified by the Court Funding Task Force as appropriate responsibilities for the state to assume. The primary expenditures targeted for increased state support in 2005 included criminal indigent defense, parental representation in dependency actions, expansion of civil equal justice, and trial court operations (district court judicial salaries and elected municipal court judicial salaries, and juror reimbursement). A key component in the partial shift of responsibility to the state for trial court operations was the creation of trial court improvement accounts dedicating half of the savings realized by local government to fund improvements to local courts' staffing, programs, facilities, or services.
  3. The BJA will explore funding mechanisms which allow for funding incremental impacts which result from legislation. The fiscal impact of legislation is spread statewide resulting in incremental workload increases to individual courts which cannot be practically funded or staffed. Notwithstanding, the cumulative effect of legislation on court workloads is substantial. Therefore, a funding mechanism is necessary which translates the incremental workload increases into rational funding distributions and judicial officer and court staff increases.
  4. Confer with legislative, executive and judicial stakeholders to explore alternative mechanisms for funding partial and whole judicial positions and associated staff that are necessary to implement legislative changes.

# ISSUE V.

## ENHANCE THE ADMINISTRATION OF JUSTICE

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At a time when funding is becoming increasingly limited for core court functions, courts must continue to review their performance and procedures to maximize the use of dwindling resources. Ongoing development of best practices ensures both efficient court processes and acceptable levels of service to court users.

### GOAL 5.1 PROMOTE EFFICIENT AND EFFECTIVE COURT PERFORMANCE

*COMMENTARY:* In 2000, the BJA established the Best Practices Committee. The Committee's mission is to actively participate in the selection, endorsement, dissemination, and implementation of best practices in court operations and administration. The Committee is committed to a process of continuously developing, assessing and updating those best practices.

#### Objective:

**Identify and disseminate best practices in court operations and administration.**

#### Tasks:

1. The BJA will develop a procedure for prioritizing and referring practices to the Best Practices Committee.
2. The Best Practices Committee will determine best practices for courts that encompass both efficiency and quality of justice.

#### Objective:

**Measure and monitor court performance to ensure the efficient delivery of court services.**

#### Tasks:

1. The BJA will oversee the development of the criteria and methods by AOC to conduct court performance audits pursuant to GR 32.

#### **GOAL 5.2**

##### **IMPROVE THE QUALITY AND CONSISTENCY OF SERVICES OFFERED BY COURTS OF LIMITED JURISDICTION.**

*COMMENTARY:* The Court Funding Task Force recommended that courts of limited jurisdiction should be reorganized into regional courts funded by the state. These regional courts would have jurisdiction over all applicable state laws and county and city ordinances and causes of action as authorized by the legislature. Regional courts would operate full time, have elected judges, and offer predictable, recognized levels of service, including probation. A regional structure for courts of limited jurisdiction will decrease the proliferation of small, limited operation, part-time courts. Ideally, regional courts would offer convenience, consolidated services, staff and administration, and would achieve savings through economies of scale for all participating jurisdictions.

#### **Objective:**

**Organize courts of limited jurisdiction into convenient, regional courts which consolidate services now provided by multiple smaller courts.**

#### **Tasks:**

1. In order to move toward the long-term goal of creating regional courts of limited jurisdiction, the BJA will support the update of Title 3 RCW including:
  - Authorizing municipalities and counties to provide joint court services by interlocal agreement.
  - Authorizing cities to contract with other cities to form regional municipal courts with elected judges.
  - Emphasizing a collaborative regional approach to provision of district and municipal court services by expanding the role and membership of the districting committee.

## **ISSUE VI.**

# **PRESERVE THE INDEPENDENCE OF THE JUDICIARY**

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There are two categories of judicial independence: decisional and institutional. Decisional independence pertains to a judge's ability to render decisions based solely on the facts of the case and the applicable law, free from political or popular influence. Institutional independence involves the administrative separation of the judicial branch from the executive and legislative branches of government.

As the courts apply laws that implement public policy, their decisions may appear to be, or actually be at odds with the interests of the legislative or executive branches of government or with public opinion. However, it is precisely this independence that is indispensable if there is to be public confidence in the administration of justice.

### **GOAL 6.1**

**PROMOTE DECISIONAL INDEPENDENCE SO THAT JUDGES MAY ADMINISTER JUSTICE ACCORDING TO LAW WITHOUT FEAR OR FAVOR.**

*COMMENTARY:* One means of attaining decisional independence is to require that all judges be elected. While no system of judicial selection guarantees perfection, election insures that judges are directly accountable to the citizens, not to an appointing government official.

### **Objective:**

**Ensure that judges have the freedom to render decisions without political or public influence.**

### **Tasks:**

1. The BJA will continue to work toward the goal that all judges, including part-time judges in courts of limited jurisdiction, stand for election.
2. To differentiate their responsibilities from those of elected judges, the BJA will support limiting the authority of district and municipal court commissioners.

**GOAL 6.2**

**PROMOTE THE INSTITUTIONAL INDEPENDENCE OF THE JUDICIAL BRANCH IN A WAY THAT WILL FOSTER MUTUAL RESPECT AND COOPERATION AMONG THE BRANCHES OF GOVERNMENT.**

*COMMENTARY:* The Court Independence Response Team (CIRT), a Committee of the BJA, was commissioned by the BJA to be both pro-active and reactive to separation of powers and other court-related issues in the Washington State courts. The committee consists of representatives of cities, counties, city attorneys, the ACLU, the Attorney General's office, and others.

**Objective:**

**Provide a forum for discussion and resolution of issues that arise between the court and the local executive or legislative authority.**

**Task:**

1. CIRT will continue to monitor local government's adherence to GR 29 (the Presiding Judge Rule), and to educate the courts and local governments regarding separation of powers issues.

## **ISSUE VII.**

# **PROMOTE PUBLIC TRUST AND CONFIDENCE IN THE JUDICIARY**

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The BJA established the Committee on Public Trust and Confidence in 1999 to identify and implement initiatives to enhance public trust and confidence in the State's judicial branch of government.

The Committee strives to ensure that individuals who have contact with the judicial branch of government are treated with respect and equality, as well as to foster a greater understanding of and respect for the judicial branch of government. In 2004, the Committee identified the following goals and projects to achieve a higher level of trust and confidence.

### **GOAL 7.1**

#### **IMPROVE ACCESS TO COURTS STATEWIDE**

*COMMENTARY:* Improving access to courts is seen as a critical first step in improving the public's level of confidence in their court system. Too often, those who visit the courthouse experience both fear and confusion as they try to navigate a complicated legal system on their own. Simple changes in courts statewide will help make a difference in their courtroom experience.

#### **Objective:**

**Facilitate changes in courthouses throughout Washington State to ensure that individuals who have contact with the judicial branch of government are treated with respect and equality.**

#### **Tasks:**

1. The Committee is undertaking two activities to improve access to Washington Courts:
  - Creation of a statewide curriculum for a volunteer docent program.
  - A pilot project identifying 'key confidence interaction points' in courts throughout Washington State.
2. The Committee will work with the civil equal justice community to facilitate the adoption of their recommendations.

## **GOAL 7.2**

### **IMPROVE THE PUBLIC'S AND THE MEDIA'S UNDERSTANDING OF THE COURT SYSTEM**

*COMMENTARY:* To improve the level of confidence in the court system, it is imperative that the public understand how the judicial branch operates and what a vital role an independent judiciary plays in a democratic society. To achieve this level of understanding, the Committee must also focus its efforts on educating the media, so that reporting on court-related matters is accurate and informative.

#### **Objective:**

**Increase the media's level of knowledge of how the judicial branch of government operates; increase the level of public outreach by judges throughout Washington State; and increase the amount of information given to citizens who serve as jurors each day.**

#### **Tasks:**

1. The Committee will develop a local court media outreach how-to kit for all presiding judges, including items such as template annual reports, press releases, guest editorials, and media pamphlets.
2. The Committee will create a curriculum for a "Courts 101" workshop for the media and a companion comprehensive media guide.
3. The Committee will undertake efforts to increase appreciation of jurors, and their understanding of their rights and responsibilities.





# BOARD FOR JUDICIAL ADMINISTRATION

## RESOLUTION REQUEST COVER SHEET

### DRUG COURTS AND OTHER PROBLEM SOLVING COURTS

#### SUBMITTED BY:

WASHINGTON STATE ASSOCIATION OF DRUG COURT PROFESSIONALS, SUPERIOR COURT JUDGES ASSOCIATION, DISTRICT AND MUNICIPAL COURT JUDGES ASSOCIATION

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1. **Name(s) of Proponent(s):** Judge Harold Clarke, Spokane County Superior Court; President, Washington State Association of Drug Court Professionals

2. **Spokesperson(s):** Judge Harold Clarke, (509) 477-5717

3. **Purpose:**

This resolution seeks to obtain the BJA's strong support and commitment to the success and expansion of Problem Solving Courts (PSC's) in Washington State through (1) an endorsement of PSC methods; (2) advocacy for adequate funding for PSC's; (3) support for training of judicial officers and PSC staff; and (4) promotion of PSC best practices, data collection, and evaluation.

4. **Desired Result:**

<u>Action</u>	<u>Actor(s)</u>	<u>Timeframe</u>
Approve the resolution	BJA	as soon as possible

5. **Expedited Consideration:**

Expedited consideration is requested. This resolution was initially presented to the BJA for consideration in April, 2011. Per BJA direction, review and comment was solicited from the Supreme Court and the Appellate Courts with regard to the resolution. To date, no

comments have been received.

**6. Supporting Material:**

Proposed draft Resolution

Letter from Judge Clarke detailing history and evolution of the proposed resolution, including relevant dates and outcomes of consideration by the BJA and others

**RESOLUTION BY  
THE BOARD FOR JUDICIAL ADMINISTRATION (BJA)  
ON DRUG COURTS AND OTHER  
PROBLEM SOLVING COURTS**

At its meeting on <Month><Date>, <Year>, the Board for Judicial Administration approved the following Resolution in support of Drug Court and Other Problem-Solving Court Principles, Methods and Funding.

For purposes of this Resolution, Drug Courts are particularly emphasized in light of the central place they occupy in that class of related court programs which have, in the past two decades, come to be known under the general name of Problem Solving Courts.<sup>1</sup> This Resolution is intended to set forth the BJA's strong support for Problem Solving Courts in general and Drug Courts in particular.

Whereas, the Board for Judicial administration recognizes the following:

- 1) Drug Courts have proven to be a highly effective strategy for reducing alcohol or other drug use and recidivism among criminal offenders with chemical dependency and addiction problems.
- 2) In addition to Drug Courts, the principles and methods of Problem Solving Courts have been shown to offer a very promising strategy for addressing a wide variety of other case types in which addiction, mental health or other behavioral issues are a significant causative factor.
- 3) There is evidence of broad support, both in Washington and other states, for the principles and methods commonly used in Problem Solving Courts, including ongoing judicial leadership; integration of treatment services with judicial case processing; close monitoring of and immediate response to behavior; multidisciplinary involvement; and collaboration with community-based and government organizations.
- 4) Through the efforts of the National Association of Drug Court Professionals (NADCP), the National Drug Court Institute, the National Center for State Courts and others, drug court research has resulted in many areas of consensus regarding the best practices for drug courts.
- 5) The Race and Criminal Justice Task Force has recommended that Washington Courts expand the use of Therapeutic (i.e., Problem Solving) Courts as one way to address racial disparity in the administration of justice in criminal cases.

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<sup>1</sup> Problem Solving Courts are also often referred to as Therapeutic Courts.

**In light of the foregoing the Board hereby resolves as follows:**

- 1) To support and encourage the development and expansion of Problem Solving Courts in Washington.
- 2) To advocate for adequate funding for these courts.
- 3) To encourage and support appropriate training for judicial officers and staff on the principles and methods of Problem Solving Courts.
- 4) To ensure the education of law students, lawyers and judges concerning the existence and principles of Problem Solving Courts.
- 5) To support the identification of and adoption of best practices in Problem Solving Courts.
- 6) To promote the consistent collection of data on Problem Solving Courts to enable effective evaluation and monitoring of Problem Solving Court outcomes and performance.

DRAFT

# SPOKANE COUNTY SUPERIOR COURT



**HAROLD D. CLARKE, III**  
JUDGE  
DEPARTMENT 8

SPOKANE COUNTY COURTHOUSE  
1116 W. BROADWAY, SPOKANE, WASHINGTON 99260-0350  
(509) 477-5717 • FAX: (509) 477-5714 • TDD: (509) 477-5790  
dept8@spokanecounty.org

February 14, 2012

Dick Carlson  
AOC  
1206 Quince Street SE  
PO Box 41170  
Olympia WA 98504-1170

RE: BJA Resolution as to Problem Solving Courts

Dear Dick:

In your e-mail of August 16<sup>th</sup> you inquired as to the work done on the proposed BJA resolution as to problem solving courts. I will try to fill in the blanks on the process a bit.

In 2010 I had conversations with Chris Ruhl as to a resolution from BJA that would support drug courts. I cannot tell you how or when this all got started, but somehow it did. By the summer Chris had put together a presentation to BJA that would give an overview of problem solving courts and introduce the idea of a resolution. On September 17, 2010 I appeared before the BJA and gave the presentation. The paper side of this presentation, as given to the board, is attached.

On November 19, 2010 I reappeared before the board and made the pitch for the resolution. At about the same time the board had decided to develop a protocol for resolutions, and so after some discussion, the matter was tabled. The only paper given to the board was a copy of the draft resolution, and that is attached.

As an aside, I do not have any of the minutes from the BJA meetings I have attended on this issue. They do not get sent to me as a non-member of the board, and I have not asked for them, but you may wish to obtain them so you can see what was said about all of this.

In any event, while the matter was on hold, we reworked the resolution at the suggestion of some at the November meeting and our own sense that it was too long and cumbersome. We (being Chris and I) involved others to review the resolution and give us input. After the board adopted their resolution policy we were ready to come back before the board.

On April 15, 2011 I reappeared before the board and presented again. A copy of the resolution given to the board is attached. At the meeting of the 15<sup>th</sup> the board declined to take action and deferred the matter. We were asked to take the resolution to the Supreme Court and the Court of Appeals. We did so by way of letter, copies of which are attached. As we have discussed, I have had no response to my letters.

In sum, there were no letters of transmittal to the board. I appeared on three occasions and made oral presentations accompanied by the materials enclosed.

I hope this helps, but I am willing to discuss this further at any time.

Sincerely,

---

Harold D. Clarke, III  
Superior Court Judge

HDC/lss  
Encl.

**SUMMARY OF EXISTING PROBLEM SOLVING COURT STATUES AND LEGISLATION FROM 2011 AND 2012**

RCW/Legislation	Authority	Definition	Requirements	Funding
<p>Drug Courts RCW 2.28.170</p>	<p>Counties may establish and operate drug courts</p>	<p>"Drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.</p>	<p>Minimum requirements:</p> <ul style="list-style-type: none"> <li>- Offender would benefit from substance abuse treatment.</li> <li>- No previous serious violent offense or sex offense.</li> <li>- Not current charged with or convicted of: sex offense, serious violent offense, use of firearm, caused substantial or great bodily harm or death to another.</li> </ul> <p>May adopt more stringent local requirements.</p>	<p>Must exhaust all federal funding that is available.</p> <p>Must match, dollar-for-dollar, state money with cash or in-kind. Except for 7/26/09-6/30/13, no match is required.</p>
<p>DUI Courts RCW 2.28.175</p> <p>(Current to include HB 1789)</p>	<p>Counties may establish and operate DUI courts</p>	<p>"DUI court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism of impaired driving among nonviolent, alcohol abusing offenders, whether adult or juvenile, by increasing their likelihood for successful</p>	<p>Minimum requirements:</p> <ul style="list-style-type: none"> <li>- Offender would benefit from alcohol treatment.</li> <li>- No previous conviction of serious violent offense, sex offense, vehicular homicide, vehicular assault, or equivalent</li> </ul>	<p>Must exhaust all federal funding that is available.</p> <p>Must match, dollar-for-dollar, state money with cash or in-kind. Until 6/30/14, no match is required for administrative or</p>

RCW/Legislation	Authority	Definition	Requirements	Funding
		rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic testing for alcohol use and, if applicable, drug use; and the use of appropriate sanctions and other rehabilitation services.	<ul style="list-style-type: none"> <li>- out-of-state offense.</li> <li>- Not currently charged with or convicted of: sex offense, serious violent offense, vehicular homicide or vehicular assault, use of firearm, caused substantial or great bodily harm to another.</li> </ul> <p>May adopt more stringent local requirements.</p>	overhead costs for DUI courts established as of 1/1/11.
<p>Mental Health Courts RCW 2.28.180</p> <p>(Current for changes based on HB 1718)</p>	Counties may establish and operate mental health courts.	"Mental health court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and symptoms of mental illness among nonviolent, felony and nonfelony offenders with mental illnesses and recidivism among nonviolent felony and nonfelony offenders who have developmental disabilities as defined in RCW <u>71A.10.020</u> or who have suffered a traumatic	<p>Minimum requirements:</p> <ul style="list-style-type: none"> <li>- Offender would benefit from psychiatric treatment or treatment related to developmental disability or traumatic brain injury.</li> <li>- No previous conviction for serious violent offense or sex offense.</li> <li>- Not currently charged with or convicted of sex offense, serious violent offense, use of firearm, caused</li> </ul>	<p>Must exhaust all federal funding that is available.</p> <p>Must match, dollar-for-dollar, state money with cash or in-kind.</p>

RCW/Legislation	Authority	Definition	Requirements	Funding
		<p>brain injury by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment including drug treatment for persons with co-occurring disorders; mandatory periodic reviews, including drug testing if indicated; and the use of appropriate sanctions and other rehabilitation services.</p>	<p>substantial or great bodily harm to another.</p> <p>May adopt more stringent local requirements.</p>	
<p>Therapeutic Courts RCW 2.28.190</p> <p>(Current to include HB 1789)</p>	<p>Counties may combine drug, DUI, and mental health courts into a single therapeutic court.</p>			
<p>SHB 1718 – Concerning offenders with developmental disabilities or traumatic brain injuries</p> <p>Bill passed in 2011</p>	<p>Amends RCW 2.28.180 to include “felony and nonfelony offenders with mental illnesses and recidivism among nonviolent felony and nonfelony offenders who have developmental disabilities as defined in RCW <u>71A.10.020</u> or who have suffered a traumatic</p>		<p>Amends the RCW 2.28.180 requirement that the offender would benefit from psychiatric treatment to include “treatment related to his or her developmental disability or traumatic brain injury.”</p>	

RCW/Legislation	Authority	Definition	Requirements	Funding
<p>E2SHB 1789 – Addressing accountability for persons driving or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug.</p> <p>Bill passed in 2011.</p>	<p>brain injury”</p> <p>Adds a new section to RCW 2.28 to authorize DUI courts (as outlined in 2.28.175 above)</p>	<p>See 2.28.175</p>	<p>See 2.28.175</p>	<p>Amends and increases penalties to include a provision that \$25 of the fee assessed must be distributed to the Highway Safety Account to be used for funding Washington Traffic Safety Commission grants. Grant recipients may include DUI courts.</p>
<p>SSB 5722 – Concerning the use of moneys collected from the local option sales tax to support chemical dependency or mental health treatment programs and therapeutic courts.</p> <p>Bill passed in 2011.</p>				<p>Counties may impose a sales and use tax of 0.12% to support mental health treatment programs, chemical dependency treatment programs and therapeutic courts. A county with a population greater than 25,000 may use 50% of the revenue to supplant existing services in 2011-12, 40% in 2013, 30% in 2014, 20% in 2015, and 10% in 2016. A county with a population less</p>

RCW/Legislation	Authority	Definition	Requirements	Funding
				than 25,000 may use 80% to supplant existing services in 2011-12, 60% in 2013, 40% in 2014, 20% in 2015, and 10% in 2016.
<p>HB 2535 – Creating a juvenile gang court.</p> <p>Bill has passed House and is alive in 2012.</p>	<p>Adds new sections to RCW 13.40 to authorize counties to establish and operate juvenile gang courts.</p>	<p>“Juvenile gang court” means a court that has special calendars or dockets designed to achieve a reduction in gang-related offenses among juvenile offenders by increasing their likelihood for successful rehabilitation through early, continuous, and judicially supervised and integrated evidence-based services proven to reduce juvenile recidivism and gang involvement or through the use of research-based or promising practices identified by the Washington State Partnership Council on Juvenile Justice.</p>	<p>Minimum requirements:</p> <ul style="list-style-type: none"> <li>- Juvenile offender participates in gang activity, is repeatedly in the company of known gang members, or openly admits admission to a gang</li> <li>- Not previously convicted of a serious violent offense or sex offense</li> <li>- Not currently charged with a class A felony, sex offense, use of firearm, subjects juvenile to adult jurisdiction</li> </ul> <p>May adopt more stringent local requirements.</p> <p>Admission to gang court requires juvenile to stipulate</p>	<p>Not addressed.</p>

RCW/Legislation	Authority	Definition	Requirements	Funding
			<p>to the admissibility of the facts contained in the police report and waive certain rights. Court shall defer entry of order of disposition. Individualized plan shall be developed. Upon successful completion, conviction shall be vacated.</p> <p>Juvenile may only be admitted to gang court once.</p> <p>Counties shall track and document certain data.</p> <p>Subject to funding, AOC shall study the data and report to the legislature.</p>	
<p>HB 2357 – Concerning sales and use tax for chemical dependency, mental health treatment, and therapeutic courts.</p> <p>Bill died in House Ways &amp; Means 2012</p>				<p>Jurisdictions can use a portion of the mental health tax to supplant existing funding. Supplanting stipulations are changed for counties with a population of 25,000 or cities with a population over 30,000. Up to 50% of revenues may be used</p>

RCW/Legislation	Authority	Definition	Requirements	Funding
				to supplant existing funds for the first three calendar years following adoption and up to 25% may be used for the 4 <sup>th</sup> and 5 <sup>th</sup> years.
<p>HB 2547/SB 6404 – Authorizing the establishment and use of veterans’ courts.</p> <p>Bills died in Judiciary in 2012.</p>	<p>Adds new section to RCW 2.28 to authorize counties and municipalities to establish and operate veterans’ courts.</p> <p>Adds veterans’ court to list of what may be combined into a single therapeutic court under RCW 2.28.190.</p>	<p>"Veterans' court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism among nonviolent misdemeanants who are veterans through early, continuous, and intense judicially supervised treatment, drug treatment, or mental health treatment - if necessary, mandatory periodic reviews, appropriate sanctions, and assistance with accessing services available through federal and state veterans' offices, government agencies, and community organizations.</p>	<p>Minimum requirements:</p> <ul style="list-style-type: none"> <li>- Offender would benefit from being in a specialized therapeutic court program</li> <li>- No previous serious violent offense or sex offense conviction.</li> <li>- Not currently charged with or convicted of DUI, felony, sex offense, serious violent offense, use of firearm, substantial or great bodily harm to another</li> <li>- Must be a veteran or service member</li> </ul> <p>May adopt more stringent local requirements.</p>	<p>Must exhaust all federal funding that is available.</p> <p>Must match, dollar-for-dollar, state monies with local cash or in-kind resources. State monies must not be used to supplant other funds.</p>
<p>SB 6578 – Providing funding for chemical</p>				<p>Fifty percent of the license fees from sprits</p>

RCW/Legislation	Authority	Definition	Requirements	Funding
<p>dependency treatment</p> <p>Bill died in Senate Ways &amp; Means in 2012</p>				<p>distributors are deposited into the Liquor Revolving Fund. Thirty percent is deposited into the newly created Chemical Dependency Treatment Account for treatment services provided to low-income individuals. Twenty percent is deposited into the Criminal Justice Treatment Account to fund county drug courts.</p>

**CONFERENCE OF CHIEF JUSTICES  
CONFERENCE OF STATE COURT ADMINISTRATORS**

**Resolution 12**

**In Support of Flexibility for Federal Funding for Problem-Solving Courts**

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators, in fulfilling their leadership roles for state judicial systems, have repeatedly taken positions in support of the principles and methods used in problem-solving courts; and

WHEREAS, the Conferences have identified the principles and methods commonly used in problem-solving courts to include ongoing judicial leadership, integration of treatment services with judicial case processing, close case monitoring, immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations; and

WHEREAS, the Conferences have advocated for the careful study and evaluation of the principles and methods employed in problem-solving courts and the identification and promulgation of best practices that incorporate the problem-solving court principles and methods; and

WHEREAS, problem-solving courts, particularly drug courts, have been evaluated and best practices have been established as a result of those evaluations and through research; and

WHEREAS, the Conferences have also taken positions in support of federal funding for planning and implementation of drug courts, mental health courts, and other problem-solving courts; and

WHEREAS, in the Administration's budget proposals for FY 2010, FY 2011, and FY2012, the Administration has proposed the creation of a flexible problem-solving justice grant program in lieu of continued specific funding for drug courts and mental health courts; and

WHEREAS, the Administration's FY 2012 description of the problem solving justice grant program is as follows:

"To provide policy development, training, and technical assistance, and grant funding for jurisdictions to develop a continuum of responses to crime problems

and offenders (particularly drug involved offenders), informed by science, that appropriately address offender risks and needs, and build on the success of the Drug Court program and other problem solving approaches.”;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators support flexibility in the funding of problem-solving courts; and

BE IT FURTHER RESOLVED that the Conferences encourage the Department of Justice to consider state court leadership’s state planning and priorities as they consider grant applications so that federal funds are leveraged to achieve the greatest impact in a state; and

BE IT FURTHER RESOLVED that the Conferences encourage the Department of Justice to base funding decisions on fidelity to the principles and methods of problem-solving courts, use of evidence-based practices, and effective design principles.

Adopted as proposed by the CCJ/COSCA Problem Solving Courts Committee at the 2011 Annual Meeting on August 3, 2011.





# Part-time Municipal Courts in Washington

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**2011**

# BJA Discussion Draft

# BJA Discussion Draft

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# BJA Discussion Draft

## Part-time Municipal Courts in Washington – An Introduction

*... [T]hough individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter... so long as the judiciary remains truly distinct from both the legislature and the Executive. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers."*

--Alexander Hamilton, *The Federalist* #78.

In February 2011, the Administrative Office of the Courts (AOC) asked cities served by part-time municipal court judges to provide public records that would help develop an objective picture of the current state of municipal court organizations in Washington. This report summarizes the information received by AOC.

AOC provides technology, policy analysis, and administrative support to Washington courts. In fulfilling its mission under RCW 2.56, the AOC works with judges, court personnel, state and local legislative and executive branch officials and the general public on issues related to the role and functioning of courts at all levels.

Judges and court employees frequently turn to AOC for guidance on issues related to the court's relationship with the legislative and executive branches of local government.

Yet, AOC had mostly anecdotal information about local ordinances and practices involving courts with part-time judges and limited staff. In order to ascertain the extent to which anecdotal issues presented to the AOC were isolated incidents or systemic issues and to evaluate the needs and develop appropriate

plans to address them, it was important for AOC to gather a more comprehensive set of objective data. AOC concluded that the least intrusive way to do so was by asking city governments to provide copies of certain existing records.

The February 2011 AOC public records request was intended to gather better data in order to answer such questions as:

- How do judicial services contracts and city ordinances define relationships between cities and their judges, and are they consistent with court rules and statutes?
- Are local ordinances regarding the appointment of pro tem judges consistent with current state law and court rules?
- How do city ordinances deal with judicial discipline or removal, and are those provisions consistent with current state law?

# BJA Discussion Draft

- Are judges appointed for defined, four-year terms of office? Are the terms aligned with the four-year cycle in state statutes?
- Do cities generally acknowledge the court as an independent branch of local government and the leadership role of the presiding judge?
- Are there provisions in local ordinances or contracts for service that impair the actual or apparent independence of the court's decision making?
- How common is it for court administrators or other court personnel to be supervised by persons other than the presiding judge?
- To what extent are locally enacted fees or assessments consistent with state law, and do they affect statutory fund distributions?

The request for documents was presented as a public records request under the state Public Records Act (PRA). A less formal letter requesting the documents would still have been a public records request under the PRA and, therefore, it seemed more appropriate to make the formal request. Nearly all cities acknowledged the request and provided a responsive document. As one might expect, there were varying levels of response with some apparently incomplete and others providing more documentation than requested.

On the whole, the level of response was sufficient to identify major themes and patterns and, therefore, the AOC did not pursue additional records or clarification of the responses received. Copies of the records received from each city will be provided to the presiding judge, together with a description of any issues that appear to warrant follow-up at the local level.

The AOC would like to thank the city public records officers for their assistance in providing the requested records. Additionally, we would like to acknowledge and thank Mike McCarty and Candice Bock of the Association of Washington Cities (AWC) for the open and productive dialogue which improved our approach and understanding

## Summary of findings

- Judges in several cities are not assured definite four-year terms of office during which their compensation may not be diminished. This conflicts with constitutional and statutory requirements.
- The terms of several judges are on a different appointment cycle than outlined in *RCW 3.50.040*. In some cases, this could be a basis for challenging the judge's legal authority.
- Many cities have ordinances related to judicial discipline and termination that do not reflect the role of the Commission on Judicial Conduct as established by the Washington constitution.
- Many cities have ordinances that give authority for the appointment of pro tem judges to city officials. Under current law, only the presiding judge has that authority.

# BJA Discussion Draft

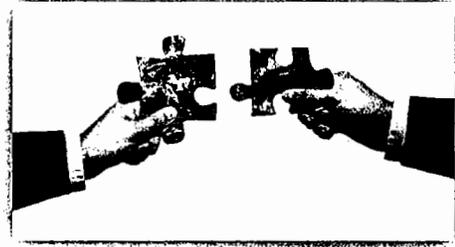
- Documents from several cities describe courts that appear to function as city departments managed by mayors, city managers, or finance directors rather than as an independent branch of government lead by a Presiding Judge.
- Most court administrators and staff in the reporting cities are supervised by persons outside the judicial branch of government and take their direction from someone other than the Presiding Judge. This is in direct conflict with *GR 29* which specifies that court personnel must report to the presiding judge.
- Most cities appear to honor the judge's independence and impartiality in the judge's adjudicatory role. However, provisions in some cities seem to intrude on the court's decisional independence.
- Some cities have enacted local fees that may either be prohibited by law or not authorized by law and that alter statutory revenue distribution schemes.

## Recommendations

- 1) Cities should review their ordinances and contracts to ensure that:
  - a) the judge's compensation shall not be diminished during the term of office as provided in *Article IV, § 8* of the Washington Constitution;
  - b) judges are elected or appointed to four-year terms of office, except where a judge has been appointed to fill a vacancy in an unexpired term as provided in *RCW 3.50.093*;
  - c) the judge's term of office is consistent with the four-year rotation cycle described in *RCW 3.50.040*;
  - d) judges are not subject to discipline or removal from office, except by action of the Commission on Judicial Conduct and the Supreme Court as provided in *Article IV, § 31* of the Washington Constitution;
  - e) pro tem judges will be appointed by the Presiding Judge as provided in *RCW 3.50.090* and *GR 29(f)(12)*.
- 2) Cities should review and, if necessary, revise ordinances, contracts, job descriptions, organization charts and other documents to ensure that:
  - a) they appropriately depict and describe the municipal court as a separate and co-equal branch of government led by the Presiding Judge;
  - b) courts are administered and staffed by persons who operate under the direction and supervision of the Presiding Judge;
  - c) no provisions impair or appear to compromise the judge's fairness and independence (e.g., mandating apparently preferential treatment, restricting the ability of the judge to exercise appropriate discretion in individual cases, etc.) and promptly initiate appropriate changes.
- 3) The AOC, in consultation with AWC, should determine whether legislation should be proposed to amend or repeal *RCW 3.50.095* regarding removal of a municipal judge from office.

# BJA Discussion Draft

- 4) The AOC should work with AWC, the District and Municipal Court Judges' Association (DMCJA), and the Board for Judicial Administration (BJA) to analyze the advisability of contracts for judicial services and whether to recommend changes to *GR 29*.
- 5) The AOC, in consultation with AWC, should determine whether legislation should be proposed to amend *RCW 3.50.090* to clarify authority for the appointment of judges pro tem when the city is without a presiding judge due to resignation, removal from office, suspension by the Commission, death, or incapacity.
- 6) Cities should give adequate weight to the administrative and leadership ability of applicants for judicial appointment, and the judicial branch should take appropriate steps to educate the legal profession about the off-bench responsibilities of judicial office.
- 7) Consideration should be given to the advisability of developing and maintaining model ordinances for cities that operate municipal courts.
- 8) Cities should review ordinances which establish local costs or fees that are to be assessed by the municipal court, and ensure that they are consistent with state law.
- 9) AOC should consult with AWC on the development of timely publications and regular education programs for judges and city officials about their respective roles and responsibilities.



# BJA Discussion Draft

## Judicial Salaries

Given the diversity in caseloads among our state's courts, it is not surprising to find there is an equally wide variation in how judges are compensated.

Some contracts and ordinances seem to indicate that the judge's salary may be reduced during his or her term in office. For example:

IN CONGRESS, JULY 4, 1776.

The unanimous Declaration of the thirteen united States of America,

*He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.*

Not recommended 1

### COMPENSATION

For services rendered pursuant to this agreement, the City will pay the Judge Seven Hundred Fifty and no/100 Dollars (**\$750.00**) per month for her services as Municipal Court Judge. The parties agree to renegotiate compensation on an annual basis.

However, *Article XI, § 8* of the Washington State Constitution prohibits reduction of the judge's salary during the term of office:

The salary of any county, city, town, or municipal officers shall not be increased except as provided in section 1 of Article XXX or diminished after his election, or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

Most judicial salaries are monthly although a substantial number are annual. Some judges are paid by the hour and in some cases compensation is per court session. In general, cities that pay judges by the hour or court session do not appear to compensate the judge for administrative duties or off-bench activities.

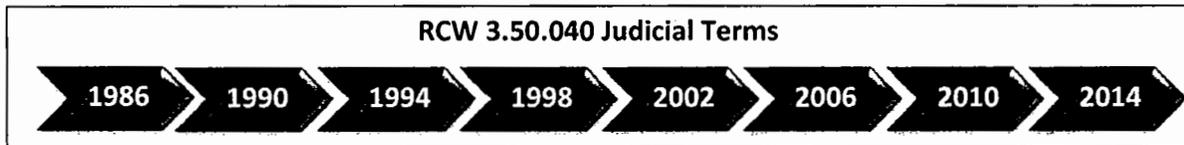
*RCW 3.50.080* requires that judicial salaries be fixed by ordinance. In most instances, it appears that cities accomplish this by adoption of the budget or council approval of a judge's contract.

**Recommendation:** Cities should review and revise their ordinances and judicial services contracts as necessary to ensure that the judge's compensation shall not be diminished during the term of office as provided in *Article IV, § 8* of the Washington Constitution.

# BJA Discussion Draft

## Terms of Office

Most of the reporting cities appoint judges on four-year cycles that are consistent with the statutory rotation in *RCW 3.50.040*. Those judges' terms began January 1, 2010 and expire December 31, 2013.



Judges in several cities appear to be appointed to four-year terms on cycles that began in a different year. This phenomenon occurs either because they were appointed in an “odd” year to a four-year term that began when the court was created, or may be because the city got “off cycle” at some point when filling vacancies. Additional research and analysis would be required to determine whether changes are warranted in those cities in order to avoid potential challenges to the judge’s authority.

There are indications that the term of office may be less than four years in some cities. In one city, for example, the judge’s contract provides that either party may terminate without cause upon 30 days notice. In another, the position is subject to annual review and renewal by the city council, and in one city it appears the judge may have been appointed to a full term that was only one year long.

**Recommendation:** Cities should review their ordinances and contracts as necessary to ensure that:

1. Judges are elected or appointed to four-year terms of office, except where a judge has been appointed to fill a vacancy in an unexpired term as provided in *RCW 3.50.093*, and
2. The judge’s term of office is consistent with the four-year rotation cycle described in *RCW 3.50.040*.

# BJA Discussion Draft

## Judicial Discipline or Removal

Many contracts and ordinances contain provisions that mirror *RCW 3.50.095* regarding the discipline and removal of judges:

A municipal judge shall be removed only upon conviction of misconduct or malfeasance in office, or because of physical or mental disability rendering the judge incapable of performing the duties of the office.

However, in our view that provision has been superseded by amendments to the Constitution that established the Commission on Judicial Conduct as the disciplinary body for judicial officers:

Upon the recommendation of the commission, the supreme court may suspend, remove or retire a judge or justice...

The supreme court may not suspend, remove, or retire a judge or justice until the commission, after notice and hearing, recommends that action be taken, and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against the judge or justice.

*Washington Constitution, Article IV, §31.*

Like *RCW 3.50.095*, many contracts and city ordinances have not been amended to reflect amendments to the state constitution in 1986, 1989, and 2005 that establish the role of the Commission.

Few cities surveyed appear to explicitly recognize the role of the Commission on Judicial Conduct. In some cases, there are provisions that expand the role of the executive or legislative branches beyond those described in *RCW 3.50.095*.

*"The Commission [on Judicial Conduct] works to protect the integrity of the judicial process and promote public confidence in the courts. It also serves to improve and strengthen the judiciary by creating in judges a greater awareness of proper judicial behavior."  
--CJC Mission Statement*

For example, one city retains the right to terminate the judge's contract if the judge's public or private conduct "could bring the judiciary into disrepute." Others effectively provide for the constructive discharge of the judge by permitting the city to unilaterally change the salary during the term of office. As previously noted, other cities have provisions in their contracts or ordinances that permit the city to terminate the judge at any time on notice as short as 30 days.

### Recommendations:

1. Cities should review their ordinances and contracts to ensure that judges are not subject to discipline or removal from office, except by action of the Commission on Judicial Conduct and the Supreme Court as provided in *Article IV, § 31* of the Constitution.
2. The AOC, in consultation with AWC, should determine whether legislation should be proposed to amend or repeal *RCW 3.50.095* regarding removal of a municipal judge.
3. The AOC should work with AWC, the District and Municipal Court Judges' Association (DMCJA), and the Board for Judicial Administration (BJA) to analyze the advisability of contracts for judicial services and whether to recommend changes to *GR 29*.

# BJA Discussion Draft

## Judges Pro Tem

Similar to the issue presented above, some city ordinances and contracts have apparently not been updated to reflect changes in state law. *RCW 3.50.090*, as amended by *Chapter 55, Laws of 2000*, gives to the presiding municipal court judge the authority to designate judges pro tem to serve in his or her absence. In addition, *GR 29(f)(12)* establishes the responsibility of the Presiding Judge to "determine the qualifications of and establish a training program for pro tem judges and pro tem court commissioners."

Ordinances and contracts in many cities designate mayors and city managers as the appointing authority for judges pro tem and court

**Section 7. Judges Pro Tem.** The Mayor shall, in writing, appoint judges pro tem who shall act in the absence or disability of the regular judge of the municipal court or subsequent to the filing of an affidavit of prejudice. The

Not recommended 2

commissioners. In some instances, the judge is expected to propose a list for approval by other city officials while in other cities the judge seems to have no role whatever. And, in a few other cities, the judge is involved in the appointment process but not the appointing authority.

It is unknown whether the actual practice in some of those jurisdictions may vary from the process set forth in city ordinances that may not have been thoroughly reviewed and updated to reflect current law.

### Recommendation:

1. Cities should review their ordinances and contracts and make any necessary changes to ensure that judges pro tem will be appointed by the Presiding Judge as provided in *RCW 3.50.090* and *GR 29(f)(12)*.
2. AOC and AWC should work together to determine whether legislation should be proposed to amend *RCW 3.50.090* to clarify authority for the appointment of judges pro tem when the city is without a presiding judge due to resignation, removal from office, suspension by the Commission, death, or incapacity.

# BJA Discussion Draft

## Role of the Presiding Judge

Most of the responding cities appear to recognize the judge's essential role as the leader of the judicial branch of city government. There are notable exceptions.

**Job Title:** Municipal Court Judge  
**Department:** Municipal Court  
**Reports To:** Mayor

Not recommended 3

One requires the judge to refer all "policy matters" to the mayor or council for decision. Organization charts or job descriptions in some cities show that the judge reports to or works under the direction of the mayor or city manager. One city restricts the judge to making recommendations to the city manager regarding court

personnel, with no independent authority.

Another group of cities has provisions that appear to limit the authority of the presiding judge in different ways:

- Requiring that the judge "cooperate" with the city while also reserving the right to terminate the judge's contract on 120 days notice.
- Requiring the judge to abide by the city's union contract but restricting the judge from any role in negotiating or approving the contract.
- And one judge's contract delegates all administrative functions to the city Finance Director, reserving only the expectation that the Finance Director consult with the judge before firing or demoting a court employee.

City organizational charts vary widely in their depiction of the court as a branch of government. Some make no separation, and depict the judge and

**4. Independent Judicial Branch.** The Municipal Court is a part of an independent branch of government and must act in accordance with the provisions of the Code of Judicial Conduct and Washington State Court rules.

Good practice 1

any staff as part of the finance department or other part of city government. Others show the judge or court with some independence, but more careful review reveals that all court personnel are imbedded in another city department and their work directed by someone other than the judge.

**Recommendation:** Cities should review and, if necessary, revise ordinances, contracts, job descriptions, organization charts and other documents to ensure that they appropriately depict and describe the municipal court as a separate and co-equal branch of government led by the Presiding Judge.

# BJA Discussion Draft

## Staff reporting relationships

Do court administrators and staff serve generally under the direct supervision of the Presiding Judge as required by GR 29? Not according to the records provided for this request. In fact, the records appear to indicate that most administrators and court staff in these cities are supervised by and take their direction from someone other than the Presiding Judge.

GR 29 provides:

(f) **Duties and Authority.** The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

*The court administrator, or equivalent employee ... shall report directly to the Presiding Judge.*

(1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers...

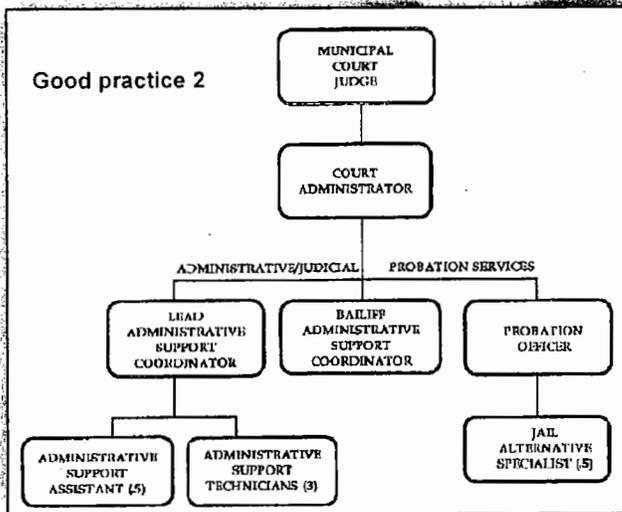
employees. The parties therefore agree and stipulate that all personnel management functions including day-to-day administration of discipline, financial and contractual review, and other details of the day-to-day personnel and fiscal administration of the Court beyond the day-to-day functions of the Court as part of the judicial system are hereby delegated to the CITY of Finance Director.

Not recommended 4

(5) Supervise the daily operation of the court including:

(a) All personnel assigned to perform court functions; and

(b) All personnel employed under the judicial branch of government including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and



# BJA Discussion Draft

(c) The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

(6) Supervise the court's accounts and auditing the procurement and disbursement of appropriations and preparation of the judicial district's annual budget request...

However, court administrators in several jurisdictions are city officials who are not supervised by the Presiding Judge. In some cases, the court administrator is responsible for administering the contract of the judge who *GR 29* designates as their supervisor. Several cities explicitly delegate all court staff supervision to persons in the other branches of city government, most commonly those in charge of city finances.

It is very common, particularly in smaller jurisdictions, for personnel to serve multiple roles simultaneously and often with the Presiding Judge directing work during only during court sessions, if at all. In one city, the nominal court administrator is the Clerk/Treasurer, serving under direction of mayor. Duties include answering phones for all city offices, receiving payment for water and sewer bills, issuing dog licenses and building permits, and answering zoning questions.

**Recommendation:** Cities should review and, if necessary, revise ordinances, judicial services contracts, job descriptions, organization charts, and other documents and practices to ensure that courts are administered and staffed by persons who operate under the direction and supervision of the Presiding Judge.

# BJA Discussion Draft

## Decisional Independence

Cities generally seem to respect the judge's independence as an adjudicator.

Judge agrees to perform his duties in accordance with all laws, rules and regulations relating hereto, however, in the management and control of the work required, Judge shall be solely responsible for the manner and details of his performance.

Good practice 3

A few possible exceptions were noted:

- Judge is required to give scheduling preference to the prosecutor's cases.
- Judge is prohibited from accepting time payments under \$50, and is required to establish time payment standards by agreement with the city manager.
- The judge must accept responsibility for effective enforcement of the city's identified priorities.
- Judicial contract requires a "debriefing" with the Deputy City Clerk and staff following each court session.

• • •  
**"A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."**  
*Code of Judicial Conduct, Canon 1*  
• • •

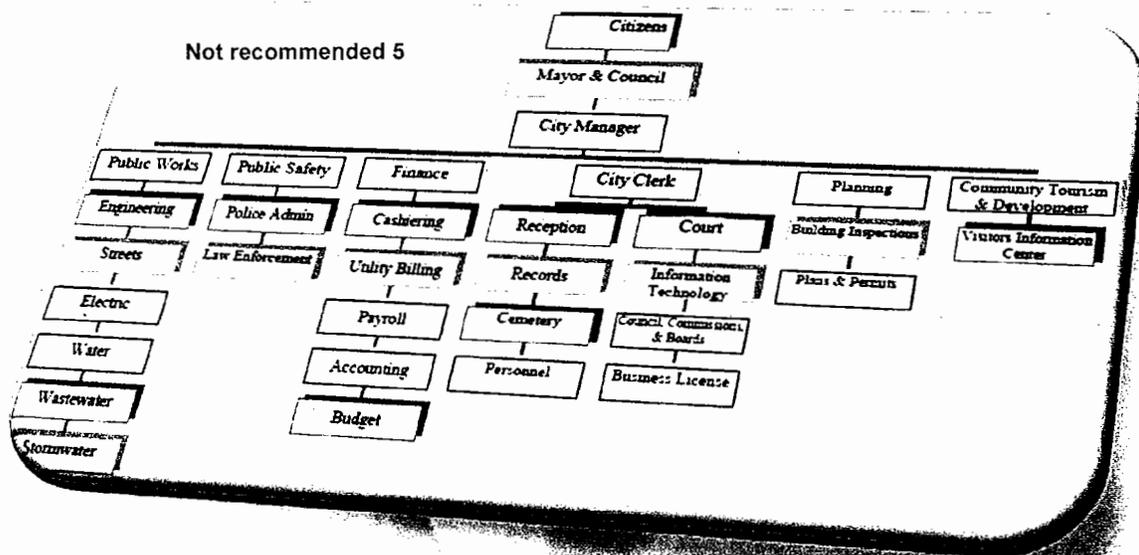
**Recommendation:** Cities and judges should review ordinances and judicial services contracts to ensure that they do not impair or appear to compromise the judge's fairness and independence (i.e., mandating apparently preferential treatment, restricting the ability of the judge to exercise appropriate discretion in individual cases, etc.) and promptly initiate appropriate changes.

# BJA Discussion Draft

## Institutional Independence

Several cities provided materials that clearly recognized the court as an independent branch of city government. The overwhelming majority of cities provided records that suggest varying degrees of interference with the court's authority to manage its organization, including policies, personnel decisions, and budgeting.

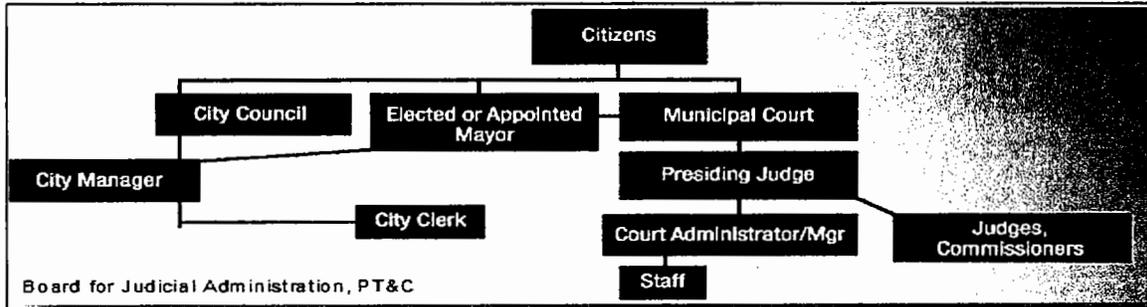
In some cities, the entire court organization appears to be structured as an ancillary part of the city's management structure without an independent role and sometimes with no designated court staff. In one city, the judge and all staff report to the city manager and the city manager has the final word on all personnel policies, hiring, discipline, and termination decisions. Another larger city provides that the mayor or designee supervises all court staff, and the ordinances specify detailed rules of pleading, practice, and procedure that are inconsistent with Supreme Court rules. Elsewhere, a judge by contract relinquished all administrative responsibility.



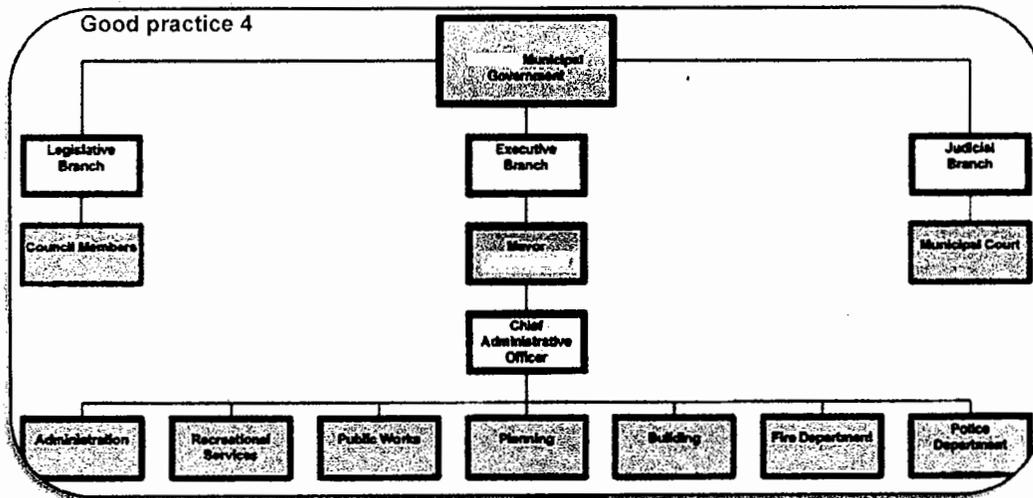
In some cities, ordinances, contracts, job descriptions, and organization charts present an unclear picture of the court's role. For example, organization charts sometimes show an independent judicial branch while job descriptions or other documents paint a different picture. In other cities, the opposite is true. This group also includes cities in which consultation on organizational matters is required but final authority rests outside the judicial branch.

# BJA Discussion Draft

In contrast, the Board for Judicial Administration's Public Trust and Confidence Committee recommends this structure:



There are also excellent examples of cities that have adopted organizational structures that are very similar to recommendations from the Board for Judicial Administration (BJA), including this one:



## Recommendations:

1. Cities should give adequate weight to the administrative and leadership ability of applicants for judicial appointment, and the judicial branch should take appropriate steps to educate the legal profession about the off-bench responsibilities of judicial office.
2. Consideration should be given to the advisability of developing and maintaining model ordinances for cities that operate municipal courts.
3. AOC should consult with AWC on the development of timely publications and regular education programs for judges and city officials about their respective roles and responsibilities.

# BJA Discussion Draft

## Costs and Fees

The records produced in response to this request disclosed some examples of local costs, fees, or assessments that may be inconsistent with state law. Such local assessments can alter statutory state-local revenue distribution schemes and state policy determinations.

In general, costs may be imposed only upon convicted defendants. The few statutory exceptions include: costs of deferred prosecution, pretrial supervision, or preparing and serving a warrant for failure to appear. *RCW 10.01.160*.

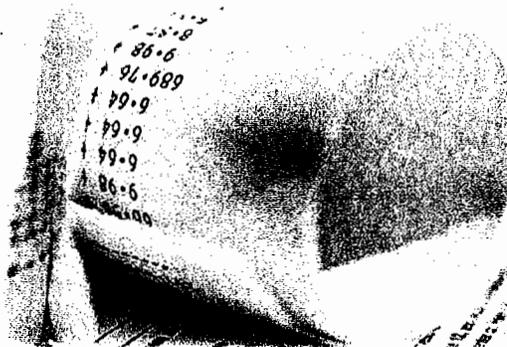
***Only costs authorized by statute may be imposed.***

The court cannot charge defendants for “expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.” *RCW 10.01.160(2)*.

Only costs authorized by statute may be imposed. *Doe v. Fife Municipal Court*, 74 Wn. App. 444, review denied, 125 Wn.2d 1925 (1995); *State v. Friend*, 59 Wn. App. 365 (1990).

The Legislature has specifically authorized a number of costs, fees, and assessments in criminal matters. Examples include:

- \$50 penalty to reimburse local governments for criminal justice expenses under *RCW 46.64.055(1)*.
- Breath test fee for DUI per *RCW 46.61.5054*.
- Crime Lab Analysis Fee per *RCW 43.43.690*.
- Domestic Violence Penalty Assessment (local option) under *RCW 10.99.080*.
- Criminal conviction fee of \$43 per case per *RCW 3.62.085*.
- Public Safety and Education Assessments as provided in *RCW 3.62.090*
- Incarceration costs, jail booking fees, warrant service fees, and probation services in *RCW 10.01.160*.



Parties must bear their own costs in infraction cases. *RCW 46.63.151*.

Some city ordinances appear to authorize or require the court to assess fees and costs that may not be consistent with those statutory limitations and merit further inquiry. Examples include:

# BJA Discussion Draft

- In addition to any penalty, the municipal court judge “shall exact” \$300 in all cases tried to a jury and \$25 in all other cases as “court costs.”
- Minimum “court costs” of \$50–\$100.
- Mandatory \$50 “per charge” investigation fund assessment on all convictions, conditional dismissals, or deferrals. The assessment cannot be suspended or waived.
- Shoplifting and “NSF check” ordinances require the court to order a donation to a local food or clothing bank and set mandatory minimum fines. The offenses are described as misdemeanors, but appear to carry no potential jail sentence. However, the ordinances purport to authorize the court to issue an arrest warrant, define the amount of bail/bond on the warrant the court will issue, and gives police (not the court) the discretion whether to release a person arrested on the warrant. *CrRLJ 2.2* authorizes the court to issue an arrest warrant only “if the sentence for the offense charged may include confinement in jail.”
- Several cities charge crime prevention assessments ranging from \$25 to \$150, and at least one has a mandatory \$100 police narcotics fund assessment to be used for investigation and prosecution of narcotics violations.
- \$100 local assessment on all alcohol-related offenses.
- \$30 witness fee for contested infractions. The ordinance was enacted because the police chief reported that “many individuals request that a police officer be present at a traffic infraction hearing even though a written report from the police officer is sufficient.” However *RCW 46.63.060* gives individuals the right to contest traffic infractions, and to “subpoena witnesses including the officer.” *RCW 46.63.151* provides that each party to a traffic infraction case is responsible for costs incurred by that party, and no costs or attorney’s fees may be awarded to either party in a traffic infraction case.

*Costs “cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.”*

Although these costs and assessments have been enacted by local ordinances, no additional research or investigation has been undertaken to determine the extent to which judges are actually assessing and collecting them. It is possible that in some cases judges have determined these ordinances are unenforceable.

**Recommendation:** Cities should review ordinances which establish local costs or fees that are to be assessed by the municipal court, and ensure that they are consistent with state law.

# BJA Discussion Draft

## **Conclusions:**

As a result of this records request, the AOC has significantly better information about part-time judges and their courts. The records supplied help create a more complete picture of the operating environment. But, structures and ordinances on the printed page do not always tell the complete story about how these dynamics play out in real life. Reality may be different —sometimes better, and sometimes worse.

Nonetheless, we believe this view provides a helpful foundation for efforts to ensure that all courts in our state can maintain the confidence of the citizenry in their ability to resolve disputes fairly and impartially.

## **Next Steps:**

AOC recommends that cities and judges work together to review and complete the actions in the attached checklist.

# BJA Discussion Draft

## Action Checklist

### Local Level:

- Cities should review their ordinances and contracts as necessary to ensure that:
  - the judge's compensation shall not be diminished during the term of office as provided in *Article IV, § 8* of the Washington Constitution;
  - judges are elected or appointed to four-year terms of office, except where a judge has been appointed to fill a vacancy in an unexpired term as provided in *RCW 3.50.093*, and
  - the judge's term of office is consistent with the four-year rotation cycle described in *RCW 3.50.040*;
  - judges are not subject to discipline or removal from office, except by action of the Commission on Judicial Conduct and the Supreme Court as provided in *Article IV, § 31* of the Washington Constitution;
  - pro tem judges will be appointed by the Presiding Judge as provided in *RCW 3.50.090* and *GR 29(f)(12)*.
- Cities should review and, if necessary, revise ordinances, contracts, job descriptions, organization charts and other documents to ensure that:
  - they appropriately depict and describe the municipal court as a separate and co-equal branch of government led by the Presiding Judge;
  - courts are administered and staffed by persons who operate under the direction and supervision of the Presiding Judge;
  - no provisions impair or appear to compromise the judge's fairness and independence (i.e., mandating apparently preferential treatment, restricting the ability of the judge to exercise appropriate discretion in individual cases, etc.).
- Cities should give adequate weight to the administrative and leadership ability of applicants for judicial appointment, and the judicial branch should take appropriate steps to educate the legal profession about the off-bench responsibilities of judicial office.
- Cities should review ordinances which establish local costs or fees that are to be assessed by the municipal court, and ensure that they are consistent with state law.

### State Level:

- The AOC, in consultation with AWC, should determine whether legislation should be proposed to amend or repeal *RCW 3.50.095* regarding removal of a municipal judge from office.
- The AOC should work with AWC, the District and Municipal Court Judges' Association (DMCJA), and the Board for Judicial Administration (BJA) to analyze the advisability of contracts for judicial services and whether to recommend changes to *GR 29*.
- The AOC, in consultation with AWC, should determine whether legislation should be proposed to amend *RCW 3.50.090* to clarify authority for the appointment of judges pro tem when the city is without a presiding judge due to resignation, removal from office, suspension by the Commission, death, or incapacity.
- AOC should consult with AWC on the development of timely publications and regular education programs for judges and city officials about their respective roles and responsibilities.
- Consideration should be given to the advisability of developing and maintaining model ordinances for cities that operate municipal courts.

# BJA Discussion Draft

## Appendix 1: AOC Letter to Presiding Judges

February 4, 2011

Honorable XXX  
XXX Municipal Court  
XXX St  
XX, WA XXXXX-XXXX

Dear Judge XX:

The AOC has been contacted by several municipal courts recently regarding issues of judicial independence and comity relative to judicial salaries, terms of employment and the structure of the court within city government. In the past we have tended to respond to these issues on an ad hoc basis, but now believe it is time to develop a fuller understanding of these issues across the state. Therefore, under RCW 2.56.030 and Chapter 42.56 RCW, the Administrative Office of the Courts (AOC) is requesting copies of certain records related to compensation, terms of employment, and the structure of the court within city government from cities served by appointed municipal court judges.

We plan to direct the request to the city public records officer and to limit the request to materials held by the city's executive and legislative branches, so it should not be a burden on you or your court. It is also our hope that the request is not a burden on others in local government, as it does not require the creation of new records and most of the information should be readily available.

If you have questions, please contact Dirk Marler, AOC Judicial Services Division Director, at [dirk.marler@courts.wa.gov](mailto:dirk.marler@courts.wa.gov) or 360-705-5211.

Sincerely,



Jeff Hall  
State Court Administrator

# BJA Discussion Draft

## Appendix 2: AOC Records Request

February 7, 2011

Public Records Officer  
City of Aberdeen  
200 E Market St  
Aberdeen, WA 98520

Re: Request for records

Sir or madam:

Please provide the following public records if they are in the possession or control of the legislative or executive branches of your city government:

1. Any records that establish the salary, wages, compensation, benefits, working conditions, or terms or conditions of employment for any municipal court judge, court commissioner, or judge pro tempore who is serving or authorized to serve in such capacity during the calendar year 2011. This request includes, but is not limited to, contracts, memoranda of understanding, appointment letters, ordinances, or municipal code provisions. It is not intended to include payroll records.
2. Resolutions, ordinances, contracts, or other records relating to the appointment or term of office of any municipal court judge serving on or after January 1, 1986.
3. Records that describe, depict, or relate to the following, including, but not limited to, organizational charts and job descriptions:
  - a. the current jurisdiction, role or authority of the municipal court or its judicial officers
  - b. the current authority or roles of officials or employees of city government regarding the business or operation of the municipal court and any city officers or employees who perform services in or for the municipal court
  - c. current process and procedure of the municipal court. Do not include municipal court rules adopted pursuant to General Rule 7.
4. Resolutions, ordinances, or other records that set the amount of or govern the current imposition, collection, or distribution of court costs or other fees or assessments by the municipal court.

Please provide the information in the following ways, listed in order of preference:

1. Electronic records transmitted by e-mail to: [caroline.tawes@courts.wa.gov](mailto:caroline.tawes@courts.wa.gov).
2. Electronic records on a DVD, CD, thumb drive or other removal media. Please send to:

Caroline Tawes  
Administrative Office of the Courts  
PO Box 41174  
Olympia, WA 98504-1174

If you have questions or need further clarification of this request, please contact me at 360-705-5211 or [dirk.marler@courts.wa.gov](mailto:dirk.marler@courts.wa.gov).

Dirk A. Marler  
Director, Judicial Services Division

# BJA Discussion Draft

## Appendix 3: Amendment to Request

February 16, 2011

Public Records Officer  
XXX  
XXX

Dear Sir or Madam:

You recently received a public records request from my office relating to the operation of the municipal court within your city. Based on a conversation with Mr. Mike McCarty with the Association of Washington Cities (AWC), this letter is intended to provide you with some context for the request and to explain why it was presented as a public records request.

The Administrative Office of the Courts (AOC) provides support and guidance to the state's trial courts. The AOC is often the place where judges and court employees turn when they are presented with questions of practice, responsibility or authority, particularly on issues that relate to the court's relationship with the legislative and executive branches of local government. Generally speaking, specific questions and issues are addressed on an ad hoc basis as questions arise. We have, however, become increasingly aware that a number of questions regarding municipal courts appear to arise with some frequency. The records request is intended to help us understand whether the particular issues presented are, in fact, fairly infrequent and should continue to be addressed on an ad hoc basis or whether the issues warrant more systemic attention. We made the same request of each city served by a part-time appointed municipal court judge.

The public records request you received is intended to gather information regarding the following types of issues which have been raised by municipal court employees and judges:

- Agreements or ordinances defining the relationships between municipalities and judicial officers that are inconsistent with court rules and statutes.
- Local ordinances which provide for the appointment of pro tem judges in a manner inconsistent with statutory provisions.

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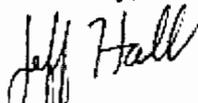
- Terms of office for municipal court judges which are not consistent with the four year cycle established in statute.
- Reporting relationships between judges and court staff and managers within the executive and legislative branches which are inconsistent with statute and court rule.
- The enactment of local fees or fines which do not appear to be authorized by statute and appear to be intended to operate in lieu of authorized fees and fines which are subject to division with the state.

These are the issues that appear to arise with some level of frequency and, in particular, have arisen recently and prompted this request for information. Notwithstanding the recognition that it was important to better understand the prevalence of these issues, it was only following several weeks of debate and deliberation that the public records request you received was issued. We are very appreciative of the strain that public records requests can place on staff resources and worked with our public records officer to craft the request as narrowly as possible. Please be assured that we are more than willing to work with you to clarify our request and ensure that no more time than is necessary is taken to respond. In that vein, enclosed is an amendment to the original request, narrowing the scope of a portion of the request.

Finally, please allow me to address why the information request was sent to you in the form of a public records request. Again, in conversation with our public records officer, it became clear that even an informal letter would constitute a public records request. Therefore, we felt it was in everyone's interest to simply make clear from the onset that we were making a public records request. I apologize that the end result was an unadorned and rather direct public records request without further explanation or context.

I hope the above serves to provide you with some greater context regarding our request and I thank you and your staff for your time in assisting us with developing this information. It is my intent to continue the dialogue with Mr. McCarty at AWC as we learn more about how municipal courts operate within city governments and explore and develop appropriate responses to what we learn.

Sincerely,



Jeff Hall

Jeff Hall  
State Court Administrator

Enclosure

cc: Mr. Mike McCarty, AWC

# BJA Discussion Draft

## Amendment to the February 7, 2011 Administrative Office of the Courts Public Records Request

Please accept this amendment to the Public Records Request previously submitted by the Administrative Office of the Courts.

The original submission included a request for the following:

- Resolutions, ordinances, contracts, or other records relating to the appointment or term of office of any municipal court judge serving on or after January 1, 1986.

Please replace that request with:

- If the municipal court was established prior to and has been in continuous existence since January 1, 1986 please provide any single record that documents the date of appointment and term of office of the incumbent municipal court judge.
- If the municipal court was established after January 1, 1986, please provide any single record that documents the effective date of the creation of the court and any single record that documents the appointment and term of office of the incumbent municipal court judge.

This amendment should serve to reduce the workload required to fulfill the intent of our request which is to determine whether current municipal court judge terms are consistent with RCW 3.50.040.

If you have questions or need further clarification of this request, please contact Dirk Marler at (360) 705-5211 or [dirk.marler@courts.wa.gov](mailto:dirk.marler@courts.wa.gov).

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## Appendix 4: General Rule 29

### RULE 29. PRESIDING JUDGE IN SUPERIOR COURT DISTRICT AND LIMITED JURISDICTION COURT DISTRICT

#### (a) Election, Term, Vacancies, Removal and Selection Criteria--Multiple Judge Courts.

(1) *Election.* Each superior court district and each limited jurisdiction court district (including municipalities operating municipal courts) having more than one judge shall establish a procedure, by local court rule, for election, by the judges of the district, of a Presiding Judge, who shall supervise the judicial business of the district. In the same manner, the judges shall elect an Assistant Presiding Judge of the district who shall serve as Acting Presiding Judge during the absence or upon the request of the Presiding Judge and who shall perform such further duties as the Presiding Judge, the Executive Committee, if any, or the majority of the judges shall direct. If the judges of a district fail or refuse to elect a Presiding Judge, the Supreme Court shall appoint the Presiding Judge and Assistant Presiding Judge.

(2) *Term.* The Presiding Judge shall be elected for a term of not less than two years, subject to reelection. The term of the Presiding Judge shall commence on January 1 of the year in which the Presiding Judge's term begins.

(3) *Vacancies.* Interim vacancies of the office of Presiding Judge or Acting Presiding Judge shall be filled as provided in the local court rule in (a)(1).

(4) *Removal.* The Presiding Judge may be removed by a majority vote of the judges of the district unless otherwise provided by local court rule.

(5) *Selection Criteria.* Selection of a Presiding Judge should be based on the judge's 1) management and administrative ability, 2) interest in serving in the position, 3) experience and familiarity with a variety of trial court assignments, and 4) ability to motivate and educate other judicial officers and court personnel. A Presiding Judge must have at least four years of experience as a judge, unless this requirement is waived by a majority vote of the judges of the court.

#### COMMENTARY

It is the view of the committee that the selection and duties of a presiding judge should be enumerated in a court rule rather than in a statute. It is also our view that one rule should apply to all levels of court and include single judge courts. Therefore, the rule should be a **GR** (General Rule). The proposed rule addresses the process of selection/removal of a presiding judge and an executive committee. It was the intent of the committee to provide some flexibility to local courts wherein they could establish, by local rule, a removal process. Additionally, by delineating the selection criteria for the presiding judge, the committee intends that a rotational system of selecting a presiding judge is not advisable.

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**(b) Selection and Term--Single Judge Courts.** In court districts or municipalities having only one judge, that judge shall serve as the Presiding Judge for the judge's term of office.

**(c) Notification of Chief Justice.** The Presiding Judge so elected shall send notice of the election of the Presiding Judge and Assistant Presiding Judge to the Chief Justice of the Supreme Court within 30 days of election.

**(d) Caseload Adjustment.** To the extent possible, the judicial caseload should be adjusted to provide the Presiding Judge with sufficient time and resources to devote to the management and administrative duties of the office.

## COMMENTARY

Whether caseload adjustments need to be made depends on the size and workload of the court. A recognition of the additional duties of the Presiding Judge by some workload adjustment should be made by larger courts. For example, the Presiding Judge could be assigned a smaller share of civil cases or a block of time every week could be set aside with no cases scheduled so the Presiding Judge could attend to administrative matters.

**(e) General Responsibilities.** The Presiding Judge is responsible for leading the management and administration of the court's business, recommending policies and procedures that improve the court's effectiveness, and allocating resources in a way that maximizes the court's ability to resolve disputes fairly and expeditiously.

**(f) Duties and Authority.** The judicial and administrative duties set forth in this rule cannot be delegated to persons in either the legislative or executive branches of government. A Presiding Judge may delegate the performance of ministerial duties to court employees; however, it is still the Presiding Judge's responsibility to ensure they are performed in accordance with this rule. In addition to exercising general administrative supervision over the court, except those duties assigned to clerks of the superior court pursuant to law, the Presiding Judge shall:

- (1) Supervise the business of the judicial district and judicial officers in such manner as to ensure the expeditious and efficient processing of all cases and equitable distribution of the workload among judicial officers;
- (2) Assign judicial officers to hear cases pursuant to statute or rule. The court may establish general policies governing the assignment of judges.;
- (3) Coordinate judicial officers' vacations, attendance at education programs, and similar matters;
- (4) Develop and coordinate statistical and management information;

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(5) Supervise the daily operation of the court including:

(a) All personnel assigned to perform court functions; and

(b) All personnel employed under the judicial branch of government including but not limited to working conditions, hiring, discipline, and termination decisions except wages, or benefits directly related to wages; and

(c) The court administrator, or equivalent employee, who shall report directly to the Presiding Judge.

## COMMENTARY

The trial courts must maintain control of the working conditions for their employees. For some courts this includes control over some wage-related benefits such as vacation time. While the executive branch maintains control of wage issues, the courts must assert their control in all other areas of employee relations.

With respect to the function of the court clerk, generally the courts of limited jurisdiction have direct responsibility for the administration of their clerk's office as well as the supervision of the court clerks who work in the courtroom. In the superior courts, the clerk's office may be under the direction of a separate elected official or someone appointed by the local judges or local legislative or executive authority. In those cases where the superior court is not responsible for the management of the clerk's office the presiding judge should communicate to the county clerk any concerns regarding the performance of statutory court duties by county clerk personnel.

A model job description, including qualification and experience criteria, for the court administrator position shall be established by the Board for Judicial Administration. A model job description that generally describes the knowledge, skills, and abilities of a court administrator would provide guidance to Presiding Judges in modifying current job duties/responsibilities or for courts initially hiring a court administrator or replacing a court administrator.

(6) Supervise the court's accounts and auditing the procurement and disbursement of appropriations and preparation of the judicial district's annual budget request;

(7) Appoint standing and special committees of judicial officers necessary for the proper performance of the duties of the judicial district;

(8) Promulgate local rules as a majority of the judges may approve or as the Supreme Court shall direct;

(9) Supervise the preparation and filing of reports required by statute and court rule;

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(10) Act as the official spokesperson for the court in all matters with the executive or legislative branches of state and local government and the community unless the Presiding Judge shall designate another judge to serve in this capacity;

## COMMENTARY

This provision recognizes the Presiding Judge as the official spokesperson for the court. It is not the intent of this provision to preclude other judges from speaking to community groups or executive or legislative branches of state or local government.

(11) Preside at meetings of the judicial officers of the district;

(12) Determine the qualifications of and establish a training program for pro tem judges and pro tem court commissioners; and

(13) Perform other duties as may be assigned by statute or court rule.

## COMMENTARY

The proposed rule also addresses the duties and general responsibilities of the presiding judge. The language in subsection (d), (e), (f) and (g) was intended to be broad in order that the presiding judge may carry out his/her responsibilities. There has been some comment that individual courts should have the ability to change the "duties and general responsibilities" subsections by local rule. While our committee has not had an opportunity to discuss this fully, this approach has a number of difficulties:

- It would create many "Presiding Judge Rules" all of which are different
- It could subject some municipal and district court judges to pressure from their executive and/or legislative authority to relinquish authority over areas such as budget and personnel
- It would impede the ability of the BJA through AOC to offer consistent training to incoming presiding judges

The Unified Family Court subgroup of the Domestic Relations Committee suggested the presiding judge is given specific authority to appoint judges to the family court for long periods of time. Again the committee has not addressed the proposal; however, subsections (e) and (f) do give the presiding judge broad powers to manage the judicial resources of the court, including the assignment of judges to various departments.

**(g) Executive Committee.** The judges of a court may elect an executive committee consisting of other judicial officers in the court to advise the Presiding Judge. By local rule, the judges may provide that any or all of the responsibilities of the Presiding Judge be shared with the Executive Committee and may establish additional functions and responsibilities of the Executive Committee.

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## COMMENTARY

Subsection (g) provides an option for an executive committee if the presiding judge and/or other members of the bench want an executive committee.

**(h) Oversight of judicial officers.** It shall be the duty of the Presiding Judge to supervise judicial officers to the extent necessary to ensure the timely and efficient processing of cases. The Presiding Judge shall have the authority to address a judicial officer's failure to perform judicial duties and to propose remedial action. If remedial action is not successful, the Presiding Judge shall notify the Commission on Judicial Conduct of a judge's substantial failure to perform judicial duties, which includes habitual neglect of duty or persistent refusal to carry out assignments or directives made by the Presiding Judge, as authorized by this rule.

**(i) Multiple Court Districts.** In counties that have multiple court districts, the judges may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

**(j) Multiple Court Level Agreement.** The judges of the superior, district, and municipal courts or any combination thereof in a superior court judicial district may, by majority vote of each court, elect to conduct the judicial business collectively under the provisions of this rule.

**(k) Employment Contracts.** A part-time judicial officer may contract with a municipal or county authority for salary and benefits. The employment contract shall not contain provisions which conflict with this rule, the Code of Judicial Conduct or statutory judicial authority, or which would create an impropriety or the appearance of impropriety concerning the judge's activities. The employment contract should acknowledge the court is a part of an independent branch of government and that the judicial officer or court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct and Washington State Court rules.

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## Appendix 5: Ethics Advisory Opinion 99-09

### **Question**

(1) May a judge, consistent with imperatives of the Code of Judicial Conduct, execute a contract for employment to serve as a municipal court judge which contains any of the following provisions:

- (a) Employees of this court will report to the court administrator who will operate under the general direction of the city manager, with guidance from the judge;
- (b) The judge will undergo regular performance reviews by the city manager;
- (c) The judge will communicate with police and other city agencies about court cases.

(2) If a judge may enter into such an employment contract, are there limitations imposed on the judge by the Code of Judicial Conduct?

(3) Are there restrictions imposed on the judge beyond those embodied in the Code of Judicial Conduct?

### **Answer**

The central question raised by the request is whether a judicial officer may enter into an employment contract with a city to be a municipal court judge if: (a) court employees will report to the court administrator who will report to the city manager; (b) the judge will undergo performance reviews by the city manager; and (c) the judge will communicate with police and other city agencies about court cases.

A judicial officer may contract with a municipality to serve as a municipal court judge. However, the contract may not contain provisions which would create an impropriety or the appearance of impropriety concerning the judge's activities. Some examples of inappropriate contract provisions are having: (1) the court administrator and court employees report to the court administrator and not to the judge; (2) the performance reviews conducted by the city manager, a member of the municipal executive branch; and (3) the judicial officer discuss court cases with members of law enforcement and other municipal court agencies. The employment contract should acknowledge the court is a part of an independent branch of city government and that the judicial officer and court employees are bound to act in accordance with the provisions of the Code of Judicial Conduct.

Canon 3(B)(1) and (2) require that judges diligently discharge their administrative responsibilities, facilitate the performance of the administrative responsibilities of court officials, and require their staff and court officials subject to their direction and control to observe the standards of fidelity and diligence that apply to them. In addition, Canon 3(A)(2) requires judges to maintain order and decorum in proceedings before them. The contract provision requiring employees to report to the court administrator who will operate under the general direction of the city manager with guidance from the judge would

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interfere with the judge's duties to comply with the foregoing provisions. This part of the contract also intrudes on the independence of the judiciary.

CJC Canon 2(A) provides in part that judges should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2(B) provides in part that judges should not allow relationships to influence their judicial conduct or judgment. It also provides that judges may not permit others to convey the impression that they are in a special position to influence them. That fact that a judicial officer will undergo performance reviews by the city manager may either cause the judicial officer to violate these provisions or create the reasonable appearance that there is such a violation. It also intrudes on the independence of the judiciary.

The employment contract calls for the judge to communicate with police and other city agencies about court cases. This is prohibited by CJC Canon 3(A)(4) which provides in part that a judge may neither initiate nor consider ex parte or other communications concerning a pending or impending matter.

The final question addresses other restrictions which may be imposed on the municipal court judge beyond those embodied in the Code of Judicial Conduct. GR 10 provides in part that the Ethics Advisory Committee is designated as the body to give advice with respect to the application of the Code of Judicial Conduct to officials of the judicial branch as defined in Article IV of the Washington Constitution. Therefore, the last question is beyond the scope of the committee's charge.

The Supreme Court adopted a new Code of Judicial Conduct effective January 1, 2011. In addition to reviewing the ethics advisory opinions, the following should be noted:

CJC 2.5  
CJC 2.12  
CJC 2.4  
CJC 1.2  
CJC 1.3  
CJC 2.9

Opinion 99-09

12/7/1999