

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

Jenny Lynn Veca, Appellant
v.
Aaron Keyes Prichard, Respondent

ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR BENTON COUNTY

Benton County Cause No. 14-3-00647-1

OPENING BRIEF OF APPELLANT

Case Number: 356850

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I. Introduction

This appeal seeks to remedy the trial court's abuse of discretion with regard to several issues in the Parenting Plan and the Child Support Order. The Trial court abused its discretion in failing to place .191 restriction on a parent with long history of police involvement, protection orders, and violations of protection orders, as well as a history of drug use that includes arrests for possible drug dealing. It abused its discretion when it refused to allocate *any* Jewish holidays because the holidays are "so numerous that they would make any parenting plan unworkable." PR 1066. In addition, this appeal seeks to remedy trial court's abuse of discretion with its use of "other" provisions in the parenting plan to place arbitrary restrictions on the parents, that have nothing to do with the best interest of the children. Finally, this appeal seeks to remedy the trial court's abuse of discretion when it failed to follow the law and require long-distance transportation be paid for proportionately and instead put most of the burden on mother.

The parties are Jenny Thurston (f/k/a Veca)¹, appellant, and Aaron Prichard, Respondent. Jenny, is about 5'5" inches and around 120 pounds (CP 582), Aaron is almost a foot taller and 75 pounds heavier at 6'3" and approximately 195 pounds (CP 093). They have two children together, their

¹ For clarity, this brief will refer to the parties by their first names, as Ms. Thurston no longer uses the last name Veca.

son, M.P. (age 9, born 12/08) and their daughter, R.P. (age 4, born 5/12). Jenny has an older son from a prior relationship, Jerom Chapman, who was raised with Aaron as his stepdad. Jarom is very close with his siblings and his mother. He and Aaron no longer have a relationship. Jenny and the children have resided in Nevada for the last three years. Aaron continues to reside in the Tri-Cities.

II. Assignments of Error

The trial court made several errors in its final parenting plan:

1. The Trial court erred by failing to place .191 restrictions on the father.
2. The Trial court erred by refusing to allocate Jewish holidays because there are “so numerous that they would make any parenting plan unworkable.”
3. The Trial court abused its discretion in the “Others” provisions by including items that were not based on the best interest of the children or in contradiction to statute.
4. The Trial court abused its discretion in failing to allocate travel expense proportionately.

III. Issues Pertaining to Assignments of Error

1. Did the trial court abuse its discretion by failing to impose .191 restrictions against the father despite a long history of police involvement, protection orders, violations, and CPS involvement and an undisputed history and continuing abuse of drugs (Assignment of Error 1)?

2. Did the trial court improperly impose restrictions on Jenny's ability to practice her religion and share it with her children when he refused to allocate any of the Jewish holidays? (Assignment of Error 2)

3. Did the trial court exceed its authority by requiring the parties to include his opinions about the parties in any future mental health treatment they seek? (Assignment of Error 3)

4. Did the trial court improperly impose an automatic finding of a "substantial change of circumstances" as sanction for reporting to someone other than him, including law enforcement, medical providers, or CPS any concerns related to the children and Aaron and as a sanction for either party talking negatively about the other parent? (Assignment of Error 3)

5. Did the trial court create a Skype call requirement that is inconsistent with the best interest of the children due to its inflexibility and requirement that the children be at home 3 times a week at 5:00 p.m. for the call? (Assignment of Error 3)

6. Did the trial court err when it failed to follow the statute with regard to the allocating travel expenses proportionately between the parents? (Assignment of Error 4.)

IV. STATEMENT OF THE CASE

A. The Parties' Relationship

The parties had a marriage ceremony but never filed a marriage certificate on August 21, 2004 in San Diego, California.² CP 962.

The parties had a violent relationship. According to Aaron, while living in San Diego, the police came to the came to their home at least ten to fifteen times. RP 865. In March 2010, Jenny reported to CPS that Aaron choked her, pushed her and knocked her to the ground. CP 290. According to a declaration by Jarom Chapman (CP 573), Jenny's oldest son and Aaron's former stepson, he heard a loud rustling noise and then his mom yelling for help. (CP 573.) Jarom came into the kitchen and saw Aaron standing over Jenny, who was also holding her youngest son, and Aaron looked like he was trying to attack Jenny. Jarom intervened by throwing Aaron off long enough to allow Jenny to get away and then Jarom called the police. CP 573 and CP 290-291.

Aaron was charged with domestic violence in 2011 in San Diego, but chargers were dropped. CP 571. On January 11, 2011, Aaron requested the court drop the restraining order he had against Jenny. CP 721. Jenny was

² While appellant believes the court erred in its interpretation of California law and determining that the parties were legally married, the impact of that legal error is less significant than the impact of the errors related to the parenting and thus this appeal focuses on the parenting plan.

granted a temporary restraining order against Aaron in California on January 12, 2011 through February 1, 2011. CP 716.

On January 21, 2011, San Diego CPS found that the father is violent towards the mother and encouraged a safety plan whether the mother moved out of the state. CP 292. On February 25, 2011, police arrested Aaron for battery of Jenny and an emergency protection order was entered CP 092-93. Then three days later, CPS was called related to an argument between the parties and Aaron pushing Jenny while they were arguing. On March 24, 2011, Jenny was in the hospital as a victim of violence related to her shoulder and right ear. CP 292.

A Domestic violence protection order was entered in California on April 12, 2011, prohibiting Aaron from contact with Jenny from April 12, 2011 to April 14, 2014. CP 704. On June 15, 2011, Jenny was granted an emergency move away order. CP 709.

Between January 2012 and May 2012, Jenny moved to Washington and Aaron followed. CP 293. They began living together again. CP 293.

On July 8, 2012 Aaron was charged with violating a no contact order, assault. CP 287. Aaron plead guilty to violating a protection order. CP 571.

Jenny filed a petition to invalidate their marriage on July 22, 2014 by Jenny, the same day that Aaron left the Tri-Cities for San Diego. RP 13,

lines 8-20. Aaron moved back to the Tri-Cities in January 2015. RP 13, line 20; RP 1015, lines 8-12 Aaron did not come back to the Tri-Cities to see his children during the entire time he lived in San Diego. RP 1015, lines 8-12.

On May 25, 2015, during Aaron's residential time with the children, the police were called on an allegation that Aaron would not allow Jenny and the children to come home. CP 120-121. The police arrived and found Aaron and Jenny in bed. Jenny said she was not with him of her own free will. CP 121. Jenny testified that Aaron drugged and raped her. RP 218, lines 6-8. RP 225, lines 17-24. Jenny also testified that her multiple sclerosis had been exacerbated by the heat and that Aaron was using the heat to intentionally wear her down. RP 631-633.³ Aaron was arrested. The next day the parties moved to dismiss the case, something Jenny described as feeling forced into. RP 147-148.

Two days later, Aaron filed a police report against Jenny regarding his phones, computer, and some cash that he had given her while he was in prison. CP 63, 69. She entered an Alford plea of guilty on those charges. CP 534-544.

Jenny sought services from Domestic Violence Services of Benton and Franklin County from June 2015 through August 2015.

³ For some reason the court did not seem to believe Jenny had M.S. or that MS impacted her. Even though a year after this incident Jenny was hospitalized for five days related to an M.S. exacerbation

On July 1, 2015, Jenny called the police about phone harassment by Aaron. CP 553. Aaron created a Facebook profile, “Luna Bella” and posted to Facebook pages that Jenny managed 785-80. “Luna Bella” also posted numerous comments about the divorce that conveyed hostility towards Jenny. CP 797, 800-809. Aaron created a website to display his art, which included “death art” about Jenny and her new partner, Casey Thurston, and posted the art to social media. CP 813-The social media post included a commentary where Aaron responds to a comment eliminating any possibility that the artwork was not about Jenny. 818-820.

Jenny moved to Nevada in July 2015 (CP 307) where she reported Aaron’s continued harassment to the Henderson, Nevada police. CP 555, 560.

After Jenny moved, Aaron moved to vacate the dismissal and reinstate the family law case on July 13, 2015. CP 307.

On October 28, 2015, Aaron plead guilty for a second time to violating a protection order. CP 563. On October 28, 2015, Jenny was granted a five-year protection order against Aaron. CP 564.

Jenny took M.P. to get counseling from April 4, 2016 through January 13, 2017. CP 692-693. He was diagnosed with Child Affected by Parental Relationship Distress (Intimate Partner Violence). Post Traumatic Stress Disorder. CP 693. Jenny also took R.P. to counseling and she was

diagnosed with Child Affected by Parental Relationship Distress (Intimate partner violence); 309.4 Adjustment disorder with mixed disturbance of emotions and conduct (as of the time that contact with natural father was initiated) CP 695.

On September 15, 2016, Safe House a domestic violence organization noted that Jenny has been seen weekly since February 11, 2016 and is being treated for PTSD and high anxiety concerning her past domestic violence. CP 698.

The dissolution case proceeded to go through Benton County. On October 4, 2016, the court ordered that the children would stay in Nevada and ordered three Skype calls per week. CP 314 There were issues with the Skype call, with Aaron alleging that Jenny was not picking up, Jenny alleging that Aaron was calling under different accounts and she did not know it was him calling at the different account, and Aaron not making calls. RP 450-51, 457-58. Jenny was found in contempt twice related to the Skype calls. RP 1062 lines 5-7.

On February 15, 2017, Jenny filed for an Order of Protection and a Temporary order of protection was granted. CP 328. The next day, Jenny reported that the court order was violated. CP 328. On February 28, 2017, this Protection Order was modified based on a lack of substantiated evidence. CP 331.

On June 20, 2017, John Pallett, the therapist for the children at Neubauer Mental Health called CPS to report concerns about physical abuse of M.P. by Aaron due to report of excessive spanking and that a hospital visit revealed that M.P. had an abscess in his rectal area near his anus. CP 348.

Trial occurred in August 2017. The court issued its oral opinion on September 25, 2017. RP 1001-73.⁴ Final orders were entered on October 9, 2017, which incorporated its oral rulings by reference, and in fact required the parties provide a copy of the oral ruling to future medical providers. CP 949-71.

In addition to the police involvement in the relationship, Aaron has been arrested a couple of times related to marijuana and other drugs. In December 8, 2010, he was cited for possession. CP 290. He was arrested with marijuana and other drugs on June 25, 2015. CP 306. Aaron tested positive for Cannabinoids and THC on September 26, 2017. CP 875

V. ARGUMENT

⁴ For the court's convenience, the Parenting Plan, Child Support Order, and the court's oral ruling, with referenced sections highlighted, are included as an appendix, along with a law review cited in this brief.

1. Standard of Review

Trial court rulings about the provision of a parenting plan are reviewed for abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997) (citing *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993)). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Littlefield*, 133 Wn.2d at 46-47 (citing *Kovacs*, 121 Wn.2d at 801). A decision is manifestly unreasonable if, based on the facts and the applicable legal standard, the decision is outside the range of acceptable choices. *In re Parentage of Schroeder*, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001) (citing *Littlefield*, 133 Wn.2d at 47). *See also, In re Custody of Halls*, 126 Wn. App. 599, 606, 109 P.3d 15, 19 (2005).

Appellate courts treat trial court findings of fact as verities on appeal so long as they are supported by substantial evidence. *In re Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041, 1048 (2017) (citing *In re Welfare of Sego*, 82 Wn.2d 736, 740, 513 P.2d 831 (1973)). Evidence is “substantial” when it is “sufficient to persuade a fair-minded person of the truth of the matter asserted.” *Id.*

2. The Trial court erred by failing to place .191 restrictions on the father connected to his history of domestic violence and repeated violations of protection orders and his undisputed history and ongoing drug abuse.

A. *The trial court abused its discretion when it refused to enter .191 restrictions given the long history of police involvement, protection orders, protection order violations, and CPS involvement.*

The statute requires courts to enter .191 restrictions when there is a history of domestic violence. RCW 26.09.191. A trial court abuses its discretion if it makes a finding there is domestic violence but does not impose restrictions. *In re Parenting & Support of L.H.*, 198 Wn. App. 190, 195, 391 P.3d 490, 493 (2016) (trial court abused its discretion when it declined to enter a finding that a parent had had a domestic violence history because it wanted to protect him from collateral consequences). *See In re Marriage of C.M.C.*, 87 Wn. App. 84, 88, 940 P.2d 669, 671 (1997) (noting the Parenting Act limits the trial court's ability to formulate parenting plans when domestic violence is present).

The instant case is similar to *In re L.H.*, because despite substantial evidence and other courts' determining that there was domestic violence or protection order violations and CPS findings of domestic violence that this court is unwilling to enter a finding of domestic violence.

The trial court's refusal to recognize the findings of other courts and CPS was an abuse of discretion, resulting in the ultimate error of failing to

enter a finding regarding a history of domestic violence and entering the required .191 restrictions, both with regard to the residential schedule and sole decision making.

In *Rodriguez v. Zavala*, the Washington State Supreme Court reiterated that of domestic violence as an offense against our ordered society and we have committed to providing victims the maximum protection from abuse which the law and those who enforce the law can provide. *Rodriguez v. Zavala*, 188 Wn.2d 586, 398 P.3d 1071 (2017), (Citing RCW 10.99.010). In that case, the appellate court overturned the trial court's refusal to include family members in a domestic violence protection order. It noted that the standard for review with regard to a lower court's grant or denial of a protection order is reviewed for an abuse of discretion. *Id.* (Citing *Hecker v. Cortinas*, 110 Wn. App. 865, 869, 43 P.3d 50 (2002)).

In this case, the trial court essentially over turned other courts' protection orders (the 2011 California Emergency Protection order (CP 092-93, the California DVPO (CP 704), the 2015 Washington No Contact Order CP 564) based on its *de novo* review. The trial court erred in applying a *de nove* type review instead of reviewing the courts' orders for an abuse of discretion.

The trial court also usurped the CPS report and findings of that there was domestic violence in the home. There is a 2011 CPS finding that "DV

exists between the parents; Fa – is violent towards mother and the police has [sic] been called” (CP 479)

In addition, there was a significant amount of other evidence demonstrating that the parties were not having any kind of common domestic dispute. Aaron acknowledges that in California, the police came to the parties’ residence 10-15 times. It is unclear how many times the police were called to the family’s home while they lived in Washington. It undisputed that California courts entered Domestic Violence Protection Order protecting Jenny from Aaron on April 12, 2011. CP 704.

It is undisputed that a Washington Court entered a No Contact Order prohibiting Aaron from coming within 250 of Jenny on October 28, 2015. CP 564. After the No Contact order was in place, the court opined that Aaron had gone online as Luna Bella and made posts that “clearly went too far.” RP 1046-1047. The court also noted that Aaron violated the No Contact order on multiple occasions and was arrested twice. RP 1046, lines 3-4.

Jenny provided her medical records documenting that she was receiving treatment for Post-Traumatic Stress Disorder.⁵ CP 004. CP 006-

⁵ One of the comments the court made about this report was that Jenny did not disclose that her drug use. However, she also provided a substance abuse subtle screening inventory that determined she had a low probability of having a substance abuse disorder. CP 002.

009. That she was receiving services from a domestic violence agency to cope with domestic violence. CP 526. She also provided documentation of the services she was ensuring the children received related to their experience of domestic violence. They received services from at least April 14, 2016 through January 13, 2017. CP 692-95.

The court acknowledged that Jenny is “wonderful with Max except when she is thinking about or talking about Mr. Prichard.” RP 1060. lines 11-12.

Inexplicably, the trial court, disagreeing with two California decisions, a no contact order in Washington and CPS finding stated, “I don’t think there was any abuse.” RP 1056, line 22. See also RP 1033-1034. The court concluded that there was no domestic violence and that the problem was, Jenny’s “perception of Mr. Prichard and how that is now in her mind. And I, quite frankly, don’t believe that her fears are rationally based.” RP 1050, lines 5-8. The court made this finding despite the extensive history of police involvement, CPS reports, and domestic violence protection order/no contact orders.

Assuming arguendo, that a Washington trial court had the authority to overturn another state’s findings and conclusion in ordering a domestic violence protection order, it would surely need to apply the same analysis as an appellate court is required to use when determining whether to

overturn a trial court's decision – that the court abused its discretion. The trial court did not perform this analysis. Instead, it simply reviewed the issue *de novo* and made its own determination that domestic violence did not occur. This is an abuse of discretion on the part of the trial court in this case.

The statute regarding restrictions on residential time is not permissive, it states, “The parent’s residential time with the child shall be limited if it is found... (iii) a history of acts of domestic violence as defined in RCW 26.50.010(3).” RCW 26.09.191, RCW 26.50.010(3) defines domestic violence as, “(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members[.]” The existence of a domestic violence protection order meets this criteria. As noted in *Rodriguez*, a person requesting a domestic violence protection order must allege that physical harm, bodily injury or assault occurred. California’s laws are similar. Cal Fam Code § 6200, et. seq.. When a court grants an order, it is because the court concluded the petitioning party met their burden. The existence of multiple protection orders and violations of the orders throughout the parties’ relationship falls squarely within the requirement to demonstrate a history of domestic violence, which required the court to enter.191 findings against Aaron. The cannot simply overturn the findings

of other courts and unilaterally conclude they were erroneously entered by finding that there was no domestic violence.

Further once this finding is made, the court is required to limit decision making. *Marriage of Mansour*, 126 Wn. App. 1, 10, 106 P.3d 768, 773 (2004). (RCW 26.09.191 is unequivocal, once a finding of domestic violence under .191 has been found, “it must not require mutual decision-making and it must limit the abusive parent's residential time with the child.”)

By refusing to honor the prior court’s orders, and ignoring the long history of police intervention, and CPS reports, the court found that Aaron did not have a history of domestic violence, which led the court not to impose .191 restriction against Aaron. This was an abuse of discretion, both because the court did have the authority to overturn the findings of other courts and because the finding is not supported by substantial evidence.

B. The trial court abused its discretion by failing to place restrictions on Aaron connected to his undisputed history and current drug abuse.

A parent’s involvement or conduct may have an adverse effect on the child’s best interests, and the court may preclude or limit any provisions of the parenting plan if a parent has a long-term impairment resulting from

drug, alcohol, or other substance abuse that interferes with the performance of parenting functions. RCW 26.09.191(3)(c).⁶

Aaron does not deny his drug use. Aaron had multiple arrests connected to a suspicion he was illegally selling marijuana and other drugs. RP 16 and CP 140-141 and RP 1040 (arrested in 2015 on suspicion of selling marijuana, valium, and hydrocodone); CP 037 (Aaron cited with possession of marijuana on December 8, 2010). Aaron admitted he has a problem with marijuana use. RP 30, lines 16-23. In about July 2012, Aaron stated he believed that 90% of the problems in his relationship with Jenny were because of the marijuana. CP 294.⁷ In his own self-report in July 2013 at Kadlec Regional Medical Center, Aaron stated that he used marijuana daily from the age of 19 to 31 years old. CP 575. In this report he claims to have stopped using marijuana. If he did ever stop using marijuana it was not long-term. Sometime after his arrest violating the restraining order in May 2015, Aaron noted that his marijuana use was causing problems with his then living situation. RP 216 and CP 870. In June 2015, he was investigated for not only using marijuana, but possibly selling marijuana and

⁶ There is some discussion of Jenny's use of marijuana and discussion of a false positive for THC while she was pregnant. Jenny also provided a report dated January 26, 2011 that she had a low probability of having a substance dependence disorder. CP 002. There is no evidence or testimony that she is currently using drugs.

⁷ This comment was noted in a jail call after Aaron was arrested for violating a protection order and Jenny makes frustrated parenting comments that were noted as concerning by the GAL.

prescription drugs. CP 306. In a June 16, 2016 medical history intake, he noted that he smoked marijuana the day before. CP 151. The trial was held in August 2017 and Aaron testified he was no longer using marijuana (RP 30, lines 16-24) but this was contradicted by court-ordered positive results of his September 2017 hair follicle test. CP 875

The court noted it was concerned about Aaron's drug use (RP 1040) and concluded that Aaron certainly smokes marijuana and admitted to smoking it for an extensive period of time (RP 1047). The court then ordered him to take a drug test after issuing its decision, but it did not include any provision for what to do if the test came back positive (RP 1068, lines 9-16). The test came back positive. CP 875.

The court concluded, despite Aaron's admission of extensive marijuana use that, "I don't find that there is evidence that it necessarily impairs his ability to co-parent." RP 1047-1048. This finding is not supported by the evidence.

Aaron's drug use has had him arrested on multiple occasions, including during the parties' separation. His drug use has interfered with his housing. His drug use is so significant he self-reports to be a daily user for his entire adult life.

Now that marijuana/cannabis use is legal in Washington,⁸ courts are tasked with determining when its use rises to the level of something that reasonably interferes with a parent's ability to care for their children. Guardians ad litem/family court investigators fail their responsibilities and court's abuse their discretion if, when a parent admits to using marijuana, they do not perform an investigation into the way the parent uses marijuana and what precautions the parent takes to ensure that their marijuana use does not negatively impact the children.

Here, despite Aaron's long history of using drugs, a review of the Family Court Investigator's report shows no discussion or analysis with Aaron as to how he uses drugs and what steps he takes to ensure his drug use does not interfere with his ability to parent. The Court seemed convinced that Aaron still used drugs, but only ordered a drug test after trial and the result of the drug test appears to have in no way impact the parenting plan that was entered a month later.

Whether marijuana use is for medical or recreational purposes, the ultimate question that needs to be investigated is whether it results in long-term impairment that interferes with the performance of parenting

⁸ The Controlled Substances Act (CSA) of 1970 categorized cannabis as a Schedule I drug and prohibits the use of the drug for any purpose. Controlled Substances Act, 21 U.S.C § 801 (2012). The fact that this marijuana use is still prohibited under federal law, means that use of marijuana puts a user at risk for federal prosecution. Nevertheless, this risk seems low enough that it should not be factor in determining residential time.

functions. RCW 69.51A.120 and RCW 26.09.004. Included on this list is exercising appropriate judgment regarding the child's welfare. RCW 26.09.004(2)(e).

There court should inquire as to how the parent uses cannabis. For example, performance impairment associated with cannabis use are at their maximum within an hour and can last up to four hours. Dana Peterson, Student Scholarship: High Society: Washington State's Recreational Cannabis Law and Its Effects on Child Custody and Visitation Rights, 13 Seattle J. Soc. Just. 973, 993 (2015) (citing J.G. Ramaekers et al., Neurocognitive Performance During Acute THC Intoxication in Heavy and Occasional Cannabis Users, 23 J. of Psychopharmacology 266, 266 (2009) (discussing how long cannabis stays in one's system)) (Attached to the Appendix). Marijuana impairs the ability to drive, so an obvious question is whether marijuana is used during times of day where the children will need transportation, if so, what precautions are used to ensure the parent does not drive with the children while impaired.

Another important factor is to determine how the parent consumes marijuana and whether there are appropriate protections to prevent children from consuming. For example, if a parent uses a variety of edibles, such as cookies, brownies, fruit chews, cookie dough bites, Panda candies, and numerous other creative ways to consume marijuana, what protections does

the parent take to prevent the child from accidentally consuming foods that the child cannot reasonably be expected to know are not foods they should be consuming.

If a parent consumes marijuana through smoking it, it must be determined whether the parent takes precautions not to smoke around their children. Exposure to marijuana smoking has been demonstrated to result in what is often referred to as “contact high” meaning those around someone smoking will test positive for THC, even if they have not been smoking. Peterson, High Society, 13 Seattle J. Soc. Just. at 994 (citing Christine Moore et al., Cannabinoids in Oral Fluid Following Passive Exposure to Marijuana Smoke, 212 FORENSIC SCI. INT'L 227, 227 (Oct. 2011)). While not as likely to be accidentally consumed like edibles, a similar inquiry should be performed regarding how the marijuana is stored and what protections are in place to guard against the children accessing the marijuana.

This court abused its discretion when it stated that it believed Aaron certainly used marijuana but assumed, without making even a minimal inquiry whether it impacted on Aaron’s parenting. This is particularly important given that pending trial Aaron had limited residential time. Even with a significant addiction, he could likely maintain sobriety for shorter periods of residential time. There was no inquiry how he was going to

manage his daily marijuana use when he had the children for up to four weeks in the summer.

3. The Trial court erred by refusing to allocate Jewish holiday because they are “so numerous that they would make any parenting plan unworkable.”

Parents have a constitutional right to raise their children in their faith and teach the children about the independently. *In re Marriage of Mansour*, 126 Wn. App. 1, 13, 106 P.3d 768 (2004); *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 492, 899 P.2d 802 (1995). A trial court must consider cultural factors when imposing a parenting plan. *In re Marriage of Chandola*, 180 Wn.2d 632, 653, 327 P.3d 644, 655 (2014).

Aaron stated that he was aware Jenny had converted to Judaism and that he had no objection. RP 1003, lines 11-19.

The court did not make any finding that there would be any harm caused to the children by celebrating Jewish holidays, and it defies logic that carving out residential time to celebrate the important Jewish holidays, could harm the children. The court was clear that the only reason it refused to allocate the Jewish holidays was because they are, “so numerous that they would make any parenting plan unworkable.”

The court made no effort to inquire which of the Jewish holidays that Jenny felt would be most important to celebrate with her children. The court made no effort to do what is commonly done and perhaps allow Jenny

to celebrate the holidays in alternate years. Rather the court made an arbitrary decision in violation of Jenny’s constitutional right to practice her religion and share it with her children. The refusal to allocate Jewish holidays is an abuse of discretion and should be overturned.

4. The Trial court abused its discretion in the “Others” provisions by including items that were not based on the best interest of the children.

The trial court imposed conditions within the parenting plan that it included in the “others” section of the parenting plan. CP 959. The objectives of a permanent parenting plan are to provide for the child’s care, emotional stability, to provide for the child’s changing needs in a way that minimizes the need for future modifications. RCW 26.09.184(1)(a)-(c). Parenting plans are supposed to include a dispute resolution process (RCW 26.09.187(1)), Allocation of decision-making authority (RCW 26.09.187(2)), and Residential Provisions (RCW 26.09.187(3)). Decisions cannot be arbitrary and courts must make adequate findings to support their decisions. *In re Marriage of Underwood*, 181 Wn. App. 608, 613, 326 P.3d 793, 795 (2014) (court’s failure to make adequate findings to support its decision required remand for consideration). Parenting plan provisions must be reasonably calculated to prevent the harm described. *Chandola*, 180 Wn.2d at 653.

The court made the following requirement in the other's section of the parenting plan:

“H. Mother and Father must engage in and remain in full compliance with all treatment recommendations of all present and future mental health providers and counsellors. Mother and Father must provide a transcript of the proceedings held on September 25, 2017 to their perspective present and future mental health providers and counsellors, and to the children's present and future mental health providers and counsellors. Each party shall have the right to submit the transcript directly to any provider, but may not otherwise contact the others' treatment providers. The parties must also provide the other with notice of any change of mental health provider or counsellor for themselves and the children.”

The court believed the parties had “mental health problems that limit their ability to function in relationship.” RP 1049. The opinion stated the reasons he was requiring the transcript be provided was:

I am doing that is that I want them clearly to know that I sat through almost a month of testimony, and under our adversarial system the parties presented their best evidence to me and these are my findings... I just want them to have some context so that there might be some alternative explanations that they can explore with respect to whatever they are hearing.
RP 1067-1068.

Quite simply, the court is seeking to insert itself in the parties' mental health treatment for the next fourteen years because, even though the judge is not a qualified mental health provider, he thinks his opinions are so important that the parties' mental health counselors clearly cannot

adequately perform their jobs without the benefit of his insights. While a court can certainly make residential provisions and credibility determinations, it is not qualified, whether by lack of training or the inappropriate setting a judicial proceeding, to make determinations about the parties' mental health treatment and to invade the doctor-client relationship.

On top of this, the court is requiring the parties to provide each other their mental health care providers' information. Even abuse was not an issue in this case, this is an invasion of the parents right to privacy and the medical care of their choice. But abuse is at issue, and the court is essentially allowing a party who has a No-Contact order to contact the protected parties' mental health provider. That is clearly an abuse of discretion.

The Court continued its imposition of controlling decisions, as if the Judge believed he was the only one capable of seeing through to what was going on between the parties by imposing a restriction in the "others" section that all future decisions go through him:

"E. Mother must not interfere with Father's visitation by making false reports to law enforcement, CPS, or to mandatory reporters, by filing No Contact Orders based on false claims or motions based on false claims. Request must only be submitted to Judge Bruce Spanner, or his successor as pre-assigned judge. Violation of this provision shall be considered a "substantial change in circumstances."
CP 959.

The court also included the “substantial change of circumstances language in:

“B. Neither party shall speak negatively about the other parent in front of or around the minor children. Violation of this provision shall be considered a “substantial change of circumstances.”
CP 959

A substantial change in circumstance is a legal term of art that is related to a modification of a parenting plan. RCW 26.09.260(1). A court is not allowed to modify a parenting plan unless it finds that there has been a substantial change of circumstances in the nonmoving party or the life of the child. RCW 26.09.260(1). A substantial change in circumstances must be a change occurring after the entry of the original decree or a fact unknown to or unanticipated by the trial court at that time of its orders. *In re Marriage of Tomsovic*, 118 Wn. App. 96, 106, 74 P.3d 692 (2003); (a substantial change of circumstances must be based on facts unknown to the court at the time of the prior decree or plan); *In re Marriage of Hoseth*, 115 Wn. App. 563, 569-70, 63 P.3d 164, *review denied* 150 Wn.2d 1011 (2003).

Compliance with RCW 26.09.260 is mandatory because custodial changes are highly disruptive to children and there is a strong presumption in favor of custodial continuity and against modification. *In re Welfare of R.S.G.*, 172 Wn. App. 230, 245, 289 P.3d 708, 714-15 (2012). Courts disfavor modification. *Id.*

It is unclear with this automatic finding of a “substantial change of circumstance” if the court is envisioning Aaron could skip the adequate cause requirement altogether. Regardless of whether adequate can also be skipped, it is clear that the court is seeking to have a trigger for automatic modification. This is an abuse of discretion.

In addition to the possible automatic modification trigger, the trial court’s oral ruling, which was incorporated into the decision, states that one of the remedies he will consider for making what the court determines is a “false” report is putting Jenny in jail. RP 1069, lines 8-10.⁹

The court clearly considered the child’s counselor naïve when he reported the child’s report of excessive by Aaron to CPS as “false report” (as noted above, the court concluded that the provider was basing it solely on the child’s self-report, but the evidence demonstrates the provider based it on the self-report and the abscess on the child’s bottom that had to be drained right after his visit with Aaron).

For some reason, Judge Spanner seems to believe that he is the only one capable of understanding what is happening in this family. While the

⁹ The court also mentions a remedy may be “expert visits.” It is unclear what the court means by this, but based on the court’s discussion of his thoughts regarding Jenny’s mental health, it seems that the court is threatening something like a CR 35 Exam as a possible “punishment” for violating the Court’s dictates. This would clearly be an abuse of discretion.

trial may have been a long trial, it is still a tiny snapshot in the lives in the family. It simply untenable to believe that the court is the only one capable of addressing any concerns in this family. Especially given that all future hearings will be about 15 to 30 minutes of argument.

The effort to prevent Jenny and the children from ever discussing any concerns they have about the treatment of the children while in Aaron's care is an abuse of discretion. The fact that Jenny could be thrown in jail based on the child's statement to a provider and a provider's action is untenable.

Another inappropriate parenting plan provision that will likely lead to substantial unnecessary conflict is the rigid Skype calls ordered by the court. The court ordered the following:

“A. Except as provided below, the non residential parent shall be entitled to have Skype calls with the children on Tuesdays, Thursdays, and Sundays at 5:00 pm. Pacific Time. The residential parent shall have the children at home for these calls, and the non-residential parent shall initiate the Skype calls. If the parties are residing within 20 miles of each other, the Skype calls shall cease.”

The requirement for the children to take the Skype calls at 5:00 p.m. three days a week and for the children to be at home during the call creates a substantial burden on the children and their lives and it does not appropriately adjust with the children as they grow.

This means if Skype call occurs, but it occurs at a McDonald's, while the children take a break from a friend's birthday party, or in the car because the family was stuck in traffic trying to comply with the requirement, the fact that the call occurred will not be sufficient.

There is also no ability to agree to change the time. Thus, if M.P. has a championship game with his involvement in Sports Social,¹⁰ Jenny will be required to pull M.P. out of the game, go home, and call Aaron, and then, if the game is still going, return with M.P. and hope that the coach will not penalize him.

This requirement means that the residential parent cannot take the children on a trip, vacation, or visit grandparents as it requires the call to be at home. The kids cannot do sleepaway camps.

As the children grow and engage in additional extra-curricular activities, they will be required to interrupt those activities to go home and call Aaron.

Unlike standard residential time that envisions that a parent will maintain the children's activities while the child is in their care, this provision actually puts the Skype call before the children's development.

¹⁰ Sports-Social is social and behavioral that uses Applied Behavior Analysis ("ABA") in the sports program that M.P. and R.P. are involved in and they have A-games in May. RP 267-268.

If the court had at least included it as residential time, then the provisions about holidays and vacation could have had some flexibility. As it is, the provision is incredibly rigid. It does not matter if the call occurs, Aaron will still be able to pursue contempt based on the location. Given that Aaron filed for contempt related to Skype calls on two occasions, it is abundantly clear that this provision will foster conflict.

5. The Trial court abused its discretion in failing to allocate travel expense proportionately.

Allocating expenses for long-distance transportation to and from parents for visitation purposes is statutorily defined. RCW 26.19.080(3). The statute states that long-distance travel falls outside the economic table and so it is not covered by the basic child support obligation. The statute states, “These expenses shall be shared by the parents in the same proportion as the basic child support obligation.” *Id.* The general rule requiring apportionment of long-distance travel expenses applies to expenses when a parent must travel back and forth because the child is too young to travel. *Paternity of Hewitt*, 98 Wn. App. 85, 89, 988 P.2d 496, 498 (1999) (When the child has to travel with a companion, the necessary and reasonable costs of both the child and the companion would be apportioned.).

The trial court stated, “I am going to require that Ms. Veca – she is the one that took the kids to Henderson – she will pay for transportation.”¹¹ RP 1064, lines 6-8.

Punishing Jenny for moving to Henderson is an abuse of discretion.

While there may occasionally be reasons the court can deviate from proportionality, this deviation must occur based on economic resources. The court did not make any finding that it was deviating based on income,¹² it was clear it was simply punishing Jenny for moving by making her bear more of the expenses relate to long-distance travel.

Aaron has monthly residential time. The court required Jenny be responsible for all but summer and winter travel, which means that Jenny is responsible for paying for ten trips. Paying for three people to and from Pasco and Henderson will likely wipeout the transfer payment of \$577.58, meaning Jenny essentially will get almost no child support.

The court acknowledges that Tri-Cities did not have available resources for the children’s autism. In fact, the trial court stated, “I found it remarkable that an autistic boy would be described as a social butterfly.

¹¹ Because child support and residential time are de-coupled it is not necessary to address the fact that Jenny moved the children to Nevada to obtain better services, particularly for M.P.’s autism. The court acknowledges that Tri-Cities did not have available resources for the Children and that the programs Jenny found for the kids are allowing them, particularly Max to thrive. RP 1061

¹² The court failed to make any findings as to the parties’ income. “Child Support. I will award based upon Mr. Pickett’s worksheet.” RP 1070. 16-17.

Wow. Those relationship and that support network down there is important and significant.” RP 1061. Thus, the court is not only punishing Jenny for moving, but it is punishing Jenny for pursuing the best care for the children.

VI. Reassignment

Reassignment may be sought where the trial judge will exercise discretion on remand regarding the very issue that triggered the appeal and has already been exposed to prohibited information, expressed an opinion as to the merits, or otherwise prejudged an issue. *In re Marriage of Black*, 188 Wn.2d 114, 127, 392 P.3d 1041, 1048 (2017).

A judge shall act at all times in a manner that promotes public confidence in the integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. CJC 1.2. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment. CJC 2.3(B). Some examples listed in comment 2 to CJC 2.3(B) include threatening, intimidating, or hostile acts – here the court threatened jail time if Jenny did not answer the question in a manner the court approved of. Jenny was not swearing or otherwise disrupting the court. The court simply felt like she was going off-topic and interrupted, usually without objection of the attorneys. The court felt that

this was somehow intentional and somehow worthy of multiple fines and a threat of jail.

It is undeniable that the trial court judge does not like Jenny. It is unclear if he takes issue with her Multiple Sclerosis,¹³ her health at the time of trial. RP 308 lines 4-9 (she started getting the flu on Monday or Sunday night before of her testimony and had been throwing up while trial was ongoing. RP 397, lines 1-23. RP 490), her hearing impairment (which the court specifically noted that it did not believe existed. RP 753, lines 17-20. RP 770, lines 5-6.),¹⁴ her identity as a victim of abuse, or even her Judaism given that he refused to allocate religious holidays. It is clear by the court's orders, including the transcript of its oral rulings that it incorporated in

¹³ Her medical records show Jenny was hospitalized for five days related to MS symptoms in October 2016, less than year before the trial. CP 585.

¹⁴ In the limited section of the transcripts order, Jenny stated she was having a difficult time hearing a number of times (RP 92, line 7, 106, line 11, RP 111, line 7; RP 184, line 19; RP 185, line 3. RP 231, line 3; RP 310, line 22; RP 314, line 8; RP 321 lines 17-25; RP 348, line 14-15. RP 548, lines 36—38; RP 550, lines 3-4; RP 576, lines 7-8. RP 599, line 29; RP 770, lines 3-4. RP 803, lines 24-25.

The court's response was that when Jenny cannot hear she needs to let the court know, failing to factor in that if she cannot hear, she may not know that she is missing something to be able to alert the court. RP 109. The court refused to order Mr. Pickett to speak more clearly or slow down to allow Jenny to better understand and hear him. RP 281-282. The court responded with admonishes to listen to the question. RP 576, line 9. The court specifically noted that it did not believe Jenny was hard of hearing. RP 753, lines 17-20. RP 770, lines 5-6.

At the same time the court repeatedly admonished her for speaking loudly, something people who have hearing loss often do because they cannot hear themselves, which Jenny stated was her reason for being loud. RP 141, lines, 1-5. RP 180; line 13-14; RP 441, lines 8-10.

Parenting Plan, that the court developed a dislike for Jenny that goes far beyond a credibility determination.

Throughout the proceedings the Judge deviated from professionalism in the way he treated Jenny and her counsel. Particularly concerning is the link of his unprofessional conduct and the disabilities of Jenny and Jenny's attorney, Ms. Acosta. The judge initially imposed a sanction on Ms. Acosta, Jenny's attorney for using a service animal and being late to court, connected to her use of a service animal. RP 498-99. As outlined in FN 13 the court took significant issue with Jenny's partial deafness. Instead of responding that Jenny should just let the court know when she cannot hear, the court should have referred her to seek accommodations pursuant to GR 33, especially when the issue kept occurring.

The court deviated from professional decorum with statements like: "You are running off at the mouth again." (RP 407, line 5-6); "This isn't rocket science ma'am. Everyone in the courtroom understands the question but you apparently." (RP 458, lines 22-24); and telling Jenny to "Stop" despite Mr. Pickett continuing to ask the same question (RP 574, lines 2-5).

The court was so annoyed with Jenny's testimony that it wanted to exclude her from the courtroom. RP 768, lines 21-22. The court then began

using financial and jail threats against Jenny, stating, “I’ll remind you that you are still under my directions to answer the questions that are asked. I have assessed \$100 against your attorney this morning and I wouldn’t be bashful about doing the same for you.” (RP 499, lines 22-24). The court continually threatened jail and assessed fines throughout the trial. RP 533, line 16, RP 586 line 3. RP 606 lines 14-20; RP 718, line 19; RP 725 lines 21. RP 752 lines 4-7 (“And if you open your mouth again without being responsive to a question we are going to have some real problems. Do you understand me?” RP 826-827.)

The court excluded Jenny from the courtroom until she could come up with the \$250 to pay the fines the court imposed upon her for her “unwillingness to submit to the authority of this court[.]” When Jenny attempted to pay the fine, the court admonished her again and determined he was going to keep the case with him going forward. (RP 882, line 7-10; RP 889 lines 7-20). The court then added the threat of up to 30 days in jail. RP 883, lines 8-10).

The court’s admonitions, threats, and fines clearly impacted Jenny’s testimony. RP 793, lines 18-22 (“forgive me, Your Honor. It wasn’t a yes - or-no question so I don’t know if I can even – if I am allowed to speak. I don’t want to be rude or be reprimanded further. So am I allowed to address

that question.”) RP 816, lines 7-7. (“I am really confused at this point as to what’s allowed or what I can say or if I can even answer anything.”).

The experience of trial is a challenging process. The judge is the ultimate professional in the courtroom. The judge must be respectful and maintain the integrity of the judicial system. When a judge makes it clear they have a bias against a party that invades their ability to follow the law, reassignment is appropriate. The trial judge will have to exercise the same discretion on remand regarding the very issue triggered on appeal that trial court has already demonstrated his prejudice for, in this case his untenable dislike of Jenny that was so strong it impaired his ability to follow the law. *Black*, 188 Wn.2d at 137.

VII. Conclusion

Appellant respectfully requests this court right the wrong that occurred at the trial court with regard to this case. While the Court was able to see that the children are thriving in Nevada with Jenny and they should continue to reside there with Jenny as their primary parent, many of the other findings lack any basis in evidence or law. The trial court clearly abused its discretion when it failed to enter .191 restriction against Aaron connected to his history of abuse or his excessive drug use. It abused its discretion in refusing to allocate *any* Jewish holidays because “there are too many Jewish holidays.” RP 1066. It abused its discretion when it sought to

use the “others” section to trigger automatic future modification of the parenting plan if Jenny turned to anyone other than him with regard to safety and health concerns about the children. It also abused its discretion when it sought to require the parties to provide the judge’s opinion about their family law case to their mental health providers. It continued to abuse its discretion when it entered conditions around Skype calls that had no flexibility and would likely lead to more conflict. Finally, it abused its discretion when it failed to follow the law and required the majority of the long-distance travel expenses to be borne exclusively by Jenny. The courts decisions with regard to these provisions should be overturned and remanded to a different trial court judge to make rulings on these issues in accordance with this court’s opinion.

Respectfully submitted on May 31, 2018.



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VIII. APPENDIX INDEX

- A. Parenting Plan**
- B. Child Support Order**
- C. Court's Oral Ruling**
- D. Law Review Article**

Appendix
Attachment A

JOSIE DELVIN
BENTON COUNTY CLERK

2017 OCT -9 PM 4:09

FILED

Superior Court of Washington, County BENTON

In re: Marriage of Veca and Prichard

No. 14-3-00647-1

Petitioner:

Parenting Plan- Final
(PPP/PPT/PP)

JENNY LYNN VECA

And Respondent:

Clerk's action required: 1.

AARON KEYES PRICHARD

Final Parenting Plan

1. This parenting plan is a **Court Order** signed by a judge or commissioner. This is a Final order (PP).

2. **Children** - This parenting plan is for the following children:

Child's name	Age
1. Maximilian Keyes Prichard	8
2. Royalynn Alma Prichard	5

3. **Reasons for putting limitations on a parent** (under RCW 26.09.191)

a. **Abandonment, neglect, child abuse, domestic violence, assault, or sex offense.**

Neither parent has any of these problems.

1 **b. Other problems** that may harm the children's best interests:

2 A parent has one or more of these problems as follows:

3 **Abusive use of conflict** - Jenny Veca uses conflict in a way that endangers or
4 damages the psychological development of a child listed in 2.

5 **Withholding the child** - Jenny Veca has kept the other parent away from a child listed
6 in 2 for a long time, without good reason.

6 **Other**- See transcript of 09/25/2017 trial ruling hereby incorporated as reference.

7 **4. Limitations on a parent**

8 **No limitations despite reasons:** See transcript of 09/25/2017 trial ruling hereby
9 incorporated as reference.

10 **5. Decision-making**

11 When the children are with you, you are responsible for them. You can make day-to-day
12 decisions for the children when they are with you, including decisions about safety and
13 emergency health care. Major decisions must be made as follows.

13 **a. Who can make major decisions about the children?**

Type of Major Decision	Joint <i>(parents make these decisions together)</i>	Limited <i>(only the parent named below has authority to make these decisions)</i>
School / Educational	[X]	
Health care (not emergency)	[X]	

18 **b. Reasons for limits on major decision-making, if any:**

19 There are no reasons to limit major decision-making per the court's 09/25/2017 trial
20 ruling.

21 **6. Dispute Resolution** - If you and the other parent disagree:

22 From time to time, the parents may have disagreements about shared decisions or about
23 what parts of this parenting plan mean. To solve disagreements about this parenting plan,
24 the parents will go to a dispute resolution provider or court. The court may only require a
dispute resolution provider if there are no limitations in **3a**.

a. The parents will go to court with Judge Bruce Spanner, or his successor as
pre-assigned judge (without having to go to mediation, arbitration, or counseling).

1
2 **What to expect in the dispute resolution process:**

- 3
- 4 • Preference shall be given to carrying out the parenting plan.
 - 5 • If you reach an agreement, it must be put into writing, signed, and both parents must get a copy.
 - 6 • If the court finds that you have used or frustrated the dispute resolution process without a good reason, the court can order you to pay financial sanctions (penalties) including the other parent's legal fees.
 - 7 • You may go back to court if the dispute resolution process doesn't solve the disagreement or if you disagree with the arbitrator's decision.

8 **7. Custodian**

9 The custodian is Jenny Veca solely for the purpose of all state and federal statutes which
10 require a designation of determination of custody. Even though one parent is called the
11 custodian, this does not change the parenting rights and responsibilities described in this
12 plan.

13 *(Washington law generally refers to parenting time and decision-making, rather than
14 custody. However, some state and federal laws require that one person be named the
15 custodian. The custodian is the person with whom the children are scheduled to reside a
16 majority of their time.)*

17 **Parenting Time Schedule (Residential Provisions)**

18 *Complete the parenting time schedule in sections 8 - 11.*

19 **8. School Schedule**

20 **a. Children under School-Age**

21 Does not apply. All children are school-age.

22 **b. School-Age Children**

23 This schedule will apply immediately.

24 The children are scheduled to live with Jenny Veca except when they are scheduled to live
with Aaron Prichard on:

If Father lives more than 20 miles away from Henderson, Nevada, he shall have visitation:

WEEKENDS: one weekend per month:

1 Father shall have visitation one weekend per month in either Henderson, Nevada or
 2 in Tri-Cities, Washington, at Father's choice. If there is a school holiday or long
 3 weekend during a month, Father shall have that weekend unless Father chooses
 4 otherwise. Father must inform Mother by the first day of the preceding month before
 5 the visit of his choice. If he fails to inform Mother in time, the default weekend shall
 6 be the third weekend of the month in Henderson, Nevada.

MSD
 ZIA
 BAF

For long weekends, visitation shall begin with the first flight the same day the
 children are ~~after~~ released from school until the day before school resumes at
 6:00 p.m. Pacific Standard Time, or the closest flight that leaves Pasco at 6:00
 p.m.

after
 MSD
 BAF

For regular weekends, visitation shall begin with the first flight on Friday after the
 children are released from school until Sunday at 6:00 p.m. Pacific Standard
 Time, or the closest flight that leaves Pasco at 6:00 p.m.

Mother shall be responsible for the children's costs of travel for all visits, except
 for summer, winter break and spring visitation per Section 12.

If Father lives less than 20 miles away from Henderson, Nevada, he shall have visitation:

WEEKENDS: every other weekend per month:

Father shall have visitation every other weekend from Friday picking them up at
 school when it lets out until Monday when he brings the children to school.

9. Summer Schedule

9:00 A.M. MSD ZIA BAF

Father shall have summer visitation with the children every year from the seventh day after
 the children are released from school at 9:00 a.m. Pacific Standard Time, or the closest
 flight leaving Henderson at ~~6:00 p.m.~~ Father shall then have the children until July 15 at
 6:00 p.m. Pacific Standard Time, or the closest flight leaving Pasco at 6:00 p.m.
 Transportation shall be as set forth in Paragraph 12.

10. Holiday Schedule (includes school breaks)

This is the Holiday Schedule for all children:

Holiday	Children with: Jenny Veca	Children with: Aaron Prichard
Martin Luther King Jr. Day		Every Yr. if Father chooses
	Other plan: Per Section 8b.	

Holiday	Children with: Jenny Veca	Children with: Aaron Prichard
Presidents' Day		Every Yr. if Father chooses
	Other plan: Per Section 8b.	
•Spring Break	Begin day/time:	Every Yr. if Father chooses Begin day/time: Saturday after children are released from school
	End day/time:	End day/time: Saturday before school resumes
Transportation shall be as set forth in Paragraph 12.		
•Mother's Day	Every Yr. Begin day/time:	
	End day/time:	
•Memorial Day		Every Yr. if Father chooses
	Other plan: Per Section 8b.	
•Father's Day		Every Yr.
	Other plan: Per Section 9.	
•Fourth of July		Every Yr.
	Follow the Summer Schedule in section 9.	
•Labor Day		Every Yr. if Father chooses
	Other plan: Per Section 8b.	

Holiday	Children with: Jenny Veca	Children with: Aaron Prichard
•Thanksgiving Day / Break	Even Years Begin day/time: _____ End day/time: _____	Odd Years Begin day/time: Wednesday after school is released End day/time: Sunday before school resumes
Thanksgiving is a long weekend in odd years only.		
•Winter Break	Every Yr. Begin day/time: _____ End day/time: _____	Every Yr. Begin day/time: _____ End day/time: <i>BAS</i>
<p>Other plan: Mother shall have the children from when school is released for winter break until December 26th. Father shall have the children every year beginning at the first available flight leaving Henderson after 9:00 a.m. December 27th until the ^{closest} flight leaving Pasco before 6:00 p.m. two days before school resumes. December 27 and two days prior to school resuming shall be considered travel days if the children are visiting in Washington. Father shall notify Mother by November 1 of each year to verify that he would like his visitation in Washington. If he fails to provide notification by November 1, visitation shall be in Henderson, Nevada. Transportation shall be as set forth in Paragraph 12.</p>		
•Christmas Eve	_____	_____
Follow the Winter Break schedule above.		
•Christmas Day	_____	_____
Follow the Winter Break schedule above.		
•New Year's Eve / New Year's Day <i>(odd/even is based on New Year's Day)</i>	_____	_____
Follow the Winter Break schedule above.		

Holiday	Children with: Jenny Veca	Children with: Aaron Prichard
•Children's Birthdays	Other plan: If Father is residing more than 20 miles away from Henderson, Nevada, then Children's birthdays shall not be specified, and visitation shall be per Sections 8b. If Father is residing within 20 miles of Henderson, Nevada, Father shall have visitation with the children from 2:00 p.m. to 6:00 p.m. the day of, and the parties shall exchange the children at "Donna's House".	
•All extended weekends not listed elsewhere	<i>(Federal holidays, school in-service days, etc.)</i> Other plan: Per Section 8b.	
•Parents' Birthdays	Begin day/time: _____ End day/time: _____	Begin day/time: _____ End day/time: _____
Other plan: If Father is residing more than 20 miles away from Henderson, Nevada, then Parents' birthdays shall not be specified, and visitation shall be per Sections 8b or 10, accordingly. If Father is residing within 20 miles of Henderson, Nevada, each parent shall have visitation from 12:00 p.m. to 6:00 p.m. on his/her respective birthday, and exchanges shall be at "Donna's House".		

11. Conflicts in Scheduling

The Holiday Schedule must be observed over all other schedules. If there are conflicts within the Holiday Schedule:

Named holidays shall be followed before school breaks.

12. Transportation Arrangements

The children will be exchanged for parenting time (picked up and dropped off) at other location:

Regular and Long Weekend Visits. For regular and long weekend visitation, exchanges will be at Kids at Heart when visitation is in Washington or at "Donna's House" when the visitation is in Nevada, unless the children fly without an accompanying parent. If the children fly without an accompanying parent, exchanges will be at the airports. The parties shall pay their own transportation to and from airports, and the parent dropping off the children shall pay the costs

1 charged by Kids at Heart or at "Donna's House".

2
3 If the regular and long weekend visitation is to occur in Washington, Mother shall
4 be responsible for paying for and obtaining the children's airplane tickets. If she
5 decides to accompany the children, she shall pay for her own tickets. She shall
6 inform Father of the flight information once the flights have been purchased, and if
7 the children fly unaccompanied by a parent send the return boarding passes to
8 father.

9 **Spring Break, Winter Break and Summer Visits.** Spring Break, Winter Break
10 and Summer visits will be in Washington, unless Father lives within 20 miles of
11 Henderson, Nevada. Father is responsible for the children's cost of the plane
12 tickets for summer, winter break and Spring Break visitation. Father shall chose
13 the flights and notify Mother of his choice. Mother shall then pay for the airplane
14 tickets within 48 hours of notification. Mother shall provide a receipt to Father, and
15 Father will then send reimbursement to Mother within 7 days of obtaining the
16 receipt. If Mother decides to accompany the children, she shall pay for her own
17 tickets. If Mother decides not to accompany the children, she shall provide
18 boarding passes for the return flight. The parties shall pay their own transportation
19 to and from airports, and the parent dropping off will pay the costs associated with
20 the exchanges. Exchanges will be at Kids at Heart when visitation is in
21 Washington unless the children fly without an accompanying parent. If the
22 children fly without an accompanying parent, exchanges will be at the airports. If
23 Father lives within 20 mile of Henderson, Nevada, exchanges will be at Donna's
24 Place. The parent dropping off the child shall pay the costs charged by Kids at
Heart or at "Donna's House".

13. Moving with the Children (Relocation)

17 If the person with whom the children are scheduled to reside a majority of their time plans to
18 move (relocating person), s/he **must notify** every person who has court-ordered time with
the children.

19 ***Move to a different school district***

20 If the move is to a different school district, the relocating person must complete the form
21 *Notice of Intent to Move with Children* (FL Relocate 701) and deliver it at least **60 days**
before the intended move.

22 *Exceptions:*

- 23 • If the relocating person could not reasonably have known enough information to
24 complete the form in time to give 60 days' notice, s/he must give notice within **5**
days after learning the information.

- If the relocating person is relocating to a domestic violence shelter or moving to avoid a clear, immediate and unreasonable risk to health or safety, notice may be delayed **21 days**.
- If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.
- A relocating person who believes that giving notice would put her/himself or a child at unreasonable risk of harm, may ask the court for permission to leave things out of the notice or to be allowed to move without giving notice. Use form *Motion to Limit Notice of Intent to Move with Children (Ex Parte)* (FL Relocate 702).

The *Notice of Intent to Move with Children* can be delivered by having someone personally serve the other party or by any form of mail that requires a return receipt.

If the relocating person wants to change the *Parenting Plan* because of the move, s/he must deliver a proposed *Parenting Plan* together with the *Notice*.

Move within the same school district

If the move is within the *same* school district, the relocating person still has to let the other parent know. However, the notice does not have to be served personally or by mail with a return receipt. Notice to the other party can be made in any reasonable way. No specific form is required.

Warning! If you do not notify...

A relocating person who does not give the required notice may be found in contempt of court. If that happens the court can impose sanctions. Sanctions can include requiring the relocating person to bring the children back if the move has already happened, and ordering the relocating person to pay the other side's costs and lawyer's fees.

Right to object

A person who has court-ordered time with the children can object to a move to a different school district and/or to the relocating person's proposed *Parenting Plan*. If the move is within the same school district, the other party doesn't have the right to object to the move but s/he may ask to change the *Parenting Plan* if there are adequate reasons under the modification law (RCW 26.09.260).

An objection is made by filing the *Objection about Moving with children and Petition about Changing a Parenting/Custody Order (Relocation)* (form FL Relocate 721). File your *Objection* with the court and serve a copy on the relocating person and anyone else who has court-ordered time with the children. Service of the *Objection* must be by personal service or by mailing a copy to each person by any form of mail that requires a return receipt. The *Objection* must be filed and served no later than **30 days** after the *Notice of intent to Move with Children* was received.

Right to move

1
2 During the 30 days after the *Notice* was served, the relocating person may not move to
3 a different school district with the children unless s/he has a court order allowing the
4 move.

5 After the 30 days, if no *Objection* is filed, the relocating person may move with the
6 children without getting a court order allowing the move.

7 After the 30 days, if an *Objection* has been filed, the relocating person may move with
8 the children **pending** the final hearing on the *Objection* **unless**:

- 9 • The other party gets a court order saying the children cannot move, or
- 10 • The other party has scheduled a hearing to take place no more than 15 days after
11 the date the *Objection* was served on the relocating person. (However, the
12 relocating person may ask the court for an order allowing the move even though a
13 hearing is pending if the relocating person believes that s/he or a child is at
14 unreasonable risk of harm.)
- 15 • The court may make a different decision about the move at a final hearing on the
16 *Objection*.

17 ***Parenting Plan after move***

18 If the relocating person served a proposed *Parenting Plan* with the *Notice*, **and** if no
19 *Objection* is filed within 30 days after the *Notice* was served (or if the parties agree):

- 20 • Both parties may follow that proposed plan without being held in contempt of the
21 *Parenting Plan* that was in place before the move. However, the proposed plan
22 cannot be enforced by contempt unless it has been approved by a court.
- 23 • Either party may ask the court to approve the proposed plan. Use form *Ex Parte*
24 *Motion for Final Order Changing Parenting Plan – No Objection to Moving with*
Children (FL Relocate 706).

25 ***Forms***

26 You can find forms about moving with children at:

- 27 • The Washington State Courts' website: www.courts.wa.gov/forms,
- 28 • The Administrative Office of the Courts - call: (360) 705-5328,
- 29 • Washington LawHelp: www.washingtonlawhelp.org, or
- 30 • The Superior Court Clerk's office or county law library (for a fee).

31 *(This is a summary of the law. The complete law is in RCW 26.09.430 through*
32 *26.09.480.)*

33 **14. Other**

34 There are the following other provisions:

RCW 26.09.016, .181, .187, .194
Mandatory Form (07/2017)
FL All Family 140

Parenting Plan

p. 10 of 12

Defoe Pickett Law Office
830 N Columbia Center Blvd, Ste A1
Kennewick, WA 99336
509.734.8787

- 1
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- 22
- A. Except as provided below, the non-residential parent shall be entitled to have Skype calls with the children on Tuesdays, Thursdays, and Sundays at 5:00 p.m. Pacific Standard Time. The residential parent shall have the children at home for these calls, and the non-residential parent shall initiate the Skype calls. If the parties are residing within 20 miles of each other, the Skype calls shall cease.
 - B. Neither party shall speak negatively about the other parent in front of or around the minor children. Violation of this provision shall be considered a "substantial change of circumstances".
 - C. Neither party shall discuss these court proceedings with or in the presence of the minor children.
 - D. The children are allowed to keep their electronic cellular devices with them at all times, except as may be required for disciplinary reasons. The children are allowed to contact the other parent on these devices as they wish, so long as it does not become disruptive to other parent's visitation.
 - E. Mother must not interfere with Father's visitation by making false reports to law enforcement, CPS, or to mandatory reporters, by filing No Contact Orders based on false claims or motions based on false claims. Requests must only be submitted to Judge Bruce Spanner, or his successor as pre-assigned judge. Violation of this provision shall be considered a "substantial change of circumstances".
 - F. Mother will sign authorizations for children's health/medical, mental health, and school records/providers so that Father will have full access to the providers and to the records.
 - G. Mother must advise Father, in writing, of any proposed non-emergency healthcare changes, changes in the children's providers, or changes in the children's school at least three (3) weeks beforehand.
 - H. Mother and Father must engage in and remain in full compliance with all treatment recommendations of all present and future mental health providers and counsellors. Mother and Father must provide a transcript of the proceedings held on September 25, 2017 to their respective present and future mental health providers and counsellors, and to the children's present and future mental health providers and counsellors. Each party shall have the right to submit the transcript directly to any provider, but may not otherwise contact the others' treatment providers. The parties must also provide the other with notice of any change of mental health provider or counsellor for themselves and the children.

23

24

15. Proposal

Does not apply. This is a court order.

1 **16. Court Order**

2 This is a court order (if signed by a judge or commissioner below).

3 **Findings of Fact** - Based on the pleadings and any other evidence considered:

4 The Court adopts the statements in section 3. (Reasons for putting limitations on a
5 parent) as its findings.

6 **Conclusions of Law** - This *Parenting Plan* is in the best interest of the children.

7 **Order** - The parties must follow this *Parenting Plan*.

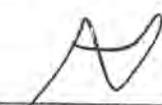
8 _____
9 Date 10/9/17 
10 Judge Bruce Spanner

11 **Warning!** If you don't follow this *Parenting Plan*, the court may find you in contempt (RCW
12 26.09.160). You still have to follow this *Parenting Plan* even if the other parent doesn't.
13 Violation of **residential** provisions of this order with actual knowledge of its terms is punishable
14 by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2).
15 Violation of this order may subject a violator to arrest.

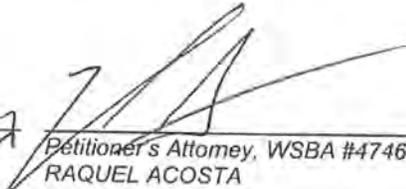
16 **If this is a court order, the parties and/or their lawyers (and any GAL) sign below.**

17 This order:
18 Is presented by me.

This order:

19 
20 Respondent's Attorney, WSBA #27818
21 MASON PICKETT

10/9/17
Date

22 
23 Petitioner's Attorney, WSBA #47465
24 RAQUEL ACOSTA

10/9/2017
Date

21 _____
22 Respondent
23 AARON PRICHARD Date

21 _____
22 Petitioner
23 JENNY VECA Date

21 _____
22 Family Court Investigator (FCI)
23 SANDRA ALARCON Date

Appendix
Attachment B

JOSIE DELVIN
BENTON COUNTY CLERK
2017 OCT -9 PM 4:09

FILED

Superior Court of Washington, County of BENTON

In re: Marriage of Veca and Prichard

No. 14-3-00647-1

Petitioner:

Child Support Order
Final (ORS)

JENNY LYNN VECA

And Respondent:

[X] Clerk's Action Required: WSSR

AARON KEYES PRICHARD

Final Child Support Order

1. Money Judgment Summary

No money judgment is ordered.

Findings and Orders

2. The court orders child support as part of this family law case. This is a final order.
3. The *Child Support Schedule Worksheets* attached or filed separately are approved by the court and made part of this Order.
4. **Parents' contact and employment information**

Each parent must fill out and file with the court a *Confidential Information* form (FL All Family 001) including personal identifying information, mailing address, home address, and employer contact information.

Important! If you move or get a new job any time while support is still owed, you must:

- Notify the Support Registry, and
- Fill out and file an updated *Confidential Information* form with the court.

Warning! Any notice of a child support action delivered to the last address you provided on the *Confidential Information* form will be considered adequate notice, if the party trying to serve you has shown diligent efforts to locate you.

5. **Parents' Income**

Parent (name): Aaron Prichard	Parent (name): Jenny Veca
Net monthly income \$ 2,555 . <i>(line 3 of the Worksheets)</i>	Net monthly income \$ 2,693 . <i>(line 3 of the Worksheets)</i>
This income is: <input checked="" type="checkbox"/> this parent's actual income <i>(after any exclusions approved below)</i>	This income is: <input checked="" type="checkbox"/> imputed to this parent.
Does this parent have income from overtime or a 2 nd job? <input checked="" type="checkbox"/> No.	Does this parent have income from overtime or a 2 nd job? <input checked="" type="checkbox"/> No.

6. **Imputed Income**

To calculate child support, the court may **impute** income to a parent:

- whose income is unknown, or
- who the Court finds is unemployed or under-employed by choice.

Imputed income is not actual income. It is an assigned amount the court finds a parent could or should be earning. (RCW 26.19.071(6))

Parent (name): Aaron Prichard	Parent (name): Jenny Veca
Does not apply. This parent's actual income is used.	This parent's monthly net income is imputed because: this parent is voluntarily unemployed. The imputed amount is based on the information below: <i>(Options are listed in order of required priority. The Court used the first option possible based on the information it had.)</i> Table of Median Net Monthly Income.

1 **7. Limits affecting the monthly child support amount**

2 Does not apply. The monthly amount was not affected by the upper or lower limits in RCW
3 26.19.065.

4 **8. Standard Calculation**

Parent Name	Standard calculation Worksheets line 17
Aaron Keyes Prichard	\$578
Jenny Lynn Veca	\$608

9 **All children living together** - All of the children are living with Jenny Veca most of the time.
10 The other parent must pay child support. The standard calculation from the *Child Support
Schedule Worksheets* line 17 for the parent paying support is \$578.

11 **9. Deviation from standard calculation**

12 Should the monthly child support amount be different from the standard calculation?:

13 **No** - The monthly child support amount ordered in section 10 is the **same** as the
14 standard calculation listed in section 8 because neither parent asked for a deviation
from the standard calculation.

15 **10. Monthly child support amount (transfer payment)**

16 After considering the standard calculation in section 8, and whether or not to apply a
17 deviation in section 9, the court orders the following monthly child support amount (transfer
payment).

18 Aaron Prichard must pay child support to Jenny Veca each month as follows for the children
19 listed below:

Child's Name	Age	Amount
1. Maximilian Keyes Prichard	8	\$288.79
2. Royalynn Alma Prichard	5	\$288.79
Total monthly child support amount:		\$ 577.58

1 **11. Starting date and payment schedule**

2 The monthly child support amount must be paid starting October 2017 on the following
3 payment schedule:

4 In two payments each month: 1/2 by the 5th and 1/2 by the 20th day of the month.

5 **12. Step Increase (for modifications or adjustments only)**

6 Does not apply.

7 **13. Periodic Adjustment**

8 Child support may be changed according to state law. The Court is not ordering a specific
9 periodic adjustment schedule below.

10 **14. Payment Method (check either Registry or Direct Pay)**

11 Send payment to the:

12 **Registry** – Send payment to the Washington State Support Registry. The Division of Child
13 Support (DCS) will forward the payments to the person owed support and keep records of
14 all payments.

15 Address for payment: Washington State Support Registry
16 PO Box 45868, Olympia, WA 98504

17 Phone number/s: 1 (800) 922-4306 or 1 (800) 442-5437

18 *Important! If you are ordered to send your support payments to the Washington State Support
19 Registry, and you pay some other person or organization, you will not get credit for your payment.*

20 **DCS Enforcement:**

21 DCS will **not** enforce this order unless one of the parties applies for DCS services or the
22 children go on public assistance.

23 **15. Enforcement through income withholding (garnishment)**

24 DCS or the person owed support can collect the support owed from the wages, earnings,
25 assets or benefits of the parent who owes support, and can enforce liens against real or
26 personal property as allowed by any state's child support laws without notice to the parent
27 who owes the support.

*If this order is not being enforced by DCS and the person owed support wants to have
28 support paid directly from the employer, the person owed support must ask the court to sign*

1 a separate wage assignment order requiring the employer to withhold wages and make
2 payments. (Chapter 26.18 RCW.)

3 Income withholding may be delayed until a payment becomes past due if the court finds
4 good reason to delay.

5 Does not apply. There is no good reason to delay income withholding.

6 **16. End date for support**

7 Support must be paid for each child until the child turns 18 or is no longer enrolled in high
8 school, whichever happens last, unless the court makes a different order in section 17.

9 **17. Post-secondary educational support (for college or vocational school)**

10 **Reserved** - A parent or non-parent custodian may ask the court for post-secondary
11 educational support at a later date without showing a substantial change of circumstances
12 by filing a *Petition to Modify Child Support Order* (form FL Modify 501) The *Petition* must be
13 filed *before* child support ends as listed in section 16.

14 **18. Claiming children as dependents on tax forms**

15 The parties have the right to claim the children as their dependents on their tax forms as
16 follows:

17 Alternating - Aaron Prichard has the right to claim the children for even years. The other
18 parent has the right to claim the children for the opposite years. *Mr. Prichard must be*
19 *current with his child support obligations before claiming the children, else Ms. Veca may*
20 For tax years when a non-custodial parent has the right to claim the children, the *claim for that year.*
21 parents must cooperate to fill out and submit IRS Form 8332 in a timely manner. *(initials)*

22 **Warning!** Under federal law, the parent who claims a child as a dependent may owe a tax penalty if the
23 child is not covered by health insurance.

24 **19. Health Insurance**

25 **Important!** Read the Health Insurance Warnings at the end of this order.

The court is not ordering how health insurance must be provided for the children because
the court does not have enough information to determine the availability of accessible
health insurance for the children (insurance that could be used for the children's primary
care). The law requires every parent to provide or pay for health insurance. The Division of
Child Support (DCS) or any parent can enforce this requirement.

1 **20. Health insurance if circumstances change or court has not ordered**

2 If the parties' circumstances change, or if the court is not ordering how health insurance
3 must be provided for the children in section 19:

- 4 • A parent, non-parent custodian, or DCS can enforce the medical support requirement.
- 5 • If a parent does not provide proof of accessible private insurance (insurance that
6 can be used for the children's primary care), that parent must:
 - 7 • Get (or keep) insurance through his/her work or union, unless the insurance
8 costs more than 25% of his/her basic support obligation (line 19 of the
9 *Worksheets*),
 - 10 • Pay his/her share of the other parent's monthly premium up to 25% of his/her
11 basic support obligation (line 19 of the *Worksheets*), or
 - 12 • Pay his/her share of the monthly cost of any public health care coverage, such
13 as Healthy Kids, BHP, or Medicaid, for which there is an assignment.

14 **21. Children's expenses not included in the monthly child support amount**

15 **Uninsured medical expenses** - Each parent is responsible for a share of uninsured
16 medical expenses as ordered below. Uninsured medical expenses include premiums,
17 co-pays, deductibles, and other health care costs not covered by insurance.

Children's Expenses for:	Parent: Aaron Prichard pays monthly	Parent: Jenny Veca pays monthly	Make payments to:	
			Person who pays the expense	Service Provider
Uninsured medical expenses	Proportional Share* 48.7%*	Proportional Share* 51.3%*	[]	[X]

18 * Proportional Share is each parent's percentage share of the combined net income from line 6 of the Child
19 Support Schedule Worksheets.

20 **Other shared expenses:**

21 The parents will share the cost for the expenses listed below:

Children's Expenses for:	Parent: Aaron Prichard pays	Parent: Jenny Veca pays	Make payments to:	
			Person who pays the expense	Service Provider
[X] Airplane Tickets for all Children's visitations to Washington except Father's summer, winter & ^{3/4 Spring} visitation. _{CMB}	0%**	100%**	[]	[X]
[X] Airplane Tickets for Children's summer, winter & ^{3/4 Spring} visitation trip to Washington. _{CMB}	100%**	0%**	[X]	[]

** If any percentages ordered are different from the Proportional Share, explain why: Per court's trial ruling.

22. Past due child support, medical support and other expenses

As of 10/01/2017, neither parent owes to The other parent or the state:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Past due child support | <input checked="" type="checkbox"/> Interest on past due child support |
| <input checked="" type="checkbox"/> Past due medical support | <input checked="" type="checkbox"/> Interest on past due medical support |
| <input checked="" type="checkbox"/> Past due other expenses | <input checked="" type="checkbox"/> Interest on past due other expenses |

The court ruled that Mother shall not be entitled to any back child-support.

23. Overpayment caused by change

Does not apply.

24. Other Orders

All the *Warnings* below are required by law and are incorporated and made part of this order.

The transcript of the court's 09/25/2017 trial ruling and findings is hereby incorporated by reference to these final documents.

Ordered.

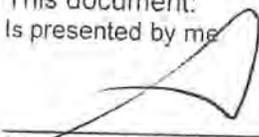
Date 10/9/17



 Judge or Commissioner

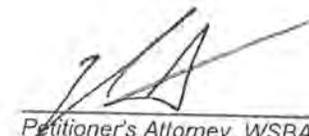
1 **Petitioner and Respondent or their lawyers fill out below:**

2 This document:
3 Is presented by me

4 
5 Respondent's Attorney, WSBA #27818
6 MASON PICKETT

10/9/17
Date

This document:

7 
8 Petitioner's Attorney, WSBA #47465
9 RAQUEL ACOSTA

10/9/2017
Date

10 **All the warnings below are required by law and are part of the**
11 **order. Do not remove.**

12 **Warnings!**

13 **If you don't follow this child support order...**

- DOL or other licensing agencies may deny, suspend, or refuse to renew your licenses, including your driver's license and business or professional licenses, and
- Dept. of Fish and Wildlife may suspend or refuse to issue your fishing and hunting licenses and you may not be able to get permits. (RCW 74.20A.320)

14 **If you receive child support...**

15 You may have to:

- Document how that support and any cash received for the children's health care was spent.
- Repay the other parent for any day care or special expenses included in the support if you didn't actually have those expenses. (RCW 26.19.080)

16 **Health Insurance Warnings!**

17 Both parents must keep the Support Registry informed whether or not they have access to health insurance for the children at a reasonable cost, and provide the policy information for any such insurance.

18 **If you are ordered to provide children's health insurance...**

- 19 You have **20 days** from the date of this order to send:
- proof that the children are covered by insurance, or
 - proof that insurance is not available as ordered.

20 Send your proof to the other parent or to the Support Registry (if your payments go there).

21 If you do **not** provide proof of insurance:

- The other parent or the support agency may contact your employer or union, without notifying you, to ask for direct enforcement of this order (RCW 26.18.170), and
- The other parent may:
 - Ask the Division of Child Support (DCS) for help,
 - Ask the court for a contempt order, or
 - File a Petition in court.

22 **Don't cancel your children's health insurance without the court's approval, unless your job ends and you can no**

longer get or continue coverage as ordered in section **19** through your job or union. If your insurance coverage for the children ends, you must notify the other parent and the Support Registry.

If an insurer sends you payment for a medical provider's service:

- you must send it to the medical provider if the provider has not been paid; or
- you must send the payment to whoever paid the provider if someone else paid the provider; or
- you may keep the payment if you paid the provider.

If the children have public health care coverage, the state can make you pay for the cost of the monthly premium.

Always inform the Support Registry and other parent if your access to health insurance changes or ends.

filed
10-9-17

Washington State Child Support Schedule Worksheets

[X] Proposed by [X] Aaron Prichard [] State of WA [] Other (CSWP)
 Or, [] Signed by the Judicial/Reviewing Officer. (CSW)

County BENTON

Case No. 14-3-00647-1

Child/ren and Age/s: Maximilian Keyes Prichard, 8; Royalynn Alma Prichard, 5

Parents' Names: Aaron Keyes Prichard (Column 1) Jenny Lynn Veca (Column 2)

	Aaron	Jenny
Part I: Income (see Instructions, page 6)		
1. Gross Monthly Income		
a. Wages and Salaries Imputed for Jenny	\$3,019.84	-
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	-
e. Other Income	-	-
f. Imputed Income	-	-
g. Total Gross Monthly Income (add lines 1a through 1f)	\$3,019.84	\$2,693.00
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State) Tax Year: Manual	\$233.50	-
b. FICA (Soc. Sec. + Medicare)/Self-Employment Taxes	\$231.02	-
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	-	-
e. Mandatory Pension Plan Payments	-	-
f. Voluntary Retirement Contributions	-	-
g. Maintenance Paid	-	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	\$464.52	-
3. Monthly Net Income (line 1g minus 2i)	\$2,555.32	\$2,693.00
4. Combined Monthly Net Income (add both parents' monthly net incomes from line 3)	\$5,248.32	
5. Basic Child Support Obligation (Combined amounts →)		
Maximilian Keyes Prichard \$593.00		
Royalynn Alma Prichard \$593.00		
-		
-		
-		
6. Proportional Share of Income (divide line 3 by line 4 for each parent)	.487	.513

	Aaron	Jenny
Part II: Basic Child Support Obligation (see Instructions, page 7)		
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)	\$577.58	\$608.42
8. Calculating low income limitations: Fill in only those that apply.		
Self-Support Reserve: (125% of the Federal Poverty Guideline.)	\$1,256.00	
a. Is combined Net Income Less Than \$1,000? If yes, for each parent enter the presumptive \$50 per child.	-	-
b. Is Monthly Net Income Less Than Self-Support Reserve? If yes, for that parent enter the presumptive \$50 per child.	-	-
c. Is Monthly Net Income equal to or more than Self-Support Reserve? If yes, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, enter that amount or the presumptive \$50 per child, whichever is greater.	-	-
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive \$50 per child.	\$577.58	\$608.42
Part III: Health Care, Day Care, and Special Child Rearing Expenses (see Instructions, page 8)		
10. Health Care Expenses		
a. Monthly Health Insurance Premiums Paid for Child(ren)	-	-
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	-	-
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	-	-
d. Combined Monthly Health Care Expenses (add both parent's totals from line 10c)	-	-
11. Day Care and Special Expenses		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)	-	-
	-	-
	-	-
	-	-
e. Total Day Care and Special Expenses (Add lines 11a through 11d)	-	-
12. Combined Monthly Total Day Care and Special Expenses (add both parents' day care and special expenses from line 11e)	-	-
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)	-	-
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	-	-
Part IV: Gross Child Support Obligation		
15. Gross Child Support Obligation (line 9 plus line 14)	\$577.58	\$608.42

	Aaron	Jenny
Part V: Child Support Credits (see Instructions, page 9)		
16. Child Support Credits		
a. Monthly Health Care Expenses Credit	-	-
b. Day Care and Special Expenses Credit	-	-
c. Other Ordinary Expenses Credit (describe)	-	-
	-	-
d. Total Support Credits (add lines 16a through 16c)	-	-
Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)		
17. Standard Calculation (line 15 minus line 16d or \$50 per child whichever is greater)	\$577.58	\$608.42
Part VII: Additional Informational Calculations		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	\$1,149.89	\$1,211.85
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	\$144.40	\$152.10
Part VIII: Additional Factors for Consideration (see Instructions, page 9)		
20. Household Assets (List the estimated value of all major household assets.)		
a. Real Estate	-	-
b. Investments	-	-
c. Vehicles and Boats	-	-
d. Bank Accounts and Cash	-	-
e. Retirement Accounts	-	-
f. Other: (describe)	-	-
	-	-
	-	-
	-	-
21. Household Debt (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
22. Other Household Income		
a. Income Of Current Spouse or Domestic Partner (if not the other parent of this action)		
Name Casey Thurston	-	\$8,583.33
Name	-	-
b. Income Of Other Adults in Household		
Name Michelle Langevin	\$3,000.00	-
Name Jerom Chapman, Andrea Norris	-	-

Other Factors For Consideration (continued) (attach additional pages as necessary)

Signature and Dates

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

Parent's Signature (Column 1)

Parent's Signature (Column 2)

10/9/12

Date

Ken

City

10/9/2012

Date

Kennewick, WA

City

Judicial/Reviewing Officer

Date

This Worksheet has been certified by the State of Washington Administrative Office of the Courts.
Photocopying of the worksheet is permitted.

Appendix
Attachment C

1 to the oral amendment. It's at the time of trial. If you
2 feel it's an issue, Your Honor, you can decide if you feel
3 it's appropriate. What the biggest issue here is obviously
4 the kids.

5 THE COURT: Right.

6 Any problem with the court deeming the petition to be
7 amended to include both claims of dissolution and declaration
8 of invalidity?

9 MS. ACOSTA: That would be perfect. Thank you,
10 Your Honor.

11 THE COURT: All right. I obviously want to be
12 procedurally correct.

13 MR. PICKETT: Yes.

14 THE COURT: Thank you for resolving that. I do
15 have ex parte at 8:30 and so I have my built-in excuse for
16 being a few minutes late. We will see you tomorrow morning.

17 MR. PICKETT: Thank you, Your Honor.

18 MS. ACOSTA: Thank you, Your Honor.

19 (Whereupon court adjourned.)

20 Kennewick, Washington; Monday, September 25, 2017

21 3:02 p.m.

22 --o0o--

23 THE COURT: All right. Good afternoon.

24 Ms. Veca are you on the line?

25 MS. VECA: Yes. I am here.

1 THE COURT: And can you hear me okay? Can you
2 hear me okay?

3 MS. VECA: Yes. I can hear.

4 THE COURT: All right. Can the parties hear
5 Ms. Veca?

6 MR. PICKETT: I can, Your Honor.

7 MS. ACOSTA: Yes, Your Honor.

8 THE COURT: All right. I want you to know that
9 I went back and I reread all of my notes. I read all of the
10 exhibits and ensured I had the opportunity to re-live the
11 case, as it were, and I did some of that on vacation last
12 week. So from that I have created a spreadsheet where I have
13 used over 600 lines trying to make a detailed analysis of the
14 many accusations raised in this matter.

15 I have to start out by reminding everyone, and
16 Mr. Pickett was correct in closing argument when he said that
17 I cannot rely on the friendly parent rationale; that is, I
18 cannot consider whether one party would be more likely to
19 foster a relationship with the other parent.

20 Our court has looked at that a number of times. The
21 legislature has declined to include that in the statute a
22 number of times and so I cannot do that. By the way, I am
23 going to go through and give you all of the findings of fact.
24 I assume this is going to be transcribed for use and to
25 prepare findings of fact and conclusions of law.

1 This is going to be a lengthy process. At the end I
2 am going to ask the attorneys if they have any questions for
3 clarification. I have a 4:30 appointment so I may be jumping
4 up and running out. Okay? All right.

5 I cannot focus on the best interests of either the
6 mother or the father. I have to focus only on the best
7 interests of the children as it relates to the parenting
8 plan. Now, I have to tell you that for a long time I looked
9 at this case as an all-or-nothing proposition: Ms. Veca was
10 right in everything she was claiming or Mr. Prichard was
11 right in everything that he was claiming.

12 And I just finally came to the realization that life
13 is more nuanced than that. Yeah. And so then that helped me
14 to finally reach a conclusion here. The first question is,
15 is the marriage valid under California law?

16 I find that, factually, the parties satisfied all five
17 elements except one, namely that both of them consented to
18 the marriage. Thus I reject Ms. Veca's claim that she was
19 forced into the marriage. They did obtain a license, and,
20 under the statute, there was a certificate attached to it.

21 They participated in a service; that is, they
22 solemnized the marriage. The certificate was appropriately
23 signed by the parties and at least one witness. And,
24 finally, I find that the officiant did not record the
25 certificate but instead gave it to the parties.

1 Under the California statute, it is the obligation of
2 the officiant, and the officiant only, to record that
3 certificate. The statute says that the failure of a third
4 party; that is, a failure of someone other than Ms. Veca or
5 Mr. Prichard to record the certificate does not invalidate
6 the marriage.

7 Well, clearly here the officiant did not meet his
8 statutory duty which was to record the certificate. Instead
9 he gave it to the parties. Therefore, the marriage is valid
10 because the only missing element is the one that the
11 officiant failed to do.

12 Now, I find that that is a nondelegable obligation on
13 the part of the officiant. Had it been delegable then
14 Ms. Veca's argument could have some merit, but since it is
15 nondelegable it was the failure to record. And the fault for
16 failure to record under the statute rests solely with the
17 officiant.

18 I find that the marriage is now irretrievably broken.
19 I would like to put matters in timelines, if I can. It helps
20 me to -- so I can step back and look at all of the evidence
21 and understand it within context.

22 From 1994 to 2003, the parties agreed that there was a
23 series of police encounters, including encounters with CPS.
24 Ms. Veca was largely the aggressor in those situations and it
25 involved her consuming alcohol and marijuana. She also,

1 during that period, was making the same allegations against
2 other men in order to gain control over the situation.

3 The parties were married in August of 2004. Max was
4 born December 18, 2008. Mr. Prichard attempted suicide in
5 2008. Now, the next event on the timeline is this
6 January 7th, 2011, event where Ms. Veca claims that she was
7 choked.

8 Jarom saw a scuffle, but he stated clearly on the
9 stand that he did not see any choking. The CPS report does
10 not mention any choking. The police reported no injuries to
11 either party. And Ms. Veca claimed to have a photograph of
12 that incident but it was never produced, as far as I can
13 tell. I am finding that Mr. Prichard did not choke her.

14 She had a photo of a black eye that she attributed to
15 an event on July the 7th, 2011. This is the one she sent to
16 her aunt. I find that that person in that photograph looks
17 to be more than six years or five-and-a-half years younger
18 than what Ms. Veca appeared at the time of trial. I think
19 that photo was from an incident prior to 2011.

20 Next question: What happened on February 25th, 2011?
21 Ms. Veca -- or the allegation is that he pushed Ms. Veca out
22 of the way so he could leave the house. So what was
23 happening there is she is trying to block him from leaving
24 the house and he used some force to get her out of the way.

25 He did not commit domestic violence on that occasion. There

1 were no reported injuries by either party.

2 The next is: What happened on March 24, 2011? All we
3 have there as evidence is Ms. Veca's testimony, together with
4 a hospital wristband. I conclude that nothing happened on
5 that date as it relates to domestic violence because had
6 Ms. -- well, I have looked at enough hospital records to know
7 that there is always a history and a physical where the first
8 thing that the physician does is take a history as to what
9 occurred.

10 If she had a report of domestic violence, it would be
11 in that history. She did not produce that history. So
12 therefore, I have to conclude that there wasn't domestic
13 violence.

14 The next is: What happened on January 20, 2012? This
15 is where Ms. Veca claims that she went into preterm labor
16 because of domestic violence.

17 Again, she did not present the history and physical.
18 There is no mention of that in the IEP evaluation report for
19 Royalynn. That's the IEP evaluation report at Vanderburg,
20 even though the pregnancy and how it went was discussed in
21 that report at length.

22 I do acknowledge that she makes a claim in some other
23 reporting. This is also the event where she tested positive
24 in the hospital for THC. She claims it was a false positive.
25 There is no expert testimony that substantiates that. And

1 this is also where she said some words that were interpreted
2 as being a threat and suicide. I don't find that to be a
3 real threat.

4 I think whatever happened on January 20th is just
5 another incident in their volatile relationship without
6 domestic violence. Parties moved to Washington
7 February 2012. Royalynn born May 20, 2012. The next item on
8 the timeline is July 8, 2012.

9 I know I am going fast. Are you doing okay?

10 THE COURT REPORTER: Yes. It's okay.

11 THE COURT: This is where Mr. Prichard was
12 arrested in California for a no-contact order violation -- or
13 no. He was arrested for the California no-contact violation.
14 He was asleep when the police came in.

15 Ms. Veca denied that there had been any violence in
16 one part of this, but she also claimed in another report --
17 depending on which officer's reports you read -- she denied
18 that there was any violence, but also she claimed that she
19 was hit hard in her face three times.

20 The police do not mention any injuries in their
21 report. And I can guarantee you I have read enough police
22 reports that that is exactly what they are looking for; to
23 find out what happened is they are looking for any signs of
24 injuries. And all they found was that Mr. Prichard had
25 scratches on his neck, face, and shoulder.

1 Mr. Prichard said that this altercation came about
2 because he did not want Ms. Veca to drive drunk with Max in
3 the car. Ms. Veca, after claiming to have been struck
4 sufficient to get Mr. Prichard charged with a felony,
5 recanted so those charges were reduced to a misdemeanor.

6 This is also the event where there is a jail call and
7 Ms. Veca is screaming at Max on the jail phone recording
8 terrible, terrible, horrible things to Max. It's obvious
9 that she is very volatile and has a hard time controlling her
10 actions and emotions.

11 She also, at that point, advised a grandfather that
12 she knew what to say in order to get a no-contact order. But
13 in these same jail conversations she is telling Mr. Prichard
14 that she loves him on multiple occasions. I conclude that
15 there was no domestic violence on that occasion.

16 MS. VECA: I disagree with that completely.

17 THE COURT: Ms. Veca, I am going to tell you
18 this once and once only. You will not speak unless I invite
19 you to speak. Do you understand? And now you are invited to
20 speak.

21 MS. VECA: Yes. Sure. I hear you.

22 THE COURT: All right. There is -- no, that
23 wasn't the question, ma'am. Do you understand my direction
24 that you are not to speak unless I invite you to speak?

25 MS. VECA: Yes.

1 THE COURT: All right. The next is a
2 photograph of a scraped arm. Ms. Veca claims that
3 Mr. Prichard grabbed her arm hard, causing her to fall and
4 scraping her arm. Initially she testified that occurred in
5 2013, then she changed it to 2015. I don't find her position
6 to be credible.

7 The parties separated in March of 2014. Ms. Veca took
8 no action to protect the children between March and July of
9 2014. She claimed -- there is a photo of a bruise that would
10 have occurred in July of 2014. Again, there is no effort on
11 her part to protect the children until after Mr. Prichard
12 moved to California later that month.

13 And she claimed that he stomped on her hand and there
14 is no reference to that in the no-contact order -- the
15 affidavit for the no-contact order that she sought a few
16 weeks after he left. I don't know what that bruise of her
17 hand was, but I don't believe it was the product of domestic
18 violence.

19 Mr. Prichard moves to California, I have here,
20 July 22nd of 2014. It was after that that she seeks a
21 no-contact order. I find that curious that she would wait
22 until he's over a thousand miles away to do that. I don't
23 believe she was afraid of him at that time.

24 About -- well, within a month of Mr. Prichard moving
25 to California she marries Casey Thurston; that was in

1 August of 2014. Mr. Prichard returns from California in
2 January of 2015. At that time there was no effort on
3 Ms. Veca's part to protect the children. She files a notice
4 of intent to move to San Diego in March of 2015; does not go
5 through with it.

6 And then in April of 2015 there is the attempt to
7 reconcile. Again, at that point there is no attempt on
8 Ms. Veca's part to try to protect the children. So then the
9 next question is: What happened on May 25th, 2015? I
10 conclude that she was not held against her will.

11 She denied that -- the police report asked her if she
12 was there of her free will. She said she was. In her
13 testimony she claimed the police asked her if she was
14 kidnapped and then -- said she answered no because there
15 wasn't a ransom. I find the police report to be more
16 accurate.

17 I'll agree that the parties were going to go to court
18 the next day to terminate the no-contact order, and, in fact,
19 that's what happened. Ms. Veca claimed that Mr. Prichard
20 would not let her leave the hotel.

21 But in either a text or phone call or something -- my
22 recollection is not that great -- she is reporting that
23 Mr. Prichard left the hotel and left her with the kids alone.
24 She had an opportunity to escape at that point but didn't.
25 She was with him from like 3:00 in the afternoon until

1 midnight and made no attempt to get away and she never called
2 the police.

3 She had the no -- protection order dropped the next
4 day while he was in jail. There are more jail calls, the
5 first being on May 25th where she does suggest that she was
6 there voluntarily, but she never addressed that in her
7 testimony or tried to clarify that.

8 There is a text on the 24th to Mr. Prichard from
9 Ms. Veca where she says, quote, "I tried to be with you,"
10 closed quote. She never said in those jail calls that -- to
11 Mr. Prichard that he was holding her against her will. But
12 then in subsequent calls, that's where she went off on
13 Mr. Prichard because she had his telephone and computer and
14 found that he had been inappropriately corresponding with an
15 18-year-old.

16 So here we are on May the 26th or 27th or so. Up to
17 this point there had only been one time where Ms. Veca had
18 ever told anyone that she felt that Mr. Prichard was a danger
19 to her or her children and that was back in 2011. But we
20 can't forget that she told the grandfather that she knows
21 what to say in order to get no-contact orders.

22 I find that as of May 25th, 2015, Ms. Veca did not
23 then have a present belief that Mr. Prichard presented a
24 danger to her or to her children and that all of her
25 subsequent claims thereafter were because now she is mad at

1 Mr. Prichard because of this relationship with the
2 18-year-old girl.

3 Now, next question: What about the June 25th, 2015,
4 skate park drug transaction that Mr. Prichard was involved
5 in? I have to ask myself, remember what the police report
6 said, that he was seen handing -- associating with and
7 handing someone who was described as a quote, "old CI,"
8 closed quote. That's an old confidential informant.

9 Why was Mr. Prichard associating with someone in the
10 drug culture? The police smelled a strong odor of marijuana.
11 Mr. Prichard gave seven or eight Valium pills to this old CI.
12 The police found 65 Valiums and several hydrocodones in his
13 backpack. But I looked at notes from his visits with his
14 psychologist or psychologist [sic] in -- that were within a
15 matter of days if not a couple of weeks of that incident.

16 All of his prescriptions were noted, but he was not
17 then being prescribed Valium, nor hydrocodones. I can't
18 figure out why he wasn't prosecuted for giving away a
19 controlled substance, Valium, but I still haven't figured
20 that out -- haven't figured out why he has controlled
21 substances for which he did not have prescriptions.

22 But he did testify that Ms. Veca took Valium and
23 hydrocodones and I found reference to those prescriptions in
24 her records. I am concerned about Mr. Prichard and drug use.
25 And that was as recent as, you know, 2015, real close to that

1 last event we talked about. Let's see.

2 And as I mentioned earlier, it wasn't until after
3 Ms. Veca got angry about the 18-year-old girl that this
4 narrative regarding a history of abuse of her and the
5 children surfaces. That's with the exception of one time in
6 an affidavit or declaration filed on February 9, 2011, for a
7 restraining order down in California.

8 She, in general terms, claimed that he was an abuser,
9 but really did not give any specifics of any things that
10 Mr. Prichard did, either to her or her children, except a
11 reference to a past incident where he may have choked her.

12 And, of course, then when she leaves for Nevada on or
13 about the 1st of July 2015, Ms. Veca was not motivated by
14 fear of Mr. Prichard. She was just using that as an excuse.
15 He filed his motion to vacate the dismissal on July 13, 2015.

16 There was some indication in the record that there had
17 been some communication between the attorneys regarding that
18 before she left for Nevada, but it wasn't persuasive enough
19 for me to conclude that she knew about the efforts to vacate
20 the dismissal before she left. I don't think it makes much
21 difference anyway.

22 Mr. Prichard finds out that Ms. Veca is in Nevada in
23 February of 2016. That's because the process server came to
24 serve him with a Nevada dissolution. The order was entered
25 vacating the dismissal on March 8, 2016. This Superior Court

1 ordered Skype calls would be Tuesdays, Thursdays, and Sundays
2 at 7:00 p.m. in an order dated October 4th of 2006.

3 Sandra Alarcon, the family court investigator, was
4 reappointed on the same day. So the first two attempts at
5 Skype calls on October 9th and October 11th are unsuccessful
6 because Ms. Veca doesn't pick up the phone. The first Skype
7 call occurred on October 16th.

8 And on October 24th Royalynn is reported as having
9 said, "I don't want to talk to you." That's addressed to
10 Mr. Prichard. "I don't want to live with you." The first
11 visit was supposed to occur on November 25th of 2016, but
12 Ms. Veca did not show.

13 The first supervised visit was at Kids at Heart
14 December 26th, 2016. Royalynn said, "I don't like Aaron very
15 much." Aaron wants Ms. Veca to, quote, "die in jail," closed
16 quote. And then she also said that her, quote, "mommy," told
17 her that. This is also on December 29th.

18 Both children are saying more bad things about, quote,
19 "Aaron." I put that in quotes because they are not calling
20 him Dad. The family court investigator observes a visit, a
21 supervised visit, on December 29th and finds that the
22 children are happy and content with Mr. Prichard.

23 Ms. Veca claimed that it was Mr. Prichard who told
24 those kids the things that they repeated at that visit and
25 that was absolutely impossible to do. He hadn't seen them

1 for over a year. Only Ms. Veca could have put that in their
2 minds.

3 Ms. Veca files for a no-contact order claiming that
4 Max was shown porn on his phone on February 15th. That
5 was -- a permanent order was denied. A court commissioner
6 decided it was false or not sufficient, but it did interfere
7 with a scheduled visit. At any rate, the order was denied on
8 February 28th.

9 I have here that Mr. Thurston moved to Nevada in April
10 of 2017. The court ordered a spring break visit on
11 April 11th. And that visit did occur, but Ms. Veca sends the
12 police over for a welfare check because she can't get through
13 on the phone.

14 And then she sends horrible texts to Max telling him
15 that Jarom will protect him. Both of those things happened
16 on April the 12th. Mr. Prichard had a second unsupervised
17 visit on July 31st, 2017.

18 So I asked myself the question: Was Ms. Veca
19 credible? I watched her very carefully throughout the
20 proceedings. She was an expert at deflecting questions. She
21 would give an answer that strayed from the question. When it
22 was apparent that an answer was not helpful to her, she would
23 feign confusion. She would claim she didn't know, she would
24 claim she couldn't hear, and finally claimed that she
25 couldn't recall, despite this other claim that she had a

1 photographic memory. So, for example, she couldn't recall
2 that Jarom testified that he did not see the choking. She
3 didn't recall. And this is unbelievable. She didn't recall
4 that the prosecutor made an offer to drop the charges if she
5 would return the phones and computer. Her late claim in the
6 trial that there were hundreds of DV incidents and that she
7 has a log of them that she is going to write a book about, it
8 is just utter nonsense.

9 Her claim that her son shut down as an explanation of
10 why he didn't testify that he saw the choking is rejected.
11 To her credit she has no criminal history in Washington.

12 And Mr. Pickett asked the question during the trial:
13 Is she deliberately misrepresenting things, or can she just
14 not help herself? I don't know. I don't know. We are going
15 to see if we can't find that out.

16 There were also misrepresentations of Mr. Thurston's
17 job status on the record. There were medical records showing
18 that she was working in Nevada in the fall of 2016. I have a
19 vague -- vague recollection that she testified that she
20 hadn't worked since going there, but I couldn't find that in
21 my notes to be able to reach a conclusion one way or another.

22 She claims in a psych evaluation dated February 29,
23 2016, that she had PTSD secondary to a history of domestic
24 violence. She was not truthful in that evaluation in that
25 she indicated that she had never consumed alcohol or illicit

1 drugs.

2 She was selective in the authorizations that she
3 provided to the family court investigator. She never told
4 the family court investigator that Mr. Prichard threatened
5 her or attempted to kill her, but she did tell her that she
6 was afraid of Mr. Prichard.

7 She claimed that Prichard introduced drugs to Jarom
8 and used them in front of him, but Jarom denied both. Her
9 claims of May 25, 2015, that she was held against her will
10 were belied by her statements -- her expressions of love in
11 the calls from the jail.

12 Ms. Veca claimed that Mr. Prichard belittled Jarom.
13 Jarom denied that on the stand. And so I don't find Ms. Veca
14 to be particularly credible. In fact, I am making the
15 opposite conclusion; that her testimony was largely not
16 credible. And so unless I make a specific finding consistent
17 to her testimony, I am rejecting whatever that testimony
18 might be.

19 Now, is Mr. Prichard credible? I have to tell you
20 that the Lena Bella posts are troubling. His suggestion that
21 they were made because he was upset with the LDS church is
22 nonsense. Why would anyone make -- vent to the church about
23 Casey and how he parents his kids?

24 The rants in those Lena Bella posts are horrible,
25 clearly directed at Ms. Veca and Casey. I get that he was

1 frustrated, but he clearly went too far. He knows about
2 Ms. Veca's anxiety disorder, but he did it anyway.

3 He violated the no-contact orders on multiple
4 occasions, was arrested twice. Here I am going to
5 respectfully disagree with our family court investigator.
6 There is no such thing as a mutual violation of a no-contact
7 order. It prevented one person and one person only from
8 seeing Ms. Veca and he willfully ignored it.

9 He also filed a declaration on January 11th, 2011,
10 saying he exaggerated and misrepresented facts to get a
11 no-contact order. He associated with his confidential
12 informant in June of 2015. He had the unprescribed Valium
13 and hydrocodone in June of 2015.

14 He has a photo of a penis on his phone. I know that
15 Ms. Veca had concerns about that being shown to Max. We know
16 that he had kept pictures on his phones of his penis because
17 one of the exhibits was just that. It's outrageous. I have
18 had lots of phones and I don't have a picture of a penis on
19 one of them.

20 He has a criminal history, two violations of a
21 protection order. You know, we get to the death, the
22 so-called death art, and Ms. Veca probably overreacted to
23 that as being some sort of threat against her. But then
24 again, I thought -- I think it was all part of this Lena --
25 the same thought process of Lena Bella that went into that

1 so-called art designed only to harass and annoy her.

2 I don't find any of his taking photographs with -- on
3 Royalynn's computer or iPad to be a problem. But the photo
4 of him pointing at the framed picture I can only describe as
5 being creepy, as is the picture he sent of his penis,
6 especially when you consider the timing and the fact that
7 there is a no-contact order in place.

8 Was he making fake IDs? It sure looked like it, but I
9 don't know what to do with that. Although -- well, never
10 mind. Does Mr. Prichard view pornography? Yes. Is there
11 evidence that it harmed either child? No.

12 Mr. Prichard, look at me. A lot of people think that
13 pornography is no big deal; it doesn't harm anyone.
14 Nonsense. You have got some tools like a hammer in your tool
15 box. Right? And that's an object and an object has a
16 purpose. Right?

17 Well, when you look at pornography, women become
18 objects. Objects for what? For your pleasure. It
19 undermines. It undermines your ability to have healthy
20 relationships with women because you view them as objects due
21 to the pornography. I want you to think about that.

22 Does Mr. Prichard smoke marijuana? Certainly. He was
23 smoking it in June of 2015. And there is an admission of
24 smoking it for an extensive period of time. I don't find
25 that there is evidence that it necessarily impairs his

1 ability to co-parent.

2 Sandra was correct that the law does not require
3 parents to be perfect. We, as a court, get them as we find
4 them. And we are looking for adverse impacts on the
5 children, not character traits in general.

6 The relationship, the sexual relationship with an
7 18-year-old girl over the Internet, I just have to find that,
8 you know, there does seem to be an emphasis in Mr. Prichard's
9 life on sex that isn't healthy. This got in the wrong part.

10 And then after he was arrested, his "champion" text
11 and wanting to give Ms. Veca the "big D" was bizarre.
12 Getting back to Ms. Veca, she claimed she had photos of
13 evidence of various misconduct but never produced it.

14 Anyway, the video where she claims that Royalynn was
15 hit on the head with an iPad, the Portland Zoo stalking
16 allegation, the video of Casey, the photograph of Casey's
17 home, photographs of Ms. Veca's home.

18 And here the so-called rape kit was in his backpack,
19 according to Ms. Veca, at the time he was arrested and she
20 was given possession of the backpack. But guess what? No
21 rape kit was offered into evidence so I don't believe that
22 there was a rape kit. More things that undermine --
23 undermine Ms. Veca's credibility.

24 So I get to the question: Was there a history of
25 domestic violence by Mr. Prichard against Ms. Veca? No. But

1 she says that he gaslighted her or trashed her. I think he
2 was just really telling her the truth about her volatility
3 and she just can't see her shortcomings.

4 His threats to leave; I wouldn't threaten to leave a
5 volatile, toxic relationship like that. Is it plausible that
6 domestic violence was prevalent in that home and Jarom as a
7 teenager never saw it? No. Is it plausible that --
8 Ms. Veca's claims of repeated rape? No.

9 Is it plausible of her claims of repeated emotional
10 abuse? Well, I guess that causes me to pause here a moment.
11 We have two people -- and I am going to describe their mental
12 health problems in more detail -- two people with mental
13 health problems that limit their ability to function in
14 relationships.

15 So when someone -- and that being so, anger is a
16 natural emotion. And when you get two people who don't have
17 the ability to resolve disputes constructively and get angry
18 with each other, there is going to be allegations of
19 emotional abuse. But that's not -- that's really not what's
20 going on. That's just their inability to resolve conflict in
21 a positive way.

22 And I also found it troubling that Ms. Veca just
23 refused to accept any responsibility whatsoever for her role
24 in this volatile relationship. According to her it's all
25 Mr. Prichard, and I think the evidence is very much against

1 her.

2 Casey's testimony had a few interesting tidbits in
3 there. He described how Ms. Veca would meltdown when she
4 communicated with Mr. Prichard or even thought about
5 Mr. Prichard, which tells me a lot. Her problem is her
6 perception of Mr. Prichard and how that is now in her mind.

7 And I, quite frankly, don't believe that her fears are
8 rationally based. We are all products of our home
9 environment. Both of these parties had, it sounds like,
10 horrible childhoods. Ms. Veca has mental health problems
11 that I think are what is causing her perceptions regarding
12 Mr. Prichard.

13 The counselor, John Pallett. Here is some
14 observations from his testimony: He described the children's
15 behavior after they visited with Mr. Prichard. He couldn't
16 be very specific, but it was in the fall of 2016. He
17 described them as hyperactive, aggressive, poor
18 concentration, easily agitated.

19 It was during that time period they were saying that
20 they didn't -- or, no. It was to Mr. Pallett. They were
21 saying they didn't want to see Mr. Prichard, didn't like the
22 Skype calls, that they hate Mr. Prichard, and that -- and I
23 don't know.

24 And in looking at that timeline above, this fits right
25 in it, and what we have is Ms. Veca is planting all these

1 awful things in these children's minds.

2 I will go into it now, Ms. Veca. These children
3 dearly love you and they dearly love Mr. Prichard, and when
4 you say horrible things about them [sic] it creates internal
5 conflict in those children.

6 And I find that it was you who planted those things.
7 And so when they go see him they have a good time. They come
8 back, and you are all freaked out after having said all these
9 horrible things about him, it causes internal conflict.

10 They want to please you and they want to please him.
11 But how can they please you if they are so twisted up over
12 just the fact that they went and visited with him? That
13 behavior -- don't you laugh at me.

14 MS. VECA: Well, I did not. I just -- I can't
15 believe you would say something that heinous to me. I
16 just -- so much did not facilitate that. I just --

17 THE COURT: Ma'am, enough. Enough.

18 MS. VECA: Everything you say, the timelines
19 are off. You just disregarded so much evidence, it's
20 unbelievable. It's exactly what I told was going to happen.

21 THE COURT: Ma'am --

22 MS. VECA: And as a trial judge, I don't even
23 know why you are hearing this case. It's insane.

24 THE COURT: Ma'am, if you say another word I am
25 just going to hang up on the phone. All right. I am sorry

1 you really, you missed the point there. It is the biggest
2 thing I am seeing is that when you undermine, when you
3 badmouth Mr. Prichard, you really are undermining those kids.

4 All right. I found -- you know, Mr. Pallett seemed
5 like a really nice guy. He didn't seem very experienced in
6 the business. He accepted, without question, this claim of
7 50 spankings per day. He didn't question the kids' claim
8 that Mr. Prichard tried to kill Ms. Veca as her attempt to
9 coach.

10 I really believe that his views are completely colored
11 by this narrative of history of abuse given by Ms. Veca, that
12 if he has a chance to look at this a little more closely,
13 which I am going to give him that chance, I think he might
14 see it differently.

15 The testimony of Bill Conrad, he visited the home on a
16 few occasions and found it to be completely normal. But then
17 he also noticed that Ms. Veca was worried and upset when the
18 children visited Mr. Prichard in April of 2017. This is,
19 again, just another one of those examples of her emotional
20 reaction when the kids have contact with Mr. Prichard that
21 ends up being detrimental to the kids because they pick up on
22 that.

23 He also reported that Ms. Veca was distressed, crying
24 her eyes out at the Kids at Heart drop-off. Here is another
25 example of her creating conflict in the minds of these

1 children.

2 Next subject is Ms. Veca's mental health. I find that
3 she has diagnoses of PTSD, depression, and anxiety disorder.
4 There was the note from a provider -- it was pretty old --
5 that says her anxiety interferes with her ability to seek
6 treatment. It certainly interferes with her ability to
7 rationally view Mr. Prichard and his actions, interferes with
8 her self-awareness, and causes her to overreact.

9 So when Mr. Prichard is trying to get into a legal
10 marijuana business, she sees that as a tragedy. When she
11 [sic] invites Jarom to join in the business, she sees that as
12 being horrible. She sees Mr. Prichard making motions to the
13 court so that he can visit his children as being a form of
14 abuse.

15 She finds that or considers Mr. Prichard's trying to
16 find where his children are to be abuse, considered the
17 mother's photo album to be porn, claimed that Mr. Prichard
18 drugged the children during a supervised visit. All I can
19 say is: Are you kidding me? Those supervisors watch very
20 closely.

21 Calls Mr. Prichard a molester for having a
22 relationship with an 18-year-old girl. Called the police
23 because the children's phones were off. Claims Mr. Prichard
24 didn't pay child support because she returned the money
25 orders that he sent to the attorney. Claims that --

1 MS. VECA: That is not true.

2 THE COURT: -- Mr. Prichard abused Jarom by
3 encouraging him to work and curtailed the time playing video
4 games. I will agree with her on one though, that
5 Mr. Prichard should not have allowed Jarom to watch that
6 Japanese video.

7 And, finally, another exaggeration or overreaction is
8 this claim: That the police reports were scrubbed. She
9 claims that she tried her best to provide visitation. Not
10 even close. She opposed all visitation.

11 There was one incident that really bothered me.
12 Mr. Prichard was testifying how he when he left for
13 California in July of 2015 he was -- described how Ms. Veca
14 was screaming at him to "leave now." The children were on
15 the couch hugging each other and crying.

16 Ms. Veca never contradicted that version, and the
17 thing that was really bizarre was that she smiled during that
18 testimony.

19 Next question: Did Mr. Prichard cause Ms. Veca --

20 MS. VECA: Absolutely false.

21 THE COURT: -- PTSD, depression, or anxiety
22 disorder? I conclude, no. There is no expert testimony to
23 any of that. Does Ms. Prichard [sic] have MS? It appears so
24 from the medical records, but I don't think it limits her
25 ability to parent.

1 The shoulder injury. There is an injury documented
2 occasionally in the medical records, but there is no records
3 from any -- from the acute injury. Therefore, no records
4 that show that she gave a history to any medical provider
5 that Mr. Prichard caused that. There is no expert testimony
6 on causation either. I find that it's -- the shoulder injury
7 is not disabling and was not caused by Mr. Prichard.

8 His mental health diagnoses are set forth in the
9 chart. He did attempt to commit suicide, which is troubling
10 but -- and it appears that he has it well controlled with
11 appropriate follow-up care.

12 But there is still, you know, some underlying mental
13 health issues that I think are contributing to some of the
14 relational problems. I had to ask myself at some point, you
15 know, Jarom was described as being emotionally fragile, PTSD.

16 And I ask myself, wow, was that an indicator of what
17 the children's future will be if they are left with their
18 mother? And there is no expert testimony. And, quite
19 frankly, I would be speculating if I were to reach such a
20 conclusion, but I wanted you to know that that went through
21 my mind.

22 Is Mr. Prichard bonded with the children? Yes.
23 Looked at the reports from the family court investigator and
24 the Kids at Heart owner. Is Ms. Veca bonded to the children?
25 Unquestionably. Is Max autistic? Certainly.

1 Is Royalynn autistic? The report that did include the
2 psychological professional said it is quote, "very likely,"
3 closed quote. But the basis of that was all history reported
4 by Ms. Veca. The child is no longer in special ed.
5 Mr. Prichard was excluded from that process.

6 My personal belief is that if she is retested it would
7 not find her -- well, if she were tested for autism. She
8 wasn't even tested for autism. That very likely conclusion
9 was based entirely on historical reports by Ms. Veca. You
10 know what I think about her credibility.

11 I think that what was going on in Rosalynn -- or
12 Royalynn when they got to Nevada is that she had delayed
13 developments because of limited interaction with other
14 children in a lot of the behaviors except for the -- her
15 being volatile herself. She was mimicking her brother is my
16 educated guess, but I don't need to go beyond that.

17 Was Mr. Prichard a perpetrator of domestic violence
18 against any of the children? No. Was he a perpetrator of
19 emotional abuse against Ms. Veca? I have already addressed
20 that it's a toxic relationship where neither party was
21 prepared to adequately address or handle conflict.

22 I don't think there is any abuse. Was he a
23 perpetrator of emotional abuse against any of the children?
24 No. Or physical abuse against any of the children? No. Did
25 he sexually assault Ms. Veca? No. And by the way,

1 therefore, Royalynn was not conceived during nonconsensual
2 sex.

3 Claim that -- well, we will talk a bit more about
4 Skype calls. Now, has Ms. Veca cared for the children well
5 in Nevada? Absolutely. You know, they are thriving down
6 there. They are doing wonderfully, both of them.

7 And so there is no issues with the current state of
8 their medical, dental, educational, extracurricular, social,
9 familial matters. No problems with safety or transportation,
10 their vaccines. I looked at the records. They are all up to
11 date. Mr. Prichard agrees with me in those assessments.

12 There were some expressions of concern that Max has
13 recently or will soon change teachers. I don't share that
14 concern because he will have his same classmates, and I think
15 they are important. And a lot of this, what I have just
16 said -- and I point to the testimony of Rosie Rivera. She
17 pointed a very, very positive picture.

18 The next question is: What was Mr. Prichard's role in
19 raising the kids prior to Nevada? You know, there was really
20 minimal testimony regarding that, other than to say, I was in
21 the home as a regular dad. But when you know what would hit
22 the fan, he was always the one who bugged out.

23 And then of course he was gone for many months when he
24 left for California in that final -- or in July of 2014. So
25 I find that the primary care provider was certainly Ms. Veca.

1 Are there adequate services for autistic kids in
2 Nevada? You bet. Are there adequate services for autistic
3 kids available in the Tri-Cities? I don't know. Certainly
4 we have Sandra's statement.

5 We had Casey testify that he checked the Internet a
6 couple of months ago -- a couple of months before the trial
7 and found ABA services available in the Tri-Cities, but I
8 sure would have liked to have heard from an expert.

9 Would it be traumatic to take the children from their
10 mother? Absolutely, particularly Max with the autism.
11 Royalynn would probably be more -- first more resistant but
12 then more adaptable. But, again, the only expert testimony
13 on that was Mr. Pallett who said it would be too much for
14 them.

15 Mr. Pickett brought up something in closing argument
16 and I had thought of the very same thing on the prior day,
17 and that is, would awarding the children to Ms. Veca validate
18 her conduct? And I would say very likely, but I just not --
19 that's -- that is just so hard. I can't pin any
20 particular -- well, I can't base my decision on that, I guess
21 I need to say.

22 Can the parties co-parent? Not if Ms. Veca refuses to
23 communicate. There is a five-year no-contact order that has
24 two-and-a-half or three years left on that. And, by the way,
25 that five-year no-contact order, we can't pin that on

1 Ms. Veca. She is not the one who violated the no-contact
2 order. It was -- it was the father here.

3 So let's look at the factors that I have to consider,
4 RCW 26.09.187: the relative strength, nature, and stability
5 of the child's relationship with each parent. And the
6 children are bonded to both, but the bond with mom is
7 stronger, caused only in part by her absconding with the
8 children. I think that was in play and in place before she
9 did that.

10 And particularly I look at Mr. -- I look at the
11 father, Mr. Prichard, going to California for several months
12 back in 2014. So I'd say that factor weighs towards the
13 mother. Is there an agreement of the parties? No. So
14 that's not applicable.

15 Each parent's past and potential for future
16 performance of parenting functions as defined in
17 RCW 26.09.004, subsection 3, including whether a parent has
18 taken the greater responsibility for parenting functions.

19 Well, I will commend Mr. Prichard. He had a
20 remarkably clear understanding of the services the kids were
21 receiving in Nevada. Most fathers who are distant fathers
22 don't have anywhere near that kind of a knowledge of what's
23 going on. But routine and structure are very important to
24 Max. And when Ms. Veca is not worried about Mr. Prichard,
25 she does a great job caring for the kids. And she is the one

1 who has taken on the greater responsibilities.

2 Again, I point to that several month period in 2014.
3 I also point to the fact that, whenever they had an argument,
4 he is the one who left the house and left the child or
5 children with her. This factor weighs in favor of mom.

6 The next is the emotional needs and developmental
7 levels of the children. I think it's unrebutted that Max
8 made no progress in Washington. Max was on waiting lists,
9 not getting the care he needed so I really can't place any of
10 the blame on either parent for his lack of progress.

11 Emotionally, Ms. Veca is good and bad. She is
12 wonderful with Max except when she is thinking about or
13 talking about Mr. Prichard. Jarom called Mr. Prichard Dad
14 which means he certainly can be a father. I think Ms. Veca
15 has poisoned the relationship with Jarom -- between Jarom and
16 Mr. Prichard.

17 And we have to remember, Max is very sensitive to
18 others's feelings so when Ms. Veca is stressed out or is
19 anxious, he is going to pick up on that. We also have to
20 remember that it is more important that a child be away from
21 conflict than it is to have both parents in his or her life.
22 This one slightly weighs in favor of Ms. Veca.

23 The child's relationships with siblings and/or other
24 significant adults, et cetera. Nevada has the stronger --
25 others, particularly because of the school friends. I was

1 impressed that these school friends are important to him.

2 I found it remarkable that an autistic boy would be
3 described as a social butterfly. Wow. Those relationships
4 and that support network down there is important and
5 significant. This one weighs in favor of the children
6 staying with the mother.

7 The wishes of the children, they are not old enough
8 for the court to consider that. And then each parent's
9 employment schedule. You know, the mother says she is not
10 working. That is best for the kids. Father has an evening
11 job currently which is certainly not conducive to parenting
12 now, but I acknowledge that he wants to change his plans.

13 I want to emphasize the kids are not traumatized by
14 the visits or calls with the father. They are traumatized by
15 the mother's response and reaction to it.

16 Now, the 26.09.191 limiting factors. There has been
17 no willful abandonment of the children. He moved out when
18 the parties separated.

19 I mean, he was gone for several months, but did
20 maintain some contact. There has been no history of acts of
21 domestic violence or sexual assault that causes grievous
22 bodily harm or that resulted in a pregnancy. There was no
23 pattern, physical, sexual, or a pattern of emotional abuse of
24 any child.

25 Those are the mandatory factors. If I were to find

1 any one of those, I would have to limit one of the parent's
2 contact with the children. I don't. The discretionary ones.
3 Did Mr. Prichard engage in conflict to the detriment of the
4 children? No.

5 But Ms. Veca certainly did. Withheld kids from
6 visitation, interfered, failed to facilitate Skype calls,
7 twice found in contempt, plants these horrible ideas in the
8 kids' heads, the text that, "Jarom will protect you."

9 Then I asked myself: Would placement with
10 Mr. Prichard reduce the conflict? Because that would be the
11 only way I think I could apply this factor here and I really
12 don't think so. I just think that I have to insist that
13 Ms. Veca change her ways and then hold her to it.

14 And then none of the other -- well, did Ms. Veca
15 withhold the children for protracted periods without good
16 cause? Yep. Because she couldn't help herself, I think. A
17 combination of her mental health issues and her exaggerated
18 view of Mr. Prichard and the like.

19 Now, something interesting. Mr. Pickett, did you get
20 the revised parenting plan that Ms. Acosta filed?

21 MR. PICKETT: I don't recall seeing it.

22 MS. ACOSTA: We sent it to his office.

23 MS. MICHEL: The 19th.

24 MR. PICKETT: I don't recall seeing that. I
25 don't want to say that they didn't, but I don't recall seeing

1 it.

2 THE COURT: Well, there is a complete reversal,
3 I have to tell you that, where they went from supervised
4 visitation after a bunch of conditions, to largely
5 unsupervised visits after minimal conditions. I don't know
6 why that came about.

7 But at any rate, despite Ms. Veca's shortcomings, the
8 kids are thriving. They are doing a wonderful job. And, in
9 fact, I have told them myself a number of times that if we
10 can take the best interests of the children out of this case,
11 it would be an easy case to decide.

12 And, Ms. Veca, you wouldn't come out -- you wouldn't
13 like the outcome. But at any rate, I am going to order a
14 parenting plan that leaves the kids primarily with their
15 mother. Father will get unsupervised visits, and except as
16 noted, the visits will be overnight.

17 It will be bifurcated so if, during periods that he
18 lives more than 20 miles from Ms. Veca, there will be regular
19 visits one weekend per month, either in the Tri-Cities or in
20 Henderson, as Mr. Prichard may choose. He doesn't have to
21 choose one way or the other. He can -- one month can be one
22 way; one month can be another way.

23 Visitation will fall on long weekends in the
24 particular month, like with the holidays, unless Mr. Prichard
25 chooses otherwise. But he must give notice of which weekend

1 and the place where the visit will be held on the first day
2 of the preceding month. So for the November visits he would
3 have had to have given notice by October 1st. For the
4 December visits, by November 1st.

5 If he fails to give the notice, the default will be
6 the third weekend in the month in Henderson. I am going to
7 require that Ms. Veca -- she is the one that took the kids to
8 Henderson -- she will pay for the transportation.

9 She will procure the tickets and send them to
10 Mr. Prichard so that she can get the best rates. She won't
11 have to worry about whether or not he is gouging her.

12 Mr. Prichard will get Christmas vacation every year
13 from December 27th to the second to the last day before
14 winter break ends so that December 27th will be a travel day
15 and that second to the last day will be a travel day.

16 Again, it will either be in the Tri-Cities or in
17 Henderson, as Mr. Prichard chooses. He must give notice of
18 this one by the 1st of the -- by the 1st of November.

19 Skype calls will maintain the current schedule and
20 frequency. Ms. Veca will make it a routine. She will
21 encourage the kids. The calls will always be at home -- the
22 kids will always be at home for the calls unless Mr. Prichard
23 agrees otherwise.

24 Now, summers will be in the Tri-Cities. The children
25 will travel to the Tri-Cities on the seventh day after school

1 lets out for the summer and then they will travel back on
2 July the 15th. Mr. Prichard will pay for that transportation
3 and will procure the tickets.

4 Ms. Veca will be entitled to Skype calls where
5 Mr. Prichard has the same obligations as she does: maintain
6 his current schedule and frequency, make it part of the kids'
7 routine, must encourage the kids, must be at home -- the kids
8 must be at home during the calls.

9 Holidays. The only holiday I am going to allocate
10 under these circumstances is Thanksgiving will be considered
11 a long weekend in November in alternating years, beginning in
12 2017. It will be a long weekend.

13 There will be no special provisions regarding the
14 birthdays of the kids or the birthdays of Mr. Prichard and
15 Ms. Veca. Now, if Mr. Prichard lives less than 20 miles from
16 Ms. Veca, the visitation will be alternating weekends in
17 Henderson where the first weekend for Mr. Prichard would be
18 this second full weekend that he lives in that area.

19 Christmas will be the same as the other. Skype calls,
20 we will go ahead and continue that routine on the same
21 schedule. Summer will be in Henderson, again, beginning on
22 the seventh day after school lets out until they travel back
23 on July 15th. Both will pay their own transportation for
24 that -- no. I changed my mind on this one. If Mr. Prichard
25 lives less than 20 miles, we will end the Skype calls.

1 MS. ACOSTA: Okay.

2 THE COURT: Just to avoid that source of
3 irritation. There would be an alternating holiday schedule.
4 I will allow the parties to figure out that in proposed
5 parenting plan. I will not award any Jewish holidays. There
6 is simply no testimony regarding that, other than the
7 suggestion that Ms. Veca might be Jewish.

8 And those holidays are so numerous that they would
9 make any parenting plan unworkable. And no Jewish holidays
10 applies to whether Mr. Prichard lives more or less than
11 20 miles from Ms. Veca. If he lives less than 20 miles -- we
12 are back to that -- the kids will be with him from 2:00 p.m.
13 to 6:00 p.m. on their respective birthdays and then with
14 their mother the rest of the day -- night.

15 On the parents' respective birthdays, the kids will be
16 with the respective parents from noon to 6:00. Exchanges in
17 Henderson will be at Donna's house.

18 Now, then, I am running out of time here. Would a
19 psychological evaluation of Mr. Prichard be useful? Growing
20 up -- I need to tell you this story. Growing up, my dad had,
21 out in the garage, this hammer. It was the coolest thing.
22 It was a five-pound head on a 12-inch handle. You could do
23 some close-in work and damage everything that you touch.

24 In all my years growing up, I would occasionally take
25 that hammer out and I would break something every time I did.

1 And I never saw my dad take it out except one time. We had
2 exhausted every alternative. And I will never forget. He
3 goes, "Well, my friend" -- looking at the hammer -- "Let us
4 reason together."

5 A couple of quick blows and whatever we were working
6 on was broken so that we could start to rebuild it because
7 that was the only way. Well, I have to tell you, I do these
8 psychological evaluations and these drug and alcohol
9 evaluations as being that fabulous little hammer that really
10 only needs to come out under certain circumstances.

11 So there was no testimony that told me that a
12 psychological evaluation of either of these parties would be
13 helpful. I don't know what the psychologist would look for
14 and what they could do with whatever they found.

15 But a copy of this transcript, the transcript of these
16 proceedings needs to be given to both Mr. Prichard's current
17 and future providers, as well as Ms. Veca's. And the reason
18 I am doing that is that I want them clearly to know that I
19 sat through almost a month of testimony, and under our
20 adversarial system the parties presented their best evidence
21 to me and these are my findings.

22 It is not a one-sided story that gets told to
23 treaters. I do this not to undermine a relationship between
24 a patient and a provider. No, sir. I just want them to have
25 some context so that there might be some alternative

1 explanations that they can explore with respect to whatever
2 they are hearing.

3 And what they do with that is purely up to them. I
4 don't have any expectations there, but I think that is a lot
5 simpler than the parties giving to these providers -- hold it
6 until the end -- giving these providers a copy of
7 Ms. Alarcon's report and letting the provider read those few
8 thousand pages.

9 Would a substance abuse evaluation for Mr. Prichard be
10 useful? Again, I don't think so, but I am going to require
11 that he provide a sample for a hair follicle test within the
12 next 24 hours. Mr. Pickett must file it with the court under
13 seal with a copy to me and a copy to Ms. Acosta.

14 And it's because I don't see a present indication of
15 any impairment of his parenting ability. But that arrest,
16 that summer arrest -- oops -- was very concerning.

17 I am giving the parties joint decision-making.
18 Ms. Veca must advise, in writing, of any proposed
19 non-emergency healthcare, proposed changes in providers,
20 proposed changes in schools at least three weeks beforehand.
21 She must also sign authorizations so that Mr. Prichard can
22 have full access to school, mental health counseling, and
23 medical records.

24 Other provisions with the plan: Ms. Veca must not
25 interfere with visitation by making false reports to law

1 enforcement, CPS, or mandatory reporters by submitting
2 no-contact order requests based upon false claims, by
3 submitting motions based upon false claims.

4 Regarding the latter two, the request for no-contact
5 orders and motions, those will be submitted to me and me
6 alone, not to any other judicial officer in this state or any
7 other.

8 Ms. Veca, remedies for your violating this will be --
9 jail will be at the top of my list, together with attorneys
10 fees and expert visits. I firmly believe that Ms. Veca,
11 properly motivated now, will obey this order. Her failure to
12 do so I would consider to be a substantial change in
13 circumstances.

14 Ms. Acosta, I am expecting you will explain to your
15 client what that provision means and its significance.

16 Both parties must refrain from making disparaging
17 remarks about the other parent to the kids or in their
18 presence. Again, I believe both can obey this order.
19 Failure to do so will be considered a substantial change in
20 circumstances.

21 Mr. Prichard gets access to all health, mental health,
22 school records. Ms. Veca must sign authorizations. Disputes
23 will be resolved by me. There will be no mediator. Neither
24 party will discuss court proceedings with the children or in
25 their presence.

1 They will alternate tax exemptions where Mr. Prichard
2 gets the exemption for 2018. The children will be able to
3 keep their electronic devices at all times, except as may be
4 required for disciplinary purposes. And they will get to
5 contact the parent with whom they are not living as they
6 wish.

7 Division of assets. They will both keep what's in
8 their possession, except Mr. Prichard is awarded the
9 computer, if he has not already obtained it. Ms. Veca must
10 send a copy of the vehicle title. I think she testified that
11 the vehicle is in her possession, but it's titled in
12 Mr. Casey's name. The copy of that title must be sent to
13 Mr. Pickett within one week.

14 What should be done with the IRS debt? Both parties
15 obviously lived off of the -- whatever revenue was generated.
16 They need to split that debt equally. Child support. I will
17 award based upon Mr. Pickett's worksheet. There will be no
18 back support awarded because the unrebutted testimony was
19 that Mr. Prichard paid it in full; Ms. Veca just sent the
20 checks back. I don't know why she would do that, but that's
21 just the solution from there. There will be no award of
22 attorneys fees because I believe that would only punish the
23 children; that is, undermine the ability to care for them. I
24 got to get out of here.

25 The next hearing is October 9th, 2017, to present a

1 final parenting plan, child support order, findings of fact,
2 conclusions of law; so that's October 9th at 1:30.

3 Now, you had a question, Ms. Acosta.

4 MS. ACOSTA: Oh, when you said that any future
5 care provider needs a copy of a transcript of these
6 proceedings, do you mean today, as in the judgment, or the
7 entire month?

8 THE COURT: No. Just today.

9 MS. ACOSTA: Oh, okay.

10 THE COURT: Just today so that they know how I
11 feel about it after having heard the whole case.

12 Any questions by way of clarification?

13 MR. PICKETT: Just one, not necessarily a
14 clarification, Your Honor, just about what we can do for
15 visits potentially between now and when we actually get these
16 files entered. And then I have one thing on the computer,
17 Your Honor, if we can address it, it will be very quick.

18 THE COURT: I have an appointment in Richland
19 in 15 minutes. I will give you one.

20 MR. PICKETT: Okay. Thank you, Your Honor. We
21 have been communicating with the FBI. It sounds like they
22 never received a laptop and they would like an order vacating
23 the previous order based upon that. I did not speak to them
24 personally. This is secondhand information for me.

25 But, if that is the case, could I simply send you a

1 proposed order and ask that you sign it ex parte on that so
2 we can hopefully put an end to it? I guess my client will
3 have to find another way to get his computer back.

4 THE COURT: Well, I have ordered that it is
5 awarded to him and the failure to turn it over and failure to
6 fully cooperate with efforts to get it into his possession
7 are punishable by contempt, including jail and attorneys
8 fees.

9 MR. PICKETT: That should be it, Your Honor.
10 And, again, if there is other questions that we may have I
11 can address it at the presentation hearing. I know you got
12 to get going.

13 THE COURT: Anything else, Ms. Acosta?

14 MS. ACOSTA: No. Thank you, Your Honor.

15 THE COURT: If -- oh, Ms. Acosta, I guess as
16 the prevailing party I will have you prepare the parenting
17 plan; and, Mr. Pickett, the findings of fact, conclusions of
18 law, and decree. And then you can certainly incorporate by
19 reference what I said today that they simplify that.

20 MR. PICKETT: Thank you.

21 THE COURT: If between now and then the two of
22 you have a fundamental disagreement over what I said or what
23 I meant, rather than -- and if it's -- if you feel it's
24 significant enough, feel free to try to put together a
25 conference call where we can sort it out rather than coming

1 in and haggling on the record.

2 We can certainly make a record afterward but I think
3 that would streamline it and make it more cost-effective for
4 your respective clients.

5 MR. PICKETT: That would be great, Your Honor.
6 Thank you.

7 THE COURT: All right, then. Thank you all.
8 We will be in recess. Terminate the call.

9 (Whereupon the requested proceedings concluded.)

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Appendix
Attachment D

STUDENT SCHOLARSHIP: High Society: Washington State's Recreational Cannabis Law and Its Effects on Child Custody and Visitation Rights

Spring, 2015

Reporter

13 Seattle J. Soc. Just. 973 *

Length: 10688 words

Author: Dana Petersen *

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Text

[*973] I. INTRODUCTION

Cannabis ¹ is the most widely used illicit psychoactive substance in the United States. ² While teenagers are stereotypically pegged as the biggest population of cannabis users, more and more parents are coming out of the cannabis closet, so to speak. ³ In January 2014 when dispensaries began selling recreational cannabis in Colorado, the vast majority of customers were over the age of 30. ⁴ Colorado ⁵ and Washington ⁶ were the first states to **[*974]** legalize recreational cannabis use for

¹ There are many different terms one can use when talking about cannabis. One of the most common terms is "marijuana." However, there is "a longstanding theory that narcotics agents in the 1930s chose that word over the more scientific *cannabis* when crafting drug laws; the word is of Mexican-Spanish origin and thus, the belief is, sounded more exotic and sinister." Anna King, *Is the Word "Marijuana" Racist?*, SALON (Aug. 6, 2013, 9:10 AM), http://www.salon.com/2013/08/06/weed_and_words_the_growth_of_dank_vocabulary_partner/. I am choosing to use cannabis more often in this article, though marijuana may be used interchangeably on occasion.

² Am. Psychiatric Ass'n., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 512 (5th ed. 2013) [hereinafter DSM-5].

³ Abby Haglage, *Parents Come Out of the Pot Closet*, THE DAILY BEAST (Jan. 15, 2014), <http://www.thedailybeast.com/articles/2014/01/15/parents-come-out-of-the-potclosetparents-come-out-of-the-pot-closet.html>.

⁴ *Id.*

⁵ COLO. CONST. art. XVIII, § 16.

⁶ Marijuana Retailers, Employees of Retail Outlets, WASH. REV. CODE § 69.50.360 (2013).

adults who are 21 years old and older. Voters in Oregon ⁷ and Alaska ⁸ approved measures to legalize recreational cannabis use for adults in November 2014. Washington, DC voters also approved the use of recreational cannabis for adults; however, a prohibition by Congress still makes buying or selling the drug illegal. ⁹ While Washington State's new cannabis law, and the similar laws in other states, may protect adults from criminal prosecution for cannabis possession, ¹⁰ it is still unclear how a parent's recreational use of cannabis could impact his or her rights in child custody and visitation disputes.

Historically, judges have viewed legal parental cannabis use as a negative or discriminating factor when deciding child custody cases. ¹¹ States have a vested interest in ensuring the health and welfare of minor children within their borders. ¹² This article argues that this interest can be fully served when courts use an objective test to evaluate the particular conduct of the parent that could risk serious physical harm or illness to the child(ren), rather than relying on the parent's general use of recreational cannabis.

Cannabis's negative side effects, revealed in studies below, could threaten the health and welfare of children. However, the likelihood of the [*975] risk created is dependent on the circumstances involved. Currently there is no concrete legal guidance on the proper amount of scrutiny courts should apply when deciding child custody or visitation matters involving a parent's legal use of recreational cannabis. Too much scrutiny inhibits parents from exercising their legal right to use cannabis recreationally. Too little scrutiny could risk the health and safety of the child(ren) involved.

This article offers an objective checklist of questions for family law commissioners and judges to consider in an effort to create a baseline standard assessment to ensure that children are being parented safely, and that parents may use cannabis recreationally in accordance with state law without the fear of losing their child(ren) as a result.

Part II of this article explores how the courts have considered medical cannabis use by parents in child custody cases. Part III examines the Washington and Colorado state laws allowing recreational use of cannabis by adults because these were the first recreational cannabis laws enacted in the country. Part IV addresses the legal ramifications of cannabis use at the federal level, and how the landscape of cannabis legality is changing. Part V outlines the benefits and negative side effects of cannabis use that are relevant to child custody matters. Part VI identifies how much cannabis use is considered too much, and when a parent's cannabis use could constitute a disorder rather than a recreational activity. Part VII

⁷ *Marijuana: Frequently Asked Question*, OREGON, <http://www.oregon.gov/olcc/marijuana/Pages/Frequently-Asked-Questions.aspx> (last visited Dec. 30, 2014).

⁸ Suzanna Caldwell & Laurel Andrews, *Is Weed Really Legal? And Other Things You Need to Know About Marijuana in Alaska*, ALASKA DISPATCH NEWS, Nov. 8, 2014, [http://www.adn.com/article/20141108/weed-really-legal-and-other-things-you-needknow-about-marijuana-alaska](http://www.adn.com/article/20141108/weed-really-legal-and-other-things-you-need-know-about-marijuana-alaska).

⁹ Aaron C. Davis & Perry Stein, *D.C. Hosts Nation's Biggest Legal Marijuana Giveaway*, WASH. POST, Mar. 26, 2015, http://www.washingtonpost.com/local/dcpolitics/dc-is-about-to-host-the-nations-biggest-legal-marijuana-giveaway/2015/03/26/ec566ec8-d399-11e4-8fce-3941fc548f1c_story.html.

¹⁰ WASH. REV. CODE § 69.50.360.

¹¹ Gene Johnson, *Medical Pot Can Cost Child Custody*, NBC NEWS (June 21, 2010, 1:37 PM), http://www.nbcnews.com/id/37822194/ns/health-childrens_health/t/medical-potcan-cost-child-custody/#.U09dKceKTgo.

¹² *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (noting that "the well-being of its children is of course a subject within the State's constitutional power to regulate").

discusses the current standards of review courts consider when determining child custody. Part VIII proposes a baseline for a standard checklist of questions for courts to use to address a parent's recreational cannabis use while determining child custody and visitation rights. The checklist includes the following questions: (1) Is the parent a novice cannabis user or an experienced cannabis user? (2) How is the cannabis ingested? (3) Where does the parent use cannabis? (4) How is the cannabis stored inside the home? (5) What time of day does the parent typically use cannabis? And (6) What are the ages of the children in the home?

[*976] This article will conclude by encouraging Washington State courts to adopt the checklist of six objective questions concerning a parent's recreational use of cannabis. The checklist is aligned with the policies of Washington State's new recreational cannabis law. The checklist is intended to support recreational cannabis use while also ensuring that children are protected from any risks associated with the negative effects of their parents using recreational cannabis legally.

II. MEDICAL CANNABIS USE IN CHILD CUSTODY CASES

Now that recreational cannabis use is legal for adults in Washington State, the question is how the new law could impact child custody and visitation disputes in the state. Parental cannabis use has long been an issue in child custody cases--not just in Washington, but also across the country. ¹³ In the past, parents who tested positive for illegal cannabis use or who admitted using cannabis have lost custody of their children or lost visitation rights because, very simply, they were breaking the law by using an illegal substance while caring for their children. ¹⁴ The advent of medical cannabis laws over the past 20 years has not done much to clarify, for the courts, when parental cannabis use should be a deciding factor in child custody and visitation cases.

Decisions involving disputed child custody and visitation in Washington State are soundly within the trial court's discretion. ¹⁵ Although a trial court has wide latitude in deciding parenting issues, it must make its decisions based upon the child's best interests and without abusing its discretion. ¹⁶ This wide range of discretion has led to inconsistencies in decisions regarding medical cannabis use in child custody or visitation cases, so wide **[*977]** discretion will likely exacerbate these inconsistencies in cases involving recreational cannabis use.

A. Parental Provisions in Medical Cannabis Laws in Various States

In 1996, California became the first state to allow patients to use cannabis for medical purposes under the state's Compassionate Use Act. ¹⁷ Now, some 19 years later, 22 states and the District of Columbia have joined California by enacting their own laws, which allow qualified patients to use cannabis for medicinal purposes. ¹⁸ While the medical cannabis laws in each state vary, most strive to ensure that qualifying patients, their primary caregivers, and the physicians who recommend using cannabis are not

¹³ Stephanie Smith, *Does Medical Marijuana Equal Bad Parenting?*, CNN, Mar. 14, 2014, 9:09 AM, <http://www.cnn.com/2014/03/12/health/medical-marijuana-parents/>.

¹⁴ Interview with Leonid Ponomarchuk, King County Superior Court Commissioner, in Seattle, Wash. (Mar. 3, 2014).

¹⁵ *State ex rel. Hendrix v. Waters*, 951 P.2d 317, 320 (1998).

¹⁶ *Id.*

¹⁷ Compassionate Use Act of 1996, CAL. HEALTH & SAFETY CODE § 11362.5 (2014).

¹⁸ *Medical Marijuana: Pros and Cons*, PROS AND CONS OF CONTROVERSIAL ISSUES, <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881> (last visited Dec. 30, 2014).

subject to criminal prosecution for using medical cannabis in accordance with state law.¹⁹ Each state has drafted its own list of medical conditions for which patients may legally use cannabis as a treatment.²⁰

While medical cannabis laws protect users from prosecution in general, a parent who is also a qualified medical cannabis patient can find himself or herself in a difficult legal position, often forced to choose between approved medical treatment and the threat of losing custody of his or her children.²¹ Some states have enacted provisions in their medical cannabis laws that prevent parents from having to make this choice.²² For instance, Arizona's **[*978]** Medical Marijuana Act states that "no person may be denied custody or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct, unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence."²³ In effect, these provisions suggest that courts should decide child custody and visitation matters based on additional criteria as opposed to the parent's status as a legal medical cannabis user.

In a recent decision, the California Court of Appeals seemed to agree with that sentiment, finding a distinction between cannabis "use" and "abuse."²⁴ In the case of *Drake M.*, the court overturned a lower court's decision to place Paul M., the child's father, under the supervision of the Los Angeles County Department of Children and Family Services (DCFS), which required drug counseling, parenting classes, and random drug testing for the father.²⁵ These requirements stemmed from a tip to DCFS that Paul M. and the child's mother were using cannabis.²⁶ At issue for DCFS was the fact that Paul M. drove to pick up his son from daycare roughly four hours after using cannabis.²⁷ During the DCFS inquiry, Paul M. admitted to a social worker that he had a prescription for medical cannabis and used the drug several times a week to deal with arthritis and pain.²⁸ He also testified that he did not use cannabis in the home in front of his son; instead, he went to a detached garage where the drug was kept locked in a toolbox on a shelf.²⁹ When Paul M. was in the garage using cannabis, either the child's

¹⁹ *Id.*; *Medical Marijuana*, NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML), <http://norml.org/legal/medical-marijuana-2> (last visited Mar. 27, 2014).

²⁰ *Medical Marijuana*, *supra* note 19.

²¹ See generally Kristen Wyatt, *Changing Pot Laws Create Gray Areas in Child-Welfare and Custody Cases*, WASH. POST (June 15, 2014), http://www.washingtonpost.com/national/changing-pot-laws-create-gray-areas-in-child-welfare-and-custody-cases/2014/06/15/594e752c-f49b-11e3-b633-0de077c9f768_story.html.

²² Arizona, Delaware, Maine, and Michigan each have provisions in their medical cannabis laws that state that cannabis use should not be a factor used to deny parental custody or visitation unless the parent's conduct is contrary to the best interests of the child. ARIZ. REV. STAT. § 36-2813(D) (2014); DEL. CODE ANN. tit. 16 § 4905A (2014); ME. REV. STAT. tit. 22 § 2423-E(3) (2014); MICH. COMP. LAWS ANN. § 333.26424 (c) (2014).

²³ ARIZ. REV. STAT. § 36-2813(D) (2014).

²⁴ *In re Drake M.*, [149 Cal. Rptr. 3d 875, 883-84](#) (2012).

²⁵ [Id. at 878.](#)

²⁶ *Id.*

²⁷ [Id. at 881.](#)

²⁸ [Id. at 879.](#)

²⁹ [Id. at 879, 881.](#)

[*979] mother, adult half-sister, or grandmother watched the child. ³⁰ The social worker on the case found that Drake M. was healthy and "clean without marks or bruises" and "appeared to be reaching developmental milestones." ³¹

Despite finding Drake M. safe and healthy, the court issued temporary orders that mandated random drug testing for Paul M. in order for the child to remain in the home. ³² Unsurprisingly, Paul M. tested positive for cannabis. ³³ As a result of the positive drug test, the temporary orders were made permanent after a hearing in October 2011. ³⁴ Two months later, the court of appeals overruled the lower court. ³⁵ The appellate court found that DCFS's assertion that Paul M. was regularly under the influence while caring for his child was not proof in and of itself that Drake M. was suffering from neglect or harm. ³⁶ The court went on to say, "[b]oth DCFS and the trial court apparently confused the meanings of the terms 'substance use' and 'substance abuse.'" ³⁷ The court's distinction between medical cannabis "use" and "abuse" in this case is another step toward reforming how courts view medical cannabis use in determining child custody or visitation decisions. It further adds to the argument that when determining custody and visitation more factors need to be assessed besides just the parent's use of cannabis.

B. Washington State's Medical Cannabis Law and Its Impact on Child Custody

Washington State has a law in place to protect parents who use medical cannabis from losing their parental rights. In 1998, Washington became the **[*980]** second state, behind California, ³⁸ to legalize the use of cannabis for medical purposes under the supervision of the patient's doctor. ³⁹ Under the law, patients were allowed to possess or grow enough cannabis for a 60-day supply. ⁴⁰ In 2007, then Washington Governor Christine Gregoire signed Senate Bill 6032 into law. ⁴¹ The bill amended the original Washington State Medical Use of Cannabis Act of 1998. ⁴² The new bill clarified how much cannabis a patient could legally possess, expanded the existing list of qualifying health conditions, and gave patients who possess medical cannabis more protection from arrest by state law enforcement. ⁴³

³⁰ [Id. at 879.](#)

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ [Id. at 880-81.](#)

³⁵ [Id. at 889.](#)

³⁶ [Id. at 885.](#)

³⁷ [Id. at 883-84.](#)

³⁸ Compassionate Use Act of 1996, CAL. HEALTH & SAFETY CODE § 11362.5 (2014).

³⁹ Washington State Medical Use of Cannabis Act, WASH. REV. CODE § 69.51A.005 (2)(a) (2012).

⁴⁰ *Id.*

⁴¹ *Legislators Amend Washington State Medi-Pot Law*, NORML (May 17, 2007), <http://norml.org/news/2007/05/17/legislators-amend-washington-state-medi-pot-law>.

⁴² *Id.*

⁴³ *Id.*

In 2011, the Washington State Legislature added a new medical cannabis law regarding parental rights and residential time with children:

A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under [the law].⁴⁴

The language in the law still leaves room for disparity in evaluating child custody and visitation disputes. One recent dispute involved Billy Fisher, a father and a medical cannabis patient in Spokane, Washington, who was denied custody of his infant daughter because he refused to attend an **[*981]** inpatient chemical dependency program for his medical cannabis use.⁴⁵ In 2013, the Department of Social and Health Services (DSHS) took Fisher's daughter from his estranged wife.⁴⁶ Fisher, who had authorization to use medical cannabis for pain resulting from a 2007 back injury, sought custody but the department ordered a drug assessment before they would place the baby with him.⁴⁷ In Washington State, medical cannabis use cannot be the sole reason a parent is denied custody unless there are written findings that the drug creates long-term impairment or that it interferes with parenting.⁴⁸ So, in addition to the medical cannabis use, DSHS pointed to the facts that Fisher had no experience caring for infants since he and his wife separated before the baby was born, that he had done time in prison in Idaho for burglary, and that he was once addicted to methamphetamine.⁴⁹

As a result, DSHS recommended that Fisher undergo counseling, take parenting classes, and complete 30 days of inpatient chemical dependency treatment for cannabis use before his daughter could be placed in his care.⁵⁰ Fisher agreed to do the counseling and parenting classes, but he refused to go to inpatient treatment for cannabis use because he would lose his job if he took a month off to attend the treatment.⁵¹ On the basis of Fisher's refusal to jeopardize his job by going to inpatient treatment for cannabis, DSHS provided the family court commissioner with an assessment that claimed Fisher was addicted to cannabis.⁵² Fisher hired a chemical dependency expert who said he was "dependent" on the drug to get through **[*982]** the day but was not addicted to the drug.⁵³ That expert defined chemical dependency as the condition where a person needs a drug to perform daily functions but the drug does not have a negative effect on his/her life.⁵⁴ The commissioner agreed with DSHS and

⁴⁴ Parental Rights or Residential Time--Not to be Restricted, WASH. REV. CODE § 69.51A.120 (2011).

⁴⁵ Jim Camden, *Medical Marijuana Patient Can Get Custody of Daughter*, SPOKESMAN REVIEW (Jan. 29, 2014), <http://www.spokesman.com/stories/2014/jan/29/medicalmarijuana-patient-can-get-custody-of/>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ WASH. REV. CODE § 69.51A.120 (2011).

⁴⁹ Camden, *supra* note 45.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

required Fisher to attend treatment in order to get custody of his daughter.⁵⁵ Fisher appealed to the Spokane County Superior Court where the judge rejected the inpatient drug treatment for cannabis.⁵⁶ The judge stated, "The purpose of treatment is to help the person stop using the substance, and here Mr. Fisher has a valid reason and medical prescription for using marijuana."⁵⁷ The judge went on to say that there was no evidence regarding impairment of Fisher's parental abilities due to any cannabis use.⁵⁸

The ruling allowed Fisher to begin visits with his daughter to help ease her placement into his home.⁵⁹ It is unclear how much this case will help other medical cannabis patients. An appellate court did not make the ruling so it is not binding on other judges.⁶⁰ However, it is another step toward courts beginning to see the value in assessing the parent's conduct rather than just the parent's use of cannabis when it comes to safe parenting. The concern that still remains, and that will be addressed in the objective checklist below, is exactly how the courts should evaluate the parent's conduct regarding cannabis use.

III. LEGAL RECREATIONAL USE OF CANNABIS

The recent legalization of recreational cannabis in Washington and Colorado adds a new issue for courts to grapple with as they decide how to [*983] assess a parent's cannabis use in child custody and visitation disputes. Justice Sandra Day O'Connor wrote in her dissent in the famous medical cannabis case, *Gonzales v. Raich*, "One of federalism's chief virtues, of course, is that it promotes innovation by allowing for the possibility that 'a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.'"⁶¹ In November 2012, voters in Washington and Colorado made their states laboratories for the legal use of recreational cannabis by passing I-502 and Amendment 64. Neither state fully considered the role legalization of recreational cannabis would play in child custody or visitation disputes. As more states consider similar legislation,⁶² it will be an important issue to clarify for the courts.

A. I-502

On November 6, 2012, Washington voters approved I-502, which allows adults to legally possess small amounts of cannabis.⁶³ I-502 decriminalizes cannabis possession for adults who are at least 21 years old and who possess up to the following: one ounce of loose cannabis, 16 ounces of cannabis in edible

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Gonzales v. Raich*, 545 U.S. 1, 42 (2005) (O'Connor, J., dissenting) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

⁶² Rick Lyman, *Pivotal Point Is Seen as More States Consider Legalizing Marijuana*, N.Y. TIMES, Feb. 26, 2014, <http://www.nytimes.com/2014/02/27/us/momentum-is-seenas-more-states-consider-legalizing-marijuana.html?hpw&rref=us&r=0>.

⁶³ WASH. REV. CODE § 69.50.360 (2013).

form, or 72 ounces in liquid form. ⁶⁴ Adults are not allowed to grow their own cannabis ⁶⁵ unless they qualify as patients for medical cannabis use. ⁶⁶ Adults who want to buy cannabis, and who are not qualified medical cannabis patients, are required to purchase from a licensed retail outlet. ⁶⁷

[*984] The legislation did not propose any guidelines for how family law commissioners, judges, guardians ad litem, and attorneys should handle recreational cannabis when drafting parenting plans or deciding custody or visitation disputes. The initiative deliberately excluded not only these guidelines, but also a roadmap for how to educate the legal community. ⁶⁸ ACLU Criminal Justice Director Alison Holcomb (who also wrote the 2012 initiative) stated,

On the one hand, we wanted it to be thorough enough to be reassuring that there were lots of safety bumpers in place and that we really did care about evaluating what was happening and being able to make adjustments along the way, but we also didn't want to have to over legislate and micro-manage too much. ⁶⁹

While it was logical to make such groundbreaking legislation malleable for the future, it presently leaves courts with little guidance as to how to view recreational cannabis in custody and visitation disputes. Some family law commissioners are holding recreational cannabis to the same standard as alcohol or prescription drugs, but many would like an objective test for how to deal with the issue. ⁷⁰ While this article lays out a checklist of questions below in an effort to develop an objective test, until that checklist is universally adopted, commissioners and judges continue to have very wide discretion in deciding these cases. The outcomes could vary greatly.

B. Amendment 64

Colorado lawmakers also failed to take steps to specify how the courts in that state should view recreational cannabis in child custody and visitation disputes. At the same time that Washington voters passed I-502, Colorado voters passed Amendment 64. The Amendment (now enacted as article 18, **[*985]** section 16 of the Colorado Constitution) addresses personal use and regulation of cannabis for adults 21 years old and older. ⁷¹ It effectively regulates cannabis in a manner similar to alcohol. ⁷² Under the law, adults 21 and older can grow up to three immature and three mature cannabis plants privately in a locked space; legally possess all cannabis from the plants they grow (as long as the cannabis stays where it was grown); legally possess up to one ounce of cannabis while traveling; and gift up to one ounce to other citizens 21 years of age or older. ⁷³

⁶⁴ *Id.*

⁶⁵ Prohibited Acts, WASH. REV. CODE § 69.50.401 (2013).

⁶⁶ Qualifying Patients & Designated Providers Not Subject to Penalties, WASH. REV. CODE § 69.51A.040(1)(a)(i) (2007).

⁶⁷ WASH. REV. CODE § 69.50.360 (2013).

⁶⁸ Interview with Alison Holcomb, Criminal Justice Director, ACLU of Washington, in Seattle, Wash. (Mar. 6, 2014).

⁶⁹ *Id.*

⁷⁰ Ponomarchuk Interview, *supra* note 14.

⁷¹ COLO. CONST. art. XVIII, § 16.

⁷² *Id.*

⁷³ *Id.*

A special Amendment 64 Implementation Task Force has decided it will not address how the new cannabis law factors into child custody or visitation right cases in Colorado. ⁷⁴ Despite the fact that some family law attorneys say more of their clients are asking how the new law will impact child custody and visitation rights, experts in the matter say that additional statutes or guidelines are not necessary. ⁷⁵ For now, they plan to focus on whether substance abuse affects a parent's ability to keep the children safe ⁷⁶ However, without a baseline standard of questions to consider like the checklist presented below, the courts may make inconsistent decisions regarding a parent's recreational cannabis use as it pertains to that parent's ability to parent safely.

IV. LEGAL RAMIFICATIONS OF CANNABIS USE

Courts still have to consider federal law when determining child custody and visitation rights for parents who are medical cannabis patients. They [*986] will have to do the same as they begin to evaluate parents who are recreational cannabis users.

A. Federal Cannabis Law Trumps State Cannabis Law

The Controlled Substances Act (CSA) of 1970 categorized cannabis as a Schedule I drug, which prohibits the use of the drug for any purpose. ⁷⁷ That means that whether it is for recreational or for medical use, those parents who use cannabis are violating federal law and are subject to criminal prosecution. ⁷⁸ However, under both Washington State's new recreational cannabis law ⁷⁹ and its older medical cannabis law, ⁸⁰ use is permitted and both laws promise to protect against criminal prosecution. While the state laws do have some teeth, it is important for parents who use cannabis to remember that federal law is the supreme law of the land and it supersedes state laws when those state laws contradict it. ⁸¹ The US Supreme Court held that federal law must have been made pursuant to a power that the Constitution granted to the federal government in order to be the supreme law of the land. ⁸² This means that the CSA supersedes the Washington State laws allowing recreational and medical cannabis use.

⁷⁴ *No Laws Dictating Marijuana Consumption in Child Custody Cases*, 7NEWS DENVER (The Denver Channel broadcast, Feb. 27, 2013), available at <http://www.thedenverchannel.com/news/local-news/no-laws-dictating-marijuanaconsumption-in-child-custody-cases>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Controlled Substances Act, [21 U.S.C. § 801](#) (2012).

⁷⁸ *Id.*

⁷⁹ WASH. REV. CODE § 69.50.360 (2013).

⁸⁰ WASH. REV. CODE § 69.51A.005 (2)(a) (2012).

⁸¹ The Supremacy Clause reads:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI, cl. 2.

⁸² [McCulloch v. Maryland, 17 U.S. 316, 406 \(1819\)](#) ("The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding.'").

In 2005, the Supreme Court decided *Gonzales v. Raich*, upholding the constitutionality of the CSA as applied to individuals who legally under [*987] state law grow cannabis for personal medical use.⁸³ In *Raich*, Angel Raich and Diane Monson, who were both California residents, were using cannabis to treat serious medical conditions.⁸⁴ Both women were using cannabis in line with California's Compassionate Use Act,⁸⁵ and they sought an injunction to prevent the federal government from prosecuting them under the CSA.⁸⁶ They argued that the Act could not constitutionally be applied to their *intrastate* personal use of medical cannabis because it was not a commercial activity and did not impact interstate commerce,⁸⁷ which Congress can regulate under the Commerce Clause of the Constitution.⁸⁸ The Supreme Court disagreed, stating that Congress could use the power of the Commerce Clause to regulate homegrown intrastate cannabis because the production of cannabis for home use "has a substantial effect on the supply and demand in the national market."⁸⁹ The Court further noted that "Congress has a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA because of the difficulties in distinguishing between marijuana cultivated locally and marijuana grown elsewhere."⁹⁰

The Court's decision that intrastate medical cannabis use falls within the scope of the CSA means the CSA supersedes state medical cannabis laws, and arguably state recreational cannabis laws as well. As a result, parents legally using cannabis either medically or recreationally under state law could still be prosecuted under federal law.

[*988] *B. Lack of Federal Enforcement*

Despite its authority to do so, the Justice Department has said it will not currently sue Washington State to prevent it from allowing recreational cannabis use by adults.⁹¹ In the summer of 2013, then Attorney General Eric Holder called Washington Governor Jay Inslee to say that federal authorities will not preempt I-520 as long as the state develops a "sound, workable regulatory structure."⁹² President Barack Obama weighed in on the issue, saying it was not a "top priority" for his administration to prosecute users of recreational cannabis in states where it has been made legal.⁹³ However, the Justice Department did issue a list of eight priorities for federal prosecutors who enforce cannabis laws (since it is still illegal

⁸³ [Gonzales v. Raich, 545 U.S. 1, 42 \(2005\).](#)

⁸⁴ [Id. at 6.](#)

⁸⁵ *Id.*

⁸⁶ [Id. at 7-8.](#)

⁸⁷ [Id. at 15.](#)

⁸⁸ U.S. CONST. art. I, § 8, cl. 3. (Congress has the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]").

⁸⁹ [Raich, 545 U.S. at 19.](#)

⁹⁰ [Id. at 22.](#)

⁹¹ Andrew Gross & Carrie Dann, *DOJ Won't Challenge Wash., Colo. Marijuana Laws*, NBC NEWS, Aug. 29, 2013, 12:00 PM, <http://www.nbcnews.com/news/other/doj-wontchallenge-wash-colo-marijuana-laws-f8C11034054>.

⁹² *Id.*

⁹³ *Id.*

under federal law).⁹⁴ Those priorities would still target offenses like the distribution of cannabis to minors, the use of violence or firearms in the distribution of the drug, and the use of cannabis on public lands."⁹⁵ The decision not to prosecute could be looked at as a move by the federal government to inch toward decriminalizing cannabis altogether. However, until that day comes, states that choose to legalize cannabis, like Washington, need specific guidelines for how to assess a parent's cannabis use when evaluating child custody and visitation disputes.

V. BENEFITS AND NEGATIVE SIDE EFFECTS OF CANNABIS

Most people would not bat an eye if a parent stated that he or she enjoys a glass of wine or a bottle of beer at the end of the day, but the stigma likely changes if that same parent were to say that he or she enjoys a little [*989] cannabis at the end of the day. Yet, it appears more and more parents are turning to cannabis to relax.⁹⁶ Some parents even say that using cannabis helps them to better care for their children.⁹⁷ One mom summed up the benefits of her cannabis use as follows: "Sometimes I feel like I can't complete one thought, let alone the 25 requests my kids have just made. Pot has the same effect on me as 20 minutes of yoga, but I don't have time for 20 minutes of yoga."⁹⁸

While relaxation may be one of the perceived benefits of cannabis, there are also many negative side effects to using the drug. Cannabis physically affects the human body because it contains more than 400 chemicals, 60 of which are chemicals known as cannabinoids.⁹⁹ Delta-9-tetrahydrocannabinol (THC) is the most active and thoroughly researched of these cannabinoids and is responsible for most of the pharmacological activity of cannabis.¹⁰⁰ Scientists are continually learning about how THC both positively and negatively affects the brain and body, which could provide important evidence for family law commissioners and judges as they determine whether a parent who uses cannabis (hereinafter cannabisusing parent) is also a safe parent.

[*990] A. *The Medical Benefits Attributed to Cannabis Use*

Parents who are users or proponents of cannabis often argue that the drug is less harmful than many prescription drugs, and they may be right.¹⁰¹ In the last decade, prescription drug overdoses killed more

⁹⁴ *Id.*

⁹⁵ Memorandum from James M. Cole, Deputy Att'y Gen., to all United States Attorneys (Aug., 29, 2013), <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

⁹⁶ Jessica Baumgardner, *I'm a Parent who Smokes Pot*, REDBOOK (Feb. 9, 2012, 7:00 PM), <http://www.redbookmag.com/kids-family/advice/pot-parents>.

⁹⁷ *Id.*; David Moye, *'Marijuana Moms' Say Smoking Weed Makes Them Better Parents*, HUFFINGTON POST, June 18, 2013, 8:07 PM, http://www.huffingtonpost.com/2013/06/18/marijuana-moms-smoking-pot_n_3462020.html.

⁹⁸ Baumgardner, *supra* note 96.

⁹⁹ Nora D. Volkow, *Marijuana and Medicine: The Need for a Science-Based Approach*, in PROFESSIONAL PERSPECTIVES ON ADDICTION MEDICINE 24, 24 (Mark Stanford & Donald Avoy eds., 2009).

¹⁰⁰ *Id.*

¹⁰¹ Joseph Serna, *Fatal Drug Overdoses in U.S. Increase for 11th Consecutive Year*, L.A. TIMES, Feb. 19, 2013, <http://articles.latimes.com/2013/feb/19/news/la-heb-drugoverdoses-increase-20130219>.

people in the United States than heroin and cocaine combined.¹⁰² In fact, prescription drug overdoses account for about 45 deaths each day.¹⁰³ However, in the 10 thousand years that humans have been known to use cannabis, not one overdose death has been attributed to its use.¹⁰⁴ Cannabis researchers say that a person would have to smoke 15 thousand joints (cannabis cigarettes) in roughly 20 minutes to get a toxic level of THC,¹⁰⁵--a realistically impossible feat. While few would call cannabis "healthy," research shows some health benefits associated with cannabis use.¹⁰⁶ The drug is recognized as an effective way to treat more than 200 medical conditions such as Alzheimer's disease, cancer symptoms, glaucoma, HIV/AIDS symptoms, multiple sclerosis, and even morning sickness.¹⁰⁷ A recent study also shows that smoking cannabis is associated with lowered waist circumference, lower body mass index and fasting insulin levels, and improved blood sugar control and insulin sensitivity.¹⁰⁸ The key word in the study's conclusion is "associated." While the study is promising, the **[*991]** researchers point out that it does not prove that cannabis use brings these health benefits, only that it is *associated with* these benefits.¹⁰⁹ However, through these studies, one can infer that cannabis provides real medical benefits for the treatment of many different medical illnesses and conditions.

B. Negative Side Effects Caused by Cannabis That Could Be a Risk to Children

Despite the benefits mentioned above, cannabis may cause a number of negative side effects that could create substantial risks to children. Cannabis can cause slowed reaction time, disruptions in judgment, impaired short-term memory, mood alterations, and potential addiction.¹¹⁰ To determine whether a parent's recreational cannabis use could be a detrimental factor in child custody and visitation decisions, courts should look closely at these negative effects to see whether they could create a substantial risk that a child could suffer serious physical harm or illness.

Cannabis impairs a user's cognitive abilities and negatively affects short-term memory,¹¹¹ which could have an impact on one's ability to parent. Research shows that THC diminishes working memory by

¹⁰² *Id.*

¹⁰³ Mark Koba, *Deadly Epidemic: Prescription Drug Overdoses*, USA TODAY, Jul. 28, 2013, <http://www.usatoday.com/story/money/business/2013/07/28/deadly-epidemicprescription-drug-overdoses/2584117/>.

¹⁰⁴ Dave Smith, *'Medical' Marijuana: 10 Health Benefits that Legitimize Legalization*, INT'L BUSINESS TIMES, Aug. 8, 2012, <http://www.ibtimes.com/%E2%80%98medical%E2%80%99-marijuana-10-healthbenefits-legitimize-legalization-742456>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Elizabeth A. Penner et al., *The Impact of Marijuana Use on Glucose, Insulin, and Insulin Resistance among U.S. Adults*, 126 AM. J. MED. 583, 586 (2013) (discussing how cannabis may lower waist circumference, body mass index, and fasting insulin levels).

¹⁰⁹ *Id.* at 583.

¹¹⁰ Cathy Payne & Michelle Healy, *Marijuana's Health Effects: Memory Problems, Addiction*, USA TODAY, Dec. 7, 2012, <http://www.usatoday.com/story/news/nation/2012/12/06/nih-marijuana-effects/1751011/>; Volkow, *supra* note 99, at 24.

¹¹¹ Payne & Healy, *supra* note 110.

activating a form of synaptic plasticity that weakens neuronal connections.¹¹² The concept of working memory developed from the concept known as short-term memory, and it is defined as the brain system that "provides temporary storage and manipulation of the information necessary for such complex [*992] cognitive tasks as language comprehension, learning, and reasoning."¹¹³ It requires the simultaneous storage and processing of information in the brain.¹¹⁴ Heavy cannabis users report longer lasting memory defects, but those defects tend to diminish following a period of abstinence from cannabis.¹¹⁵ However, it is not just heavy cannabis users who experience these problems; almost everyone who has smoked cannabis has experienced a problem with short-term or working memory.¹¹⁶ This usually takes the form of a cannabis user forgetting the topic of a sentence before he or she has finished that sentence.¹¹⁷ Therefore, temporary memory or cognitive impairment in a cannabis-using parent could pose a risk to a child in that parent's custody (e.g., a parent forgets to pick up his or her child).

Cannabis users may also experience impaired motor functions.¹¹⁸ Motor control is impaired when cannabis interacts with the high concentrations of endocannabinoid receptors in the basal ganglia and cerebellum, which are areas of the brain central to motor control.¹¹⁹ In research studies, the impairments are most easily seen in the user's decreased decision-making ability and increased stop-reaction time while doing tasks that require attention.¹²⁰ In a recent review of studies analyzing the effects of cannabis, researchers found that drivers who use cannabis are more than twice as likely to be involved in an automobile crash.¹²¹ One such study noted that [*993] "marijuana causes impairment in every performance area that can reasonably be connected with safe driving of a vehicle such as tracking, motor coordination, visual functions, and particularly complex tasks that require divided attention."¹²² Cannabis also increases the risk that the user will be responsible for a fatal car accident; however, this risk is significantly less than the risk created by alcohol.¹²³ Performance impairments

¹¹² Mo Costandi, *How Marijuana Impairs Memory*, THE GUARDIAN (Mar. 2, 2012), <http://www.theguardian.com/science/neurophilosophy/2012/mar/02/how-marijuanaimpairs-memory>.

¹¹³ Alan Baddeley, *Working Memory*, 255 SCIENCE 556, 556 (1992) (defining the concept of working memory).

¹¹⁴ *Id.*

¹¹⁵ Volkow, *supra* note 99, at 24.

¹¹⁶ Timmen L. Cermak, *Medical Marijuana*, in 2 PROFESSIONAL PERSPECTIVES ON ADDICTION MEDICINE 59, 62 (Mark Stanford & Donald Avoy eds., 2009).

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 63

¹¹⁹ *Id.*

¹²⁰ Johannes G Ramaekers et al., *High-Potency Marijuana Impairs Executive Function and Inhibitory Motor Control*, 31 NEUROPSYCHOPHARMACOLOGY 2296, 2296 (2006) (discussing how cannabis impacts attention required tasks).

¹²¹ Mu-Chen Li et al., *Marijuana Use and Motor Vehicle Crashes*, 34 EPIDEMIOLOGIC REV. 65, 69 (2012) (reviewing studies on cannabis related car crashes).

¹²² R. Andrew Sewell et al., *The Effect of Cannabis Compared with Alcohol on Driving*, 18 AM. J. ON ADDICTION 185, 186 (2009) (discussing the impact of cannabis on a person's ability to drive).

¹²³ *Id.*

associated with cannabis use are at their maximum within an hour but can last up to four hours.¹²⁴ This presents a concern because, though a parent may use cannabis hours before he or she would need to drop off or pick up his or her child, the drug could still be active in his or her system.

Secondhand cannabis smoke may also create risks for children. Smoking cannabis is one of the most common ways of delivering the drug to the user.¹²⁵ Once they are inhaled, cannabinoids are absorbed by the lungs then passed into the bloodstream and carried to the brain.¹²⁶ Some doctors suspect that smoking cannabis could lead to the same risks of head, neck, and lung cancer as smoking tobacco.¹²⁷ Cannabis smoke and tobacco smoke share many of the same carcinogens, yet the levels found in cannabis smoke are usually higher than the levels found in most cigarettes.¹²⁸ Secondhand tobacco smoke causes a number of health problems in children, including more frequent and severe asthma attacks, respiratory infections, ear [*994] infections, and sudden infant death syndrome (SIDS).¹²⁹ Therefore, it is reasonable to infer that secondhand cannabis smoke could have a similar effect on children.

A 2011 study found that THC was detected in saliva samples from non-cannabis smokers who spent time in the vicinity of cannabis smokers.¹³⁰ During the study, adults spent a total of three hours at two different coffee shops in the Netherlands,¹³¹ a country known for its legalized cannabis. The number of cannabis smokers in each coffee shop ranged from zero to six.¹³² The participants tested negative for cannabis before entering each coffee shop.¹³³ Researchers then measured the THC levels of the participants after 20 minutes, 40 minutes, 60 minutes, 120 minutes, and 180 minutes of passive cannabis exposure in each shop.¹³⁴ In the first coffee shop, which had more active cannabis smokers, the samples from all the participants tested positive for THC at each time interval.¹³⁵ In the second coffee shop, which had fewer active cannabis smokers, no THC was detected in the participants during the first few time intervals.¹³⁶ However, at the three-hour mark, several of the participants tested positive for a

¹²⁴ J.G. Ramaekers et al., *Neurocognitive Performance During Acute THC Intoxication in Heavy and Occasional Cannabis Users*, 23 J. OF PSYCHOPHARMACOLOGY 266, 266 (2009) (discussing how long cannabis stays in one's system).

¹²⁵ DSM-5, *supra* note 2, at 511.

¹²⁶ Volkow, *supra* note 99, at 24.

¹²⁷ Julien Berthiller et al., *Marijuana Smoking and the Risk of Head and Neck Cancer: Pooled Analysis in the INHANCE Consortium*, 18 CANCER EPIDEMIOLOGY BIOMARKERS & PREVENTION 1544, 1544 (2009); Suma Singh, *Toward a New Pain Medicine*, in 2 PROF'L PERSPECTIVES ON ADDICTION MEDI. 80, 80 (Mark Stanford & Donald Avoy eds., 2009).

¹²⁸ Berthiller et al., *supra* note 127.

¹²⁹ *Health Effects of Secondhand Smoke*, CENTERS FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/ (last visited Apr. 10, 2014).

¹³⁰ Christine Moore et al., *Cannabinoids in Oral Fluid Following Passive Exposure to Marijuana Smoke*, 212 FORENSIC SCI. INT'L 227, 227 (Oct. 2011) (studying the effects of secondhand cannabis smoke).

¹³¹ *Id.* at 228.

¹³² *Id.*

¹³³ *Id.* at 229.

¹³⁴ *Id.* at 228.

¹³⁵ *Id.* at 229.

relatively high amount of THC.¹³⁷ Overall the study found that the volunteers, when exposed to passive or secondhand cannabis smoke, absorbed THC.¹³⁸ While this study was done with adult volunteers, one could surmise that the THC absorption [*995] levels would be the same for children exposed to secondhand cannabis smoke for similar amounts of time. This should be a concern for family law commissioners and judges as they assess how and where a parent seeking custody or visitation uses cannabis.

VI. HOW MUCH IS TOO MUCH CANNABIS?

So just how much cannabis can a parent have before it is considered too much to parent safely? Without specific guidelines, family law commissioners and judges wrestle with this question. For the first time in Washington State, the new cannabis law sets a legal impairment level for THC.¹³⁹ The level is set at five nanograms of active THC per milliliter of whole blood--that roughly equates to about 0.05 percent blood alcohol level, which is less than the state limit for DUI standards.¹⁴⁰ However, there are no handy charts showing how much cannabis it takes to reach that level, because cannabis varies in strength and affects novice and seasoned users differently.¹⁴¹ The five nanogram level is based on tests for active THC, which usually dissipates within hours of use.¹⁴² Another cannabis compound, carboxy-THC--stored in fat cells for 30 days or more, often tripping up users in workplace drug tests--is not counted under I-502 as a basis for impairment.¹⁴³

The five nanogram per milliliter limit does not really indicate just how much is too much cannabis. Cannabinoids have diverse effects on the brain.¹⁴⁴ The cannabis available today varies significantly in the potency of [*996] THC levels, ranging from 1 percent to approximately 15 percent in typical cannabis plant material and 10 to 20 percent in hashish.¹⁴⁵ During the past two decades, there has been a steady increase in the potency of cannabis.¹⁴⁶ The potency of cannabis can also depend on how it is ingested. Cannabis is most commonly smoked, but the drug can also be ingested orally, most commonly by mixing it into food.¹⁴⁷ Recently, devices have been developed that vaporize cannabis for

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 230.

¹³⁹ Jonathan Martin, *I-502 Raises Questions About How Much Pot Is Too Much for Drivers*, SEATTLE TIMES, Oct. 28, 2012, http://seattletimes.com/html/politics/2019541405_potdUI28m.html.

¹⁴⁰ Driving Under the Influence, WASH. REV. CODE § 46.61.502(1)(b) (2012); Persons Under Influence of Intoxicating Liquor or Drug, WASH. REV. CODE § 46.61.506; Martin, *supra* note 139.

¹⁴¹ Martin, *supra* note 139.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ DSM-5, *supra* note 2, at 511.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

inhalation.¹⁴⁸ Smoking and or inhaling the vapors of cannabis typically produce a more rapid onset and a more intense experience of the drug.¹⁴⁹ Thus, family law commissioners and judges should inquire how parents who are seeking custody or visitation ingest cannabis because the high from the drug could be more or less intense depending on whether the drug is smoked, inhaled through vapors, or eaten. Even with this inquiry, it could be difficult for family law commissioners and judges to assess whether a parent's cannabis use would make him or her an unsafe parent. Below are two categories defined in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) that could aid family law commissioners and judges in their assessment.

A. Cannabis Use Disorder

Parents with cannabis use disorder may use cannabis many times a day over a period of months or years, and as a result they may spend several hours a day under the influence.¹⁵⁰ Other parents may use less often, but their use could cause repeated problems when it comes to family, work, and other important activities.¹⁵¹ Experienced cannabis users may develop a behavioral and or pharmacological tolerance to the drug so that it can be [*997] difficult to detect when they are under the influence.¹⁵² Furthermore, parents who have built up this tolerance may perceive themselves as not spending excessive amounts of time under the influence of cannabis.¹⁵³ To aid family law commissioners and judges in determining whether a parent has the disorder, the DSM-5 lists cannabis use disorder as a problematic pattern of cannabis use leading to clinically significant impairment or distress as manifested by *at least two of the following, occurring within a 12-month period*:

1. Cannabis is often taken in larger amounts or over a longer period than was intended.
2. There is a persistent desire or unsuccessful efforts to cut down or control cannabis use.
3. A great deal of time is spent in activities necessary to obtain cannabis, use cannabis, or recover from its effects.
4. Craving, or a strong desire or urge to use cannabis.
5. Recurrent cannabis use resulting in a failure to fulfill major role obligations at work, school, or home.
6. Continued cannabis use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of cannabis.
7. Important social, occupational, or recreational activities are given up or reduced because of cannabis use.
8. Recurrent cannabis use in situations in which it is physically hazardous.
9. Cannabis use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by cannabis.
10. Tolerance, as defined by either of the following:

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 512.

¹⁵³ *Id.*

- [*998]** a. A need for markedly increased amounts of cannabis to achieve intoxication or desired effect.
- b. Markedly diminished effect with continued use of the same amount of cannabis.
11. Withdrawal as manifested by either of the following:
- a. The characteristic withdrawal syndrome for cannabis.
- b. Cannabis (or a closely related substance) is taken to relieve or avoid withdrawal symptoms.

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Many adults with cannabis use disorder have experienced a repeated desire to stop or have failed repeated attempts to stop using cannabis.¹⁵⁵ Milder adult usage may resemble typical teenage usage, in that cannabis use is not as frequent or heavy, but continues despite potential significant consequences of sustained use.¹⁵⁶ The list of symptoms above may help family law commissioners and judges better assess when a parent has a distinct cannabis problem, but an area of concern remains for parents who use cannabis less frequently or for the occasional high associated with cannabis intoxication.

B. Cannabis Intoxication

Cannabis intoxication typically begins with a "high" feeling followed by symptoms that include euphoria with inappropriate laughter and grandiosity, sedation, lethargy, impairment in short-term memory, difficulty carrying out complex mental processes, impaired judgment, distorted sensory perceptions, impaired motor performance, and the sensation that time is passing slowly.¹⁵⁷ Intoxication typically develops within minutes if the cannabis is smoked; however, it may take as long as a few hours to **[*999]** develop the high if the cannabis is ingested orally.¹⁵⁸ The effects of cannabis intoxication usually last three to four hours, but can last longer for those who eat the drug.¹⁵⁹ The length of time to produce a high and the duration of the high associated with orally ingesting cannabis can be a concern for parents who are novice users because they may not realize how much they are ingesting because they do not immediately feel the effects.¹⁶⁰

One mother, Wendy Sachs, wrote an article for CNN about her legal cannabis experience while on a family skiing vacation in Colorado.¹⁶¹ Mrs. Sachs wanted a way to relax after a day on the slopes, and decided to give legal cannabis a try instead of her customary cocktail or glass of wine.¹⁶² She bought a cannabis-laced cookie and cannabis-laced chocolate truffles to enjoy with her husband after the kids

¹⁵⁴ *Id.* at 509-10 (emphasis added).

¹⁵⁵ *Id.* at 513.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 516.

¹⁵⁸ *Id.* at 517.

¹⁵⁹ *Id.*

¹⁶⁰ Interview with Roger Roffman, Professor Emeritus, University of Washington, in Seattle, Wash. (Mar. 13, 2014).

¹⁶¹ Wendy Sachs, *Rocky Mountain High, or How I Spent My Family Vacation*, CNN, Apr. 3, 2014, 12:01 PM, http://www.cnn.com/2014/04/03/living/weed-colorado-familyvacation/index.html?hpt=hp_c4.

¹⁶² *Id.*

went to bed. ¹⁶³ The "budtender" who sold her the cookie warned her about how much to eat, ¹⁶⁴ but things didn't go quite as planned. She recalled in the article, "Earlier, my budtender warned me to only eat a quarter of the cookie, but I must have consumed more than was recommended because the next eight hours turned into a heart-racing, chest-thumping, head-spinning trip. The potency of edibles is apparently unreliable, and they can pack a punch. Who knew?" ¹⁶⁵

The potency of edibles that Mrs. Sachs wrote about is precisely the concern shared by family law commissioners and judges as they try to determine whether or not a parent using cannabis is still able to parent safely. ¹⁶⁶ While Mrs. Sachs was with her husband in a plush Vail resort, ¹⁶⁷ **[*1000]** those parents who are single parents and novice cannabis users could find themselves in a dangerous parenting situation if they ingest too much cannabis at home. For instance, a novice user in this situation may not know how to handle a sudden parenting emergency, such as a child suddenly becoming ill. ¹⁶⁸ While family law attorneys customarily advise their clients not to use any legal or illegal substances, such as cannabis, alcohol, or illegal drugs during custody proceedings, there are concerns about the standard of review family law commissioners or judges could use in light of past or current use.

VII. CURRENT STANDARDS OF REVIEW TO DETERMINE CHILD CUSTODY

Family law attorneys will sometimes joke that family law judges and commissioners are all fair, just, and equitable; they just have different ideas of what that means. ¹⁶⁹ That joke may prove to be an unfortunate reality when family law judges and commissioners must take Washington State's new recreational cannabis law into account when deciding child custody and visitation issues. Before recommending a checklist of objective questions that commissioners and judges should ask to evaluate whether parents who use recreational cannabis are parenting safely, it is important to know the current standard.

A. *Best Interest of the Child Standard*

The law of parenthood and child custody has evolved from a common law tradition, where children were viewed as parental property--namely the **[*1001]** property of the father--to recognition that children have their own rights. ¹⁷⁰ As courts rejected claims that parents have a property right to their children, they began to evaluate custody decisions on what is determined to be in the best interest of the child, which places the highest priority on the child's interest. ¹⁷¹ Although there is no standard definition of the best interest of the child, "[b]est interests' determinations are generally made by considering a number of

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Ponomarchuk Interview, *supra* note 14.

¹⁶⁷ *Id.*

¹⁶⁸ Roffman Interview, *supra* note 160.

¹⁶⁹ Bellevue Family Law Attorney, Guest Lecturer in Family Law course at Seattle University School of Law (Mar. 27, 2014).

¹⁷⁰ Jill Elaine Hasday, *The Canon of Family Law*, [57 STAN. L. REV. 825, 848-49 \(2004\)](#) (discussing how the law of parenthood has shifted from viewing children as "chattels" to viewing them as persons).

¹⁷¹ [Id. at 849.](#)

factors related to the child's circumstances and capacity to parent, with the child's ultimate safety and well-being the paramount concern." ¹⁷²

As a consequence of the widespread variations in the best interest of the child standard from jurisdiction to jurisdiction, there are a multitude of best interest of the child standards. ¹⁷³ In Washington State, "the best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care." ¹⁷⁴ Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm. ¹⁷⁵

In addition, "[w]hen the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in **[*1002]** conflict, the rights and safety of the child should prevail." ¹⁷⁶ "The right of a child to basic nurturing includes the right to a safe, stable, and permanent home" ¹⁷⁷ The child's health and safety are of paramount concern to the court. ¹⁷⁸ Therefore, in Washington State, the best interests of the child standard controls the decision of the court when determining who will parent a child daily. ¹⁷⁹

B. Guidelines Regarding Legal Substance Use and Secondhand Smoke in Child Custody and Visitation

Courts turn to the best interests of the child standard when evaluating legal activities such as alcohol use, prescription drug use, and tobacco use in custody disputes. ¹⁸⁰ In Washington State, courts view the best interest of the child standard as a "highly fact-specific inquiry that cannot be reduced to a mathematical equation." ¹⁸¹ In assessing these facts, courts typically do not consider a parent's responsible use of alcohol or prescription drugs to be a negative factor when making child custody decisions. ¹⁸² Washington State law dictates that it is not until a parent consumes alcohol or drugs to the point of abuse such that it interferes with the performance of parenting functions that it is used to inform child custody decisions. ¹⁸³

¹⁷² CHILD WELFARE INFORMATION GATEWAY, DETERMINING THE BEST INTEREST OF THE CHILD: SUMMARY OF STATE LAWS, U.S. DEPT. OF HEALTH & HUMAN SERVICES 2 (2012), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf.

¹⁷³ Daniel A. Krauss & Bruce D. Sales, *Legal Standards, Expertise, and Experts in the Resolution of Contests Child Custody Cases*, 6 PSYCH. PUB. POL'Y. & L. 843, 848 (2000) (proposing modifications to the best interest of the child standard).

¹⁷⁴ WASH. REV. CODE § 26.09.002 (2007).

¹⁷⁵ *Id.*

¹⁷⁶ Rights of Child, WASH. REV. CODE § 13.34.020 (1998).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *In re Parentage of J.H.*, 49 P.3d 154, 157 (2002).

¹⁸⁰ Ponomarchuk Interview, *supra* note 14.

¹⁸¹ *Dep't of Soc. & Health Services v. Paulos*, 270 P.3d 607, 614 (Wash. 2012).

¹⁸² Ponomarchuk Interview, *supra* note 14.

¹⁸³ *Id.*; Restrictions in Temporary or Permanent Parenting Plans, WASH. REV. CODE § 26.09.191(3)(c).

The issue of secondhand tobacco smoke is being raised more frequently in child custody and visitation cases. ¹⁸⁴ As mentioned above in Part V, Section B, exposure to secondhand smoke can cause respiratory ailments **[*1003]** and other health problems. ¹⁸⁵ To put it bluntly, secondhand smoke can make a child sick. ¹⁸⁶ As a result, in their effort to protect the welfare of the child under the best interest of the child standard, courts are looking more closely at the smoking habits of adults in the child's home. ¹⁸⁷

Often the amount of weight a family law judge or commissioner gives to the issue of smoking tobacco in custody or visitation decisions depends upon whether the child has existing health problems. ¹⁸⁸ In *Unger v. Unger*, the court considered the exposure of two minor children as a safety factor in the best interest of the child analysis in a custody determination. ¹⁸⁹ In that case, the mother smoked a pack and a half of cigarettes a day, and the children had persistent coughs possibly associated with chronic bronchitis and they visited the doctor frequently with complaints of respiratory problems. ¹⁹⁰ The court stated, "Clearly, the effect of [secondhand smoke] is a factor that may be considered by a court in its custody determination as it affects the safety and health of the children." ¹⁹¹ The court went on to find that the fact that a parent smokes cigarettes is a permissible parental habit to consider when determining what is in the best interests of the children because it may affect their health and safety. ¹⁹²

The court in *Daniel v. Daniel* also placed great weight on the child's health when granting a change in custody to a father because the mother continued to smoke around the asthmatic child. ¹⁹³ The mother's continued smoking, despite the child's illness, became a factor for consideration in **[*1004]** evaluating the welfare of the child. ¹⁹⁴ In a strongly worded opinion, the court stated, "Moreover, the fact that the mother continued to smoke inside the apartment for almost three years after the child was diagnosed [with asthma] suggests that she was not adequately concerned about the child's health." ¹⁹⁵ Courts have not limited their consideration of secondhand smoke to just custody; it is also a factor in visitation rights. ¹⁹⁶ Courts have said that cigarette smoking and its adverse effects on a child's existing health problems justified placing limits on a parent's visitation. ¹⁹⁷

¹⁸⁴ Kathleen Hoke Dachille & Kristine Callahan, *Secondhand Smoke and Family Courts: The Role of Smoke Exposure in Custody and Visitation Decisions*, TOBACCO CONTROL LEGAL CONSORTIUM 1, 1 (2005).

¹⁸⁵ CENTERS FOR DISEASE CONTROL & PREVENTION, *supra* note 129; Dachille & Callahan, *supra* note 184, at 2.

¹⁸⁶ Dachille & Callahan, *supra* note 184, at 2.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 3

¹⁸⁹ *Id.*; [Unger v. Unger, 644 A.2d 691 \(N.J. Super. Ct. 1994\)](#).

¹⁹⁰ [Unger, 644 A.2d at 691-93](#).

¹⁹¹ [Id. at 694](#).

¹⁹² *Id.*

¹⁹³ [Daniel v. Daniel, 509 S.E.2d 117, 119 \(Ga. Ct. App. 1998\)](#); Dachille & Callahan, *supra* note 184, at 5.

¹⁹⁴ Dachille & Callahan, *supra* note 184, at 5.

¹⁹⁵ [Daniel, 509 S.E.2d at 120](#).

¹⁹⁶ Dachille & Callahan, *supra* note 184, at 5.

Courts are also considering a healthy child's exposure to secondhand smoke when determining custody or visitation. ¹⁹⁸ In *Johnita M.D. v. David D.D.*, a court considered a child's motion for a protective order to be free from secondhand smoke while visiting his mother who was a smoker. ¹⁹⁹ The court evaluated scientific and medical studies and concluded that exposure to secondhand smoke increased the child's risk of asthma, lung cancer, and respiratory illnesses. ²⁰⁰ The court held that the mother was banned from smoking or allowing others to smoke in her home or automobile, and she was required to maintain a smoke-free environment. ²⁰¹

When it comes to secondhand cannabis smoke, Washington courts also consider whether it would be detrimental to the child(ren). ²⁰² In *McDaniel v. McDaniel*, a mother sought review of an order modifying a divorce decree, which awarded the custody of her two minor children to their father. ²⁰³ The court upheld the modification in part because the children **[*1005]** were exposed to "marijuana smoking." ²⁰⁴ It found the environment provided by the mother was detrimental to the children. ²⁰⁵ The court stated, "although [the mother] does not lack basic parental fitness in the sense that she would be unable to provide an adequate home if [the father's] home was not available, the granting of this petition will significantly promote the children's physical, mental and emotional health." ²⁰⁶ While a parent may possess basic parenting skills, the court will look more explicitly at which parent will foster a child's mental, physical, and emotional health in considering custody placement.

These cases show that more and more frequently non-smoking parents are asking courts to grant them custody to prevent a child's exposure to secondhand smoke from the smoking parent, and courts are responding. While Washington State law mandates that medical cannabis use cannot be the sole reason a parent loses custody or visitation time, ²⁰⁷ the issue of secondhand smoke could open a backdoor that would make it harder for *all* cannabis-using parents in custody and visitation disputes. Thus, Washington courts need more specific guidelines as to how to deal with this issue.

VIII. PROPOSAL FOR CHANGE: OBJECTIVE CHECKLIST OF QUESTIONS FOR ASSESSING RECREATIONAL CANNABIS USE IN DETERMINING CHILD CUSTODY OR VISITATION RIGHTS

Family law commissioners and judges wield an enormous amount of power when making child custody and visitation decisions. And though we like to think of them as completely impartial, they too have

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 6.

¹⁹⁹ See generally [Johnita M.D. v. David D.D., 740 N.Y.S.2d 811 \(Sup. Ct. 2002\)](#).

²⁰⁰ Dachille & Callahan, *supra* note 184, at 6.

²⁰¹ [David D.D., 740 N.Y.S.2d at 813](#).

²⁰² [McDaniel v. McDaniel, 539 P.2d 699, 702 \(Wash. 1975\)](#).

²⁰³ [Id. at 700](#).

²⁰⁴ [Id. at 702](#).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ WASH. REV. CODE § 69.51A.120 (2011).

personal biases,²⁰⁸ which can negatively affect the outcome of a trial.²⁰⁹ Most family **[*1006]** law commissioners and judges work to rigorously exclude personal bias when making decisions; in fact, they are typically appalled if their impartiality is called into question.²¹⁰ However, personal bias does exist. A Washington State judge revealed personal bias by calling the state's Medical Use of Cannabis Act "an absolute joke[.]" as well as "an excuse to be loaded all the time."²¹¹

Another Washington State judge noted while deciding visitation for a father who was a medical cannabis user,

I would comment that I do hope that [the father] is mindful of the serious problem that marijuana use is particularly as it relates to caring for children. I fully recognize that people of this state have decided to pass this medical marijuana law and that's the law of the state of Washington. On the other hand, the Court cannot countenance a situation where a person is using marijuana, under the influence of marijuana and is caring for children. That just cannot happen.²¹²

These personal biases are not all that surprising. As mentioned above, Congress designated cannabis as a Schedule I drug, the most restrictive schedule.²¹³ In essence Congress has said that cannabis has no accepted medical use in treatment in the United States and that it has a high potential for abuse.²¹⁴ The drug has also been a central fixture in the War on Drugs for decades.²¹⁵ While the laws regarding cannabis are changing, sometimes laws can change faster than the public's perception.

[*1007] A. *Objective Checklist of Questions*

While no methodology can completely remove personal bias from decisions concerning parental recreational cannabis use, Washington State courts need a specific checklist of questions to develop a baseline standard for how parental cannabis use should be assessed when considering custody disputes and visitation rights. The checklist below differs from the DSM-V guidelines discussed in Part VI, Section A, which characterize the symptoms of cannabis use disorder.²¹⁶ This checklist is meant to address the gray area of recreational cannabis use that does not constitute a disorder, but that could still pose safety risks to children. It is important to note that this checklist is in no way meant to be absolute. Instead it is meant to help create a baseline standard that family law commissioners and judges can use in their evaluations of a parent's legal recreational cannabis use as it pertains to child custody or visitation. The

²⁰⁸ Donald C. Nugent, *Judicial Bias*, 42 CLEV. ST. L. REV. 1, 5 (1994) (discussing inevitable biases in the American court system).

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ Gene Johnson, *Medical Pot Can Cost Child Custody*, NBC NEWS (June 21, 2010, 1:37 PM), http://www.nbcnews.com/id/37822194/ns/health-childrens_health/t/medical-pot-can-cost-child-custody/#.U0tfCseKTgo.

²¹² In the *Matter of the Marriage of Desire Wieldraayer*, 2008 Wash. App. LEXIS 2916, 3-4 (Wash Ct. App. Dec. 22, 2008).

²¹³ 21 U.S.C § 801 (2012).

²¹⁴ Peter J. Cohen, *Medical Marijuana: The Conflict Between Scientific Evidence and Political Ideology*, 35 UTAH L. REV. 37, 88 (2009) (describing how the CSA defines scheduled drugs).

²¹⁵ Anti-Drug Abuse Act of 1986, H.R. 5729, 99th Cong. (1986); Dan Eggen, *Marijuana Becomes Focus of Drug War*, WASH. POST (May 4, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/05/03/AR2005050301638.html>.

²¹⁶ DSM-5, *supra* note 2, at 509-10.

six questions included in the checklist are derived from the case law, studies, and research discussed above, and they are not necessarily listed in order of importance.

1. Is the Parent a Novice Cannabis User or an Experienced Cannabis User?

This is an important distinction because experienced cannabis users may actually be better able to handle parenting emergencies that could arise after cannabis use.²¹⁷ Again, it is worth distinguishing an "experienced user" from someone who has cannabis use disorder. An experienced user in this context is not someone who uses cannabis daily to a detrimental effect; instead, it is someone who has used it often enough to have built up a slight tolerance and knows his or her limit.

Research has shown that accuracy in working memory tasks were "not significantly altered" in participants who were experienced cannabis [*1008] users.²¹⁸ Driving studies have also found that experienced cannabis users tend to be more cautious drivers and do not initiate risk-taking behaviors on the road.²¹⁹ This should not be construed as suggesting that it is safe to drive under the influence of cannabis. However, the research could suggest that experienced cannabis users could have more cognitive function than novice users. As the mother's story recalled in Part VI, Section B, a novice cannabis user may have no idea how much cannabis he or she can safely ingest and how her or his body will react to the drug.²²⁰ Her experience led to an eight-hour "heart-racing, chest-thumping, head-spinning trip."²²¹ Therefore, it may be important for the court to consider whether an experienced or novice cannabis user may be able to better handle a parenting situation.

2. How Is the Cannabis Ingested? (i.e., Is It Smoked or Eaten in an Edible?)

Cannabis is most often smoked,²²² but more and more cannabis users are beginning to turn to edibles.²²³ There are important risks associated with each type of use. The harmful effects of cannabis smoke and secondhand smoke are detailed in Part V, Section B of this article. While cannabis smoke can present risks to the user and possible children in the vicinity of the user, edibles are no less dangerous.²²⁴ Once an edible is ingested it can take anywhere from 20 minutes to over an hour for the full effects to be felt, [*1009] and the resulting "high" is often stronger and lasts longer.²²⁵ A user's tolerance level can also be different between smoking cannabis and eating it in an edible.²²⁶ Many users who report a

²¹⁷ Roffman Interview, *supra* note 160.

²¹⁸ *Experienced Marijuana Consumers Exhibit Virtually No Change in Cognitive Task Performance After Smoking, Study Says*, NORML (Jul. 8, 2010), <http://norml.org/news/2010/07/08/experienced-marijuana-consumers-exhibit-virtually-no-change-in-cognitive-task-performance-after-smoking-study-says>.

²¹⁹ Ramaekers et al., *supra* note 120, at 2296.

²²⁰ Sachs, *supra* note 161.

²²¹ *Id.*

²²² DSM-5, *supra* note 2, at 511.

²²³ Naggles, *Beginner's Guide to Medical Cannabis: Using Edibles*, BERKELEY PATIENTS CARE COLLECTIVE, <http://berkeleypatientscare.com/2011/05/18/beginners-guide-to-medical-cannabis-using-edibles/> (last visited Apr. 14, 2014).

²²⁴ *Id.*

²²⁵ DSM-5, *supra* note 2, at 517.

²²⁶ Naggles, *supra* note 223.

high tolerance to smoking cannabis find they have a strange lack of tolerance to edibles.²²⁷ Thus, the way a parent uses cannabis could be an important distinction for family law commissioners and judges as they assess whether that parent is able to parent their child safely.

3. Where Does the Parent Use Cannabis? (i.e., Inside or Outside the Home?)

Most cannabis-using parents are quick to say that they do not use the drug around their children.²²⁸ The key to the inquiry by family law commissioners and judges is what "around" means. The mother on the Colorado ski vacation, for example, did not use the cannabis in the same room as her kids.²²⁹ For the father in *In re Drake M.*, it meant smoking cannabis in a detached garage where his son was not allowed.²³⁰ The location where the parent uses the cannabis could pose risks to the child(ren) in his or her care. For instance, a parent may think he or she is being a responsible cannabis user by smoking the drug inside the home after the child has gone to sleep. However, depending on the size of the home,²³¹ **[*1010]** the parent could be exposing the child to THC through secondhand smoke similar to the way the adult volunteers were exposed to THC while sitting in Dutch coffee shops.²³² While the location of the cannabis use should not necessarily bar the parent from custody or visitation rights, it could encourage the court to recommend that the parent use the drug elsewhere when children are in the home.

4. How Is the Cannabis Stored Inside the Home?

Whether or not a cannabis-using parent uses the drug inside the home, he or she still likely stores it inside the home. Once cannabis was legalized in Colorado, the number of children who were accidentally poisoned by the drug increased significantly.²³³ In about half of the cases, the kids had found cannabis-laced cookies, brownies, or candy.²³⁴ Edibles can have high amounts of cannabis, and if a child eats them the symptoms can be severe.²³⁵ Therefore, family law commissioners and judges should look for express evidence that the cannabis-using parent stores the drug responsibly. For example, a court may view as responsible storage in a locked safe or in a building apart from the house such as a garage or shed as opposed to storage in a cupboard or closet.

5. What Time of Day Does the Parent Typically Use Cannabis?

²²⁷ *Id.*

²²⁸ *In re Drake M.*, [149 Cal. Rptr. 3d 875, 879 \(2012\)](#) (providing the father's testimony, "None of us use drugs in front of our child."); Camden, *supra* note 45 (noting that the father stated he never smoked around his daughter); Sachs, *supra* note 161 (providing that the mother wrote, "At night after the kids were asleep, my husband and I nibbled on the jumbo cookie.").

²²⁹ Sachs, *supra* note 161.

²³⁰ *In re Drake M.*, [149 Cal. Rptr. 3d at 881](#).

²³¹ This in no way should be construed as an income or class distinction to discriminate against a cannabis-using parent who cannot afford a large home. Instead it should be viewed as factor to recommend that a cannabis-using parent not smoke cannabis inside his or her home, or at least not smoke in a room close to where the children might be sleeping or playing.

²³² Moore et al., *supra* note 130, at 227.

²³³ Steven Reinberg, *Kids Poisoned by Medical Marijuana, Study Finds*, U.S. NEWS & WORLD REP., May 27, 2013, <http://health.usnews.com/health-news/news/articles/2013/05/27/kids-poisoned-by-medical-marijuana-study-finds>.

²³⁴ *Id.*

²³⁵ *Id.*

The time of day a parent uses cannabis could be an important factor in determining whether that parent parents safely. As mentioned above, cannabis intoxication can impair motor function,²³⁶ and the effects can last at least three to four hours, if not longer.²³⁷ Also discussed above, impaired [*1011] motor function can decrease a user's decision-making ability and increase a user's stop-reaction time.²³⁸ This could be a concern because researchers have found that drivers who use cannabis are more than twice as likely to be involved in an automobile crash.²³⁹ Therefore, if a parent admits to using cannabis during the day, the court should further inquire whether that parent may also be transporting children at some point during the day.

6. What Are the Ages of the Children in the Home?

Research has found that most cannabis users do not want their children to use cannabis.²⁴⁰ However, children often acquire substance-using behaviors by modeling their parents' substance-using behavior.²⁴¹ In fact, the odds of a child using cannabis are two times higher if he or she has a parent who uses cannabis.²⁴² While arguably parents should not use cannabis around children of any age, the older the child, the more vulnerable he or she may be to also using cannabis.²⁴³ Cannabis use is most common in adolescence and generally declines before the mid-twenties.²⁴⁴ Therefore, the age of the child exposed to cannabis use may factor into the court's best interest of the child analysis in order to try to limit the child's exposure to factors that could increase the odds he or she will use cannabis in the future.

It is important to again note that these questions are not designed to elicit a right or wrong answer. The answers to the questions are meant to serve as [*1012] the basis of an objective baseline test that family law commissioners and judges can use in their assessment of whether a parent who uses legal cannabis recreationally can parent safely.

B. How the Objective Checklist of Questions Works

The objective checklist of questions gives the court wide discretion, while still maintaining limits on judicial consideration. The objective checklist of questions gives family law commissioners and judges an educated lens through which to view a parent's legal recreational cannabis conduct. Because many of the risks created by cannabis's negative side effects may be lessened through careful planning and

²³⁶ DSM-5, *supra* note 2, at 516.

²³⁷ *Id.* at 517.

²³⁸ Ramaekers et al., *supra* note 120.

²³⁹ Li et al., *supra* note 121.

²⁴⁰ Christian Thurstone et al., *Medical Marijuana Use: A Qualitative Study*, 3 ADOLESCENT PSYCHIATRY 190, 191 (2013) (discussing concerns about how medical cannabis use may affect parenting).

²⁴¹ Julie B. Kaplow et al., *Child, Parent, and Peer Predictors of Early-Onset Substance Use: A Multisite Longitudinal Study*, 30 J. OF ABNORMAL CHILD PSYCHOL. 199, 201 (2002) (discussing how children are exposed to substance use).

²⁴² Richard Nauert, Ph.D., *Kids Tend to Pick up Parents' Alcohol, Drug Habits*, PSYCHCENTRAL (Mar. 21, 2014), <http://psychcentral.com/news/2014/03/21/is-drugalcohol-use-an-inheritable-trait/67422.html>.

²⁴³ *Id.*

²⁴⁴ *Id.*

action, the objective checklist of questions provides the court the opportunity to be proactive rather than reactive to child safety risks associated with a parent's legal recreational cannabis use.

Furthermore, educating the court on risky cannabis-using conduct through the objective checklist of questions helps eliminate personal bias around recreational cannabis use and allows the court to potentially use a less heavy-handed approach in its assessment of the activity in question. This would encourage the court to recommend alternative conduct that could help a parent maintain custody or visitation, without necessarily abstaining from using cannabis. In addition, because the court would have to articulate its reasoned assessment to each of the questions, adversely affected parents will have a clear statement of the risk expressed in the court's findings to challenge on appeal. Therefore, in situations where a family law commissioner's or judge's personal bias improperly influenced the outcome of the custody or visitation decision, a parent will have a better chance of getting that decision overturned on appeal.

IX. CONCLUSION

Washington State has an opportunity to eliminate the confusion around how to deal with its new recreational cannabis law as it factors in to child [*1013] custody and visitation decisions. The new cannabis law does not give any guidance as to how courts should evaluate a parent's recreational use of cannabis in light of the best interest of the child standard.²⁴⁵ Rather than complacently allowing family law commissioners and judges to develop their own, potentially contrasting, rules, this is a unique opportunity to develop an objective checklist of questions that will educate the courts and lead the country in creating a baseline standard for how to evaluate recreational cannabis use as it pertains to custody and visitation disputes.

Given the inconsistencies in rulings on cases involving cannabis-using parents, this issue requires immediate attention of the legal community and the public at large. By adhering to the objective checklist of questions, courts would view the totality of a parent's cannabis conduct, not just the act of using cannabis. Furthermore, it would provide full protection for children by focusing on the parent's specific conduct that creates the risk of harm. Finally, it would provide the parent with a reasoned assessment as to why his or her use may create a risk for a child, and it would give the court the opportunity to mitigate that risk without removing custody or visitation rights.

Most importantly, the objective checklist of questions fully protects the health and well-being of children by focusing on specific parental conduct that could be harmful to children. Thus, by adopting the objective checklist of questions, Washington State can ensure the protection of children while affording parents the right to choose to use recreational cannabis legally and responsibly under state law.

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²⁴⁵ Holcomb Interview, *supra* note 68.

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May 31, 2018 - 12:51 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35685-0
Appellate Court Case Title: In re the Marriage of: Jenny Lynn Veca and Aaron Keyes Prichard
Superior Court Case Number: 14-3-00647-1

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