



GENDER AND JUSTICE COMMISSION

FRIDAY, NOVEMBER 6, 2020 (9:30 AM – NOON)

JUSTICE SHERYL GORDON MCCLOUD, Co-CHAIR

JUDGE MARILYN PAJA, Co-CHAIR

ZOOM: [HTTPS://WACOURTS.ZOOM.US/J/98891916194](https://wacourts.zoom.us/j/98891916194)

PHONE: 253-215-8782 US (TACOMA)

MEETING ID: 988 9191 6194



Agenda		Page
9:30 AM – 9:40 AM WELCOME AND INITIAL BUSINESS		
➤ Welcome	Justice Sheryl Gordon McCloud Commission Co-Chair	1
➤ Approval of September 25 th Meeting Minutes		
9:40 – 10:10 AM GUEST SPEAKER		
➤ Criminal Justice Equity Tool	Kate Sigafos, Kim Gordon, Anthony Powers, Belinda Cheng	
➤ Presentation of tool and request for feedback		
10:10 – 10:35 AM COMMITTEE AND MEMBER REPORTS		
➤ Self-represented Litigants Work Group	Professor Gail Hammer	
➤ E2SHB 1517 DV Work Groups	Judge Eric Lucas, Co-Chair	
➤ Reports submitted to Legislature		
▪ Treatment Report		
▪ Risk Assessment Report		
➤ Presentation to House Public Safety Committee		
➤ Court Recovery Task Force	Judge Jackie Shea-Brown Judge Marilyn Paja	SUP
<i>See report in supplement</i>		
➤ NAWJ Virtual Conference	Judge Marilyn Paja	8
<i>See report in packet</i>		
➤ Recent Cultural Competency Training	Lillian Hawkins	
➤ Facilitated training for King County District Court with Dr. Caprice Hollins (Cultures Connecting)		
10:35 – 10:45 AM STRETCH BREAK		
10:45 AM – 11:10 AM COMMITTEE AND MEMBER REPORTS, continued		



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➤ DSV Committee	Judge Jackie Shea-Brown and Erin Moody, Co-Chairs	
➤ Planning December meeting		
➤ Incarceration, Gender & Justice Committee	Elizabeth Hendren, Chair	
➤ Remote hearings with incarcerated litigants		SUP
➤ Revisiting legal resource computer/kiosk website access		
➤ Tribal State Court Consortium	Chief Judge Cindy K. Smith, Co-Chair	
➤ Protection order enforcement survey		
➤ December webinar		
11:10 AM – 11:50 AM GENDER JUSTICE STUDY		
➤ Discussion Items		11
➤ Study Report Structure	Dr. Dana Raigrodski and Justice Sheryl Gordon McCloud	
➤ Topic 1.3: Immigration status barriers that may be preventing complainants and witnesses from coming to court	Riddhi Mukhopadhyay	12
11:50 AM – 12:00 PM ADJOURNMENT		
➤ Next Steps and Adjournment	Justice Sheryl Gordon McCloud, Judge Marilyn Paja, Co-Chairs	
APPENDIX		
➤ GJC Committees Chart		39
➤ 2021 Gender & Justice Meeting Dates		40
NEXT MEETING – January 22, 2021 – Via Zoom		



Gender and Justice Commission
Friday, September 25, 2020
9:30 AM – 12 PM
Zoom Webconference



MEETING NOTES

Members & Liaisons Present

Justice Sheryl Gordon McCloud (Chair)
 Judge Marilyn Paja (Vice Chair)
 Lucy Bauer
 Honorable Melissa Beaton
 Judge Anita Crawford-Willis
 Brielle Douglas
 Laura Edmonston
 Judge Rebecca Glasgow
 Ms. Gail Hammer
 Ms. Elizabeth Hendren
 Ali Johnson
 Judge Eric Lucas
 Ms. Erin Moody
 Ms. Riddhi Mukhopadhyay
 Renée Pilch
 Dr. Dana Raigrodski
 Bailey Reese
 Judge Jackie Shea-Brown
 Judge Cindy K. Smith
 Vicky Vreeland

Guests

Chief Judge Michelle Demmert
 Erika Evans
 Kelly Harris
 Jeffrey Keddie
 Ivy-Rose Kramer
 Commissioner Jonathon Lack
 Judge Mary Logan
 Mindy Longanecker
 Michelle Nance
 Mary Ruffin
 Barbara Serrano
 Judge Mindy Walker

Staff

Kelley Amburgey-Richardson
 Cynthia Delostrinos
 Moriah Freed
 Laura Jones
 Sierra Rotakhina

Members & Liaisons Absent

Justice Steven González
 Lillian Hawkins
 Elaine Kissel
 Sal Mungia
 Sonia Rodriguez True

WELCOME AND INITIAL BUSINESS

Welcome and Call to Order

The meeting was called to order at 9:35 AM.

- Justice Gordon McCloud welcomed everyone and invited attendees to introduce themselves.
- One of the things she has missed the most during the pandemic is running into someone spontaneously at a meeting or event and learning something new.
- Members and attendees spent time getting to know each other better through more detailed introductions.

May 29, 2020 Meeting Minutes

The meeting minutes were approved as presented.

COMMITTEE AND PROJECT REPORTS

Race and Criminal Justice Task Force – Erin Moody

Background and First Meeting

- Originally convened in response to former Supreme Court justice comments that people of color are overrepresented in the criminal justice system because they commit more crimes.
- Published first report in 2011. Working on new report for July 2021 which will focus more on policing, arrest stage.
- Recently had first meeting, which was well attended. Much greater representation from county public defender and prosecutor’s offices.
- Meetings will be once a month. Erin Moody attended the first meeting, and the Co-Chairs will discuss selecting a permanent representative from GJC when new members are appointed.

Discussion

- Dr. Raigrodski – any information, interim reports, would be helpful for study.
- Cynthia Delostrinos – great opportunity for Commission to get involved, especially with study looking at women of color, a lot this group could add to that discussion.

ACTION: Co-Chairs select permanent representative to this task force after new members are appointed.

Education Committee – Judge Rebecca Glasgow, Chair

Judicial College

- Commissioner Indu Thomas will replace Judge Anne Hirsch as faculty for 2021, due to Judge Hirsch’s retirement.
- Judge Jackie Shea-Brown will shadow Commissioner Thomas this year and serve as faculty from 2022 – 2024.

SCJA and DMCJA Session Proposals

- We submitted a proposal about changes in DV treatment standards and pilot projects in WA to both conferences.
- Considering a joint proposal with the Interpreter Commission about interpretation during remote proceedings. Judge Glasgow requested input from Commission members about the draft on page 16.

ACTION: Please send feedback via email about the draft proposal as soon as possible.

Proposals are due September 30, 2020.

Incarceration, Gender & Justice Committee – Elizabeth Hendren, Chair

Legal Resource Computer Update

- Minimum security prisons don't have law libraries, don't have access to legal resources for incarcerated litigants.
- At Mission Creek, the Commission advocated for a legal resource computer to be installed. It was not working, but DOC has assured her it is working now.
- Even when working, the computer's usefulness is limited because it only contains a downloaded version of LexisNexis and there are not attorneys or law students there to help during COVID.
- Thinks the time is right for the Commission to circle back with DOC about including online legal resources on the computer. COVID is changing a lot of things and DOC is acknowledging they aren't able to meet people's legal needs. Things that weren't previously allowed are now.
- Justice Gordon McCloud was wondering if we could put helpful links all on one website (rather than requesting the DOC computer link directly to many different websites).
 - Elizabeth Hendren shared that the concern is external links, and she is not sure this would work.
- Laura Edmonston reminded everyone that the State Law Library is a resource for incarcerated litigants. Please include their mailing address. She responds to prisoner mail herself.
- Commission members support starting a conversation with DOC about this.

Impact of COVID-19 on Family Visits

- Attempts at virtual visitation are happening, but families don't have the access they usually do.
- Discussed whether a court could order DOC to make arrangements for family visits in a particular case. DOC is not a party to family law cases, so they have said family court orders don't apply to them. DOC will sometimes engage if it is a dependency case.
- There are some ways to donate resources but there are hoops to jump through.

Access to Justice Issues

- Have provided training in the past at judicial conferences on court access for incarcerated parents.
- Hoping to partner with education committee to put out some sort of guidance for courts about access during COVID.
- Courts are sending notices about hearings via email. Inmates don't have access to email, and are missing their hearings.
- Judge Paja – this is a broader issue about how courts give notice to litigants during COVID. Applies to people who are homeless, don't have internet access at all.
- Discussed whether this is something the Court Recovery Task Force could take up.

Task Force Reports – Judge Jackie Shea-Brown

Court Recovery Task Force

- This Task Force is organized under the Board for Judicial Administration, with Chief Justice Debra Stephens and Judge Gregory Gonzales as Co-Chairs.
- There are various subcommittees. Judge Paja is on the therapeutic courts subcommittee and Judge Shea-Brown is on the family law subcommittee.
- Hosted a recent summit where Jeffrey Robinson of the ACLU spoke about racial justice issues during recovery from the COVID-19 pandemic.
- We are at an important crossroads in the courts with COVID. How can we use technology to advance access to justice?
- Judge Shea-Brown will take information shared by IG&J Committee back to the Task Force.

ACTION: Please share ideas or suggestions for other groups the Task Force should contact with either judge participating.

SCJA Unlawful Detainer Work Group

- Judge Shea-Brown is separately involved in eviction relief with the SCJA unlawful detainer work group, which works closely with the Office of Civil Legal Aid (OCLA).
- Working to divert eviction cases from court so they aren't inundated. Working to mediate issues so people can keep their housing or find other housing resources if not.
- New Supreme Court order will pilot this project in seven counties, using CARES Act funding.

Gender Justice Study – Justice Sheryl Gordon McCloud, Dr. Dana Raigrodski, Sierra Rotakhina

Research

- All areas of research are progressing steadily. See report on page 19 of the packet for additional details.

- Highlighted findings from an analysis of jury data.
 - People of color, women of color, LGBTQ people are underrepresented in all jury pools.

Pilot Projects

- Workplace Harassment Survey
 - The tool is almost finished development.
 - Next it will go to a group of pre-testers to help us identify weaknesses in the tool and make modifications as needed before it is administered broadly.
- Mass Incarceration of Women
 - Pilot is using Caseload Forecast Council (CFC) data to look at gender and race data in sentencing.
 - Black and Native American women are overrepresented in all categories.
 - There is an issue with the CFC data, which means they can't do a disproportionality assessment about Latinx women.
 - Justice Gordon McCloud and Sierra Rotakhina are in conversations with the CFC about the issue.
- See Report on Page 16 of the meeting packet for updates about the other pilots.

E2SHB 1517 DV WORK GROUPS

Presentation of Findings and Recommendations

Perpetrator Treatment Report – Judge Eric Lucas

- See detailed power point in supplemental meeting materials on [GJC website](#)
- Highlights included:
 - An overview of previous recommendations from the 2017-2018 DV Work Groups convening.
 - Need for funding DSHS to train and monitor treatment providers.
 - Innovative work happening in Okanogan County with Judge Charles Short.
 - Recommendation for mandatory training for all criminal justice system professionals about domestic violence.
 - Recommendation to create a statewide information repository because offenders may move counties and a judge in the new county will not know the offender is out of compliance.
 - If someone is being assessed, need to see history to make appropriate decision.
 - Data is important. Refinement of the definition of DV is a first step.

Risk Assessment Report – Judge Mary Logan

- See detailed power point in supplemental meeting materials on [GJC website](#)
- Highlights included:
 - Discussion of mandatory arrest.
 - This has been a part of our world, but has had unintended consequences.
 - An enormous subject with many nuances.
 - Maximum protection approach of mandatory arrest has had unintended consequence for victims too.
 - Judge Lucas added that the work groups have been discussing mandatory arrest vs. intervention. David Martin and Judge Lucas have each made a proposal. Judge Lucas recommends a model called a secure crisis assistance center.
 - Bias in risk assessment tools is a serious concern.
 - Brandon Buskey, ACLU, presented to the work groups about racial bias.
 - DOC tool is for post-adjudication. Bias issues still there, but different than pre-trial.
 - Need to provide education to police officers. Paramount to us having a more neutral contact on the scene. Right now, only happens at the academy.
 - Collecting lethality assessment data statewide would allow analysis.
 - These are written documents, 12 questions at the scene, kept by law enforcement and in police report.
 - It could and should be available to defense counsel, etc, so they know what was happening at the scene.
 - Information is available, but it is in hard copy and is not very accessible.
 - It would take an enormous amount of personnel to process data and properly get it out. WASPC member of work group reported that it is all they can do to timely respond to public records request.
 - Would be a matter of collecting it up from every separate case to a central place.
 - Need improved data collection and transparency.
 - Proposal to amend CrR 3.2 and CrRLJ to include DV-specific risk factors.
 - Judge Paja will send a copy of proposal to several GJC committees for input.
 - Determine if GJC wants to sponsor or if it would be better brought forward to a different group.

Feedback and Discussion

- Children and DV
 - Discussed when children are present, whether to name child as victim.

- Cautioned that failure to protect is a factor in dependency case. If the child is listed, could impact protective parent's ability to maintain custody of child.
- Chief Judge Smith commented that Tribes have similar issues. People can hop reservations, can hop counties. As we are thinking of this, keep in mind information sharing with Tribes if they are interested. TSCC could be a partner.
- Elizabeth Hendren and Riddhi Mukhopadhyay asked which community groups, victims groups provided input. Was legal aid represented? Yes, legal aid was represented on both work groups.
 - Judge Logan read off list of some participants. Hopefully it was a fairly broad base.
 - Laura Jones will provide full list of participants.
- Judge Paja wants to reiterate how much work the Co-Chairs and members have done, looking forward to presentation to Legislature.
- Co-Chairs commended Laura Jones on her work as coordinator.

NEXT STEPS AND ADJOURNMENT

Adjournment

- In closing, Justice Gordon McCloud reflected on Justice Ruth Bader Ginsburg's passing and her famous friendship with the colleague she disagreed with the most.
- Encouraged members to talk not just with those we agree with, but broadly about gender equality issues.

The meeting adjourned at approximately 12:00 p.m.

To: Gender and Justice Commission (GJC)
From: Judge Marilyn Paja, Co-Chair GJC
Kitsap County District Court
Date: October 30, 2020
Re: Attendance at 2020 NAWJ Annual Conference (Virtual)

It is with enthusiasm that I report back from the 2020 Annual Conference of the National Association of Women Judges (NAWJ). Originally scheduled for Nashville Tennessee and to celebrate the 100th Anniversary of the Right to Vote for (Some) Women, the worldwide COVID 19 pandemic changed the plans. Originally, I received funding from the Gender and Justice Commission (GJC) and the District & Municipal Court Judges (DMCJA) Leadership Grant Program to attend the in-person event. I returned that Grant when the in-person event was cancelled. The Gender & Justice Commission paid the reduced registration fee (\$80). Thank you to the Commission.

NAWJ leadership was able to convene the conference over a condensed time with a virtual presentation using ZOOM. Education topics were excellent, and some of the content might be able to be replicated here in Washington State.

Judge Karen Matson Donohue, King County Superior Court was inducted as the President of the NAWJ for 2020-21. Judge Donohue has announced her theme for her Presidency, “Advancing Justice Like Never Before.” She has invited all NAWJ members to share ideas to ensure inclusivity within the organization. President Judge Donohue She has already reached out to the Gender & Justice commission with an invitation to share our work for presentation to the NAWJ at future events. GJC Manager, Kelley Amburgey-Richardson, is working on that list of projects and ideas for collaboration in 2021 and beyond.

Justice Barbara Madson, Washington State Supreme Court and former chair of our GJC, was honored with the “Justice Joan Dempsey Klein Honoree of the Year Award”. Justice Klein was a founding member of the NAWJ in the 1970’s. The award is presented to a member who has assisted women judges to become more proficient in their profession, helped solve the legal, social and ethical problems associated with the judiciary, and worked to increase the number of women serving as judges.

Education Events.

United Nations Steps to Stop Harassment of NGO Workers. Following administrative, board and committee meetings, the first full day of the Conference was spent with a virtual tour of the United Nations, and remarks from notable speakers around the world concerning issues effecting women during these times of COVID-19. Discussion was had about the steps the UN is taking to stop harassment of UN-affiliated employees and contractors, including pressure on individual countries to hold perpetrators of workplace harassment accountable. It’s complicated. Barriers to the successful inclusion of women in several countries in Africa and

South America included employment loss, increased domestic violence, and barriers to successful education for women and girls was included in the presentations.

Opportunities for change were also highlighted including a remarkable 2L law student woman of color, a “Dreamer”, who spent a year in Africa working with a United Nations designated NGO to help facilitate entry into the USA and other countries of refuge for displaced persons. She spoke articulately about the challenges of being a woman including the circumstances of her own housing and harassment, and how that impacted her workplace success.

Celebration of the Nineteenth Amendment. The following day we had a dynamic presentation from a Tennessee judge (and enthusiastic amateur historian) and author Elaine Weiss about the Nineteenth Amendment and its parallels with current events. Ms. Weiss recounted the women’s suffrage rights and the 19th Amendment, as detailed in her book *The Woman's Hour: The Great Fight to Win the Vote*. She presented a stark reminder of how the Constitution can be made to reflect modern life and “change with the times.” The suffrage movement is a story about the limitations of our original constitution as it was written, excluding women, but also a story of how the Constitution is a living document, and that lesson resonates for today. The 19th Amendment was the largest extension of the franchise in history. The movement highlights how change can come about, and how it can be undermined. What does democracy mean? Who gets to participate in our government? Who has a voice?

Comparing the Reconstruction Era, the implementation of the Nineteenth Amendment was undermined, and its enforcement abandoned. In conversation with Nashville Conferences Chair, Judge Barbara Holmes, Ms. Weiss recounted the similarities between the abuse towards protestors she saw during the summer (2020), and that of the campaigning suffragettes at the beginning of the 20th century. And, then like now, voting rights were challenged and under threat. Judge Holmes highlighted the emotional, mental and physical strength of the suffragettes who encountered unconscionable abuse, as many do when they challenge prevailing traditions that upturn existing power balances.

Dean Chemerinsky Presentation on the US Supreme Court. Many judicial officers have heard Dean Erwin Chemerinsky lecture about the current state of the United States Supreme Court at past conferences. The timing here though, amid the Congressional appointment process of (now) Justice Amy Coney Barrett, was unique. Outlining cases in the pipeline, Dean Chemerinsky opined that the Court might play a part in upholding or upending voting rights will be important in the coming months.

He began his talk with observations from last term. The Supreme Court decided the fewest cases since – 53 – since 1862, early in the Civil War. The Court cancelled oral arguments for two months; the last time the Court did that was October 1919 during the Spanish Flu. This year, for the first time, the Court held oral arguments by telephone, and audio broadcasts were live.

Regarding jurisprudence, Chief Justice John Roberts voted in the majority 97% of the case; he dissented twice. Dean Chemerinsky: “The term defied easy ideological

characterizations.” In Bostok v Clayton County, GA, 140 S.Ct. 1731 (2020), in a 6-3 decision, the Court held that Title XII prohibits discrimination includes protections for sexual orientation or gender identity. This is important because only about half of states have laws that prevent employment discrimination; the prohibition against this discrimination is now nationwide.

On abortion, Chief Justice Roberts repudiated the 5th U.S. Circuit Court of Appeals (which not only had disregarded the Supreme Court's earlier decision in the Texas case, but also disregarded the factual findings of the District Court judge in the Louisiana case). Dean Chemerinsky suggested this opinion was similar to the 5-4 decision upholding DACA. Department of Homeland Security v. University of California, 140 S.Ct. 1891 (2020). According to the speaker, this suggests a display of institutionalism ruling that precedents should be upheld.

Dean Chemerinsky speculated on other important questions: What might it mean if Judge Amy Coney Barrett replaces Justice Ruth Bader Ginsburg? Does the establishment clause apply to state and local governments? There could be six justices who could rule there is no separation between church and state, or religious exceptions. The public could turn from considering what may the government give religious institution to what must the government give religious institutions? Conservatives may have five votes to overrule Roe v Wade. It is possible women in need of abortions may have to travel to other states where it is legal. There may be five votes to overrule prohibitions against states disallowing same sex marriages. Considering her age, Justice Barrett could be on the Court for 20 or more years.

Dean Chemerinsky suggested that those interested in more progressive causes, civil rights advocates and plaintiff lawyers for example, might well turn to state courts and state constitutions, as well as to the political process for relief.

Break-out Discussion Sessions. Using ZOOM technology, all Conference participants were asked to participate in break-out rooms on a variety of topics, including Racial Bias, COVID in the Civil Court and Criminal Courts, the Judicial Leadership Pipeline, and the 19th Amendment. Judge Donohue attended the Racial Bias session. I attended the Judicial Leadership Pipeline session. NAWJ Board members hosted the various discussion groups, and notes of discussions were forwarded to the Board and education team members.

Thank you to the Gender & Justice Commission. I thank the Gender and Justice Commission for it continued support of Commission members to attend a variety of education and training events throughout our state and the country. Thank you also for support to pay the reduced registration fee (\$80) to attend this conference, as well to as my local court and the District & Municipal Court Judges Association (DMCJA) for encouraging attendance at national education events.

- *Marilyn*

Gender Justice Study Task Force Update

November 2020

Since the September update to the Commission, we have hit an important milestone, taking the first step in gathering broader stakeholder input on draft sections. We have already distributed a draft of the section on domestic violence and sexual assault, and anticipate circulating all of the other draft sections for feedback through the first quarter of 2021.

Pilot Projects:

Evaluation of Domestic Violence Moral Reconciliation Therapy (DV-MRT)

We contracted with Dr. Amelie Pedneault with Washington State University to conduct the evaluation. Dr. Amanda Gilman with the Washington State Center for Court Research is also providing significant support for this pilot project. We conducted a brief survey of the Courts of Limited Jurisdiction in an effort to identify all of the DV-MRT programs being offered in the state. Erica Magana, a Ph.D. student at Washington State University working with Dr. Pedneault on this evaluation, mapped out all of the DV-MRT programs we learned about through the survey, along with the courts that refer individuals to each program. While we did not receive a 100% response rate from surveyed courts, this is still a fundamental step in beginning to understand how many programs exist statewide and in determining which programs to include in the evaluation. There is no centralized list of DV-MRT programs in the state, and many programs do not have a web presence. Therefore, this mapping alone is a meaningful step toward understanding how many DV-MRT programs exist in Washington State, and which courts are, or are not, referring domestic violence perpetrators to DV-MRT programs.

Study of existing data to better understand mass incarceration of women in Washington State

Elizabeth Hendren led this work in partnership with the University of Washington and Dr. Tatiana Masters. Dr. Masters conducted the data analysis and delivered the final report at the end of October. The Gender Justice Study Co-Chairs are currently reviewing the final report and discussing how the findings will be shared.

Washington State courts workplace harassment survey

Dr. Arina Gertseva with the Washington State Center for Court Research is leading the development and administration of this survey. We have sent the survey out for pre-testing to a small group of individuals representative of the survey population. As part of pre-testing, individuals who complete the survey will also be asked a short list of questions about their experience completing the survey and issues they had with any particular survey questions. Pre-testing will allow us to identify weaknesses in the survey tool and make modifications as needed before we administer it broadly.

IMMIGRATION STATUS AND GENDER

Washington's 1989 study, though focused on gender bias, did not address other identities such as race or immigration status, the intersection of which can increase disparate treatment. This section considers gender bias within our court through an immigration lens. Rapidly changing immigration policies, heightened enforcement and the *chilling effect*¹ all contribute to real and perceived barriers that immigrants experience when accessing courtroom services and proceedings in Washington. The complicated intersection of immigration, civil and criminal law, along with implicit bias and institutional racism, all contribute to these barriers. Policies and practices will be most effective in improving conditions of immigrant women and their families when they are grounded in an understanding of the unique challenges and circumstances confronted by many immigrant women. Commonly cited barriers that immigrants experience include language barriers, lack of accessible information regarding legal processes, and fear of deportation. The research is limited on how and if immigration status barriers are disproportionately impacted by the intersection of gender. However, available research suggests that barriers disproportionately affect women, transgender and gender non-conforming/genderqueer immigrants and immigrants of color. Continuing to investigate these research questions is critical given the increasing number of immigrant and mixed status families in Washington. The failure to tell a more representative range of stories about the immigrant experience helps push a largely derogatory and inaccurate narrative of immigrants. These narratives influence which policies are embraced by the public and endorsed by our court systems.

This report aims to address two research questions. First, do the barriers to accessing the courts created by the immigration status of complainants and witnesses have disproportionate impacts by gender and/or the intersection of gender with race/ethnicity, income, country of origin, etc.? Second, if the evidence indicates immigration status creates barriers to accessing the courts that has disproportionate impacts by gender and/or the intersection of gender with

¹ See <https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families> for the full report and a description of the chilling effect. Some entities are suggesting that the chilling effect may be affecting reports particularly on domestic and sexual violence. For example, "Advocates and law enforcement have noted a decline in reports of sexual assault and domestic violence among Latinx populations nationwide following the 2016 presidential election, including downturns as sharp as 40% in Houston and 10-25% in Los Angeles, as reported by local police departments" ("Justice Compromised," 2019). However, some recent research indicates that sanctuary policies may be curbing the chilling effect in some place (Amuedo-Dorantes & Arenas-Arroyo, 2019).

race/ethnicity, income, etc., what are the legal environment (e.g. substantive legal doctrines, court procedures, etc.), biases, and/or social environment (e.g. stability of housing, access to child care, etc.) that have contributed to these disparities?

To address these two questions, this report’s first section provides an overview of current demographics and immigrant populations in Washington. The second section looks at the intersection of immigration status and gender. The third section provides an overview of immigration remedies and relief connected to the state court system and immigrant experiences in navigating the courts. The fourth section focuses on rule making and legislation to improve immigrant access and where gaps remain.

WA IMMIGRANT DEMOGRAPHICS

An overview of the landscape regarding immigrant populations in Washington provides

Table 1 Washington 2017 Demographics		
Demographics	Foreign Born* US Born	
Number	1,060,153	6,345,590
% Foreign Born	14.3%	
Population Change over Time		
% change: 2000-2017	72.5%	20.2%
Race		
White	36.3%	81.9%
Black or African American	5.8%	3.3%
American Indian or Alaska Native	0.4%	1.4%
Asian	40.3%	3.2%
Native Hawaiian and other Pacific Islander	0.7%	0.6%
Other Race	14.5%	2.9%
Two or more races	2.0%	6.6%
Latino Origin (of any race)		
Number	302,230	638,562
% Latino	28.5%	10.1%
Gender (% female)†	51.9%	49.8%
<i>Source: State Demographics Data - WA, Migration Policy Institute (MPI)</i> *The MPI includes the following definition of foreign-born: "foreign born' refers to people residing in the United States at the time of the population survey who were not U.S. citizens at birth. The foreign-born population includes naturalized U.S. Citizens, lawful permanent immigrants (or green-card holders), refugees and asylees, certain legal nonimmigrants (including those on student, work, or some other temporary visas), and persons residing in the country without authorization." †MPI data is limited in that it does not include information on transgender and non-binary communities		

critical context for understanding the barriers that immigrants experience when accessing court systems. According to the Migration Policy Institute, in 2017, Washington’s immigrant population was approximately 1,060,000 or 14.3% of the total population with slightly over half (51.9%) listed as female.² Table 1 also highlights a 72.5% population increase in foreign born individuals in the U.S. between the years 2000-2017 as compared to only a 20.2% increase for U.S. born individuals. This indicates that

² *Immigrant Population by State, 1990-Present*. (2017). Migrationpolicy.Org. <https://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-state-1990-present>

immigrant populations have increased significantly over the last 20 years. See Table 1 for more information on Washington demographics.

2017 census data from the Migration Policy Institute reflects other important immigration demographic trends in the state of Washington.³

- Regions of birth with the highest number of foreign-born individuals in Washington include Asia (44.5% of foreign-born population) and Latin America (29.5% of foreign born population)
- Countries of birth with the highest number of foreign-born individuals in Washington include: Mexico (22.6%), China (9.1%), India (7.8%), Philippines (7.5%)

Due to limitations in census data collection, it is difficult to know the exact break down of lawful status of the immigrant population (e.g. asylee, refugee, citizen etc.). However, data suggests that nearly 47.9% of foreign

	Number	%
Foreign Born by U.S. Citizenship Status		
Naturalized Citizens	507,513	47.9%
Noncitizens	552,640	52.1%

Source: State Demographics Data - WA, MPI

born individuals in the state of Washington have naturalized (See Table 2).⁴ That leaves nearly 552,640 individuals who are noncitizens, but it is unclear their immigration status and if they are eligible to naturalize. An interactive map created by USC Dornsife shows that in Washington, 180,943 individuals are eligible to naturalize indicating that they are lawful permanent resident.⁵ Of those eligible to naturalize, 64% are at 200% of the federal poverty line indicating that many eligible immigrants are lower income.⁶ Additionally, the MPI estimates that 229,000 undocumented individuals reside in the state of Washington with 61% of these individuals from Mexico and Central America. Twenty-four percent of these individuals are under the age of 24 and 8% (approx. 18,000) are under the age of 16. Forty-seven percent (108,000) of these individuals are female (*Profile of Unauthorized Population: WA, n.d.*).

³ *State Demographics Data—WA*. (n.d.). Migrationpolicy.Org. Retrieved December 21, 2019, from <https://www.migrationpolicy.org/data/state-profiles/state/demographics/WA>

⁴ *State Demographics Data—WA*. (n.d.). Migrationpolicy.Org. Retrieved December 21, 2019, from <https://www.migrationpolicy.org/data/state-profiles/state/demographics/WA>

⁵ USC Dornsife. (2018). *Interactive Map: Eligible to Naturalize Adults by Probability of Naturalization—By PUMA (2018)*. <https://dornsife.usc.edu/csii/map-eligible-to-naturalize-puma/>

⁶ USC Dornsife. (2018). *Interactive Map: Eligible to Naturalize Adults by Probability of Naturalization—By PUMA (2018)*. <https://dornsife.usc.edu/csii/map-eligible-to-naturalize-puma/>

All these data indicate that immigrants of many ages, language backgrounds, and immigration status reside in Washington. These identities present different experiences, needs, and barriers when accessing the courts.

1. *Fluid Nature of Immigration Status*

A high number of immigrant families are mixed status families.⁷ Immigrants have different access to opportunities based on their documented status. Individuals will often have multiple lawful statuses over the course of their lifetime (e.g. transition from LPR to naturalized citizen) and their experiences with one status are not stagnant in time, but rather carry into other statuses.⁸ The hierarchy of legal classifications shapes corresponding social, political, and economic conditions that may influence health outcomes and health inequalities...⁹ The same may be assumed about legal or case outcomes. Moreover, while undocumented individuals undoubtedly have the most restricted access to resources, benefits and opportunities, other non-citizen statuses such as lawful permanent residency (LPR), temporary protected status, refugee status etc. also have limited access to resources and benefits.¹⁰ This indicates that at least some barriers at the courts depend on the lawful status of the immigrant; this becomes complicated as many families are comprised of individuals with multiple statuses. Lastly, mixed status immigrant families are linked and the effects of institutional policies and rules carry into subsequent generations; "...enforcement or exclusions aimed at undocumented immigrants may affect the wellbeing of community members, regardless of legal status".¹¹

2. *Geographical Considerations*

⁷ According to Thronson & Sullivan mixed status families include: "families in which all members do not share the same immigration or citizenship status." (Thronson & Sullivan, 2012). A 2005 study by Thronson notes that among families headed by a noncitizen, 85% are mixed status and 10% of children in the US live in a mixed status family and "of poor children, fifteen percent live in mixed-status families"(Thronson, D. B. (2005). *Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts*. 11, 31). According to Amuedo-Dorantes & Arenas-Arroyo, mixed status rates of marriage between citizens and noncitizens increased by 3% between 2001-2016 (Amuedo-Dorantes & Arenas-Arroyo, 2019).

⁸ Torres, J. M., & Young, M.-E. D. (2016). A life-course perspective on legal status stratification and health. *SSM - Population Health*, 2, 141–148. <https://doi.org/10.1016/j.ssmph.2016.02.011>

⁹ Torres, J. M., & Young, M.-E. D. (2016). A life-course perspective on legal status stratification and health. *SSM - Population Health*, 2, 141–148. <https://doi.org/10.1016/j.ssmph.2016.02.011>

¹⁰ Torres, J. M., & Young, M.-E. D. (2016). A life-course perspective on legal status stratification and health. *SSM - Population Health*, 2, 141–148. <https://doi.org/10.1016/j.ssmph.2016.02.011>

¹¹ Torres, J. M., & Young, M.-E. D. (2016). A life-course perspective on legal status stratification and health. *SSM - Population Health*, 2, 141–148. <https://doi.org/10.1016/j.ssmph.2016.02.011>. Torres & Young do not specifically address gender as a contributing factor towards disparities that immigrants experience.

Recent in-migration and growth by immigrants to rural areas over the last 20 years represents rapid demographic populations changes happening across the country with underrepresented populations contributing to rural communities that would otherwise be struggling economically (Lichter, 2012). Resources are very often focused in urban areas. Using Hispanic population numbers, between 2000 and 2010, they for 56 percent of all nonmetropolitan population growth, yet represented only about 7 percent of its total population in 2010 (Lichter, 2012).

Other research indicates that Spanish speaking communities are increasing in rural areas and that these communities have unmet language access needs when accessing court services. One national survey of 158 courts conducted by The National Center for State Courts found that “Almost 60 percent of courts in population centers had a language assistance plan...In contrast, 26 percent of courts in rural areas had such a plan” (see section on Language Access and Interpretation).¹²

Table 3 (right) connects national level research to Washington and shows the top five Washington counties with immigrant populations. Most notable in this chart is that King County has over 47% of the state’s known immigrant population. However, the remaining top four counties are substantially more rural than King County. This indicates that barriers for rural immigrant populations accessing the courts should also be considered. A recently published report by the University of Washington Center for Human Rights on U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) apprehensions in Washington courthouses shows that apprehensions are happening in more rural counties like Clark, Grant and Adams counties, discussed further below. No other data was found regarding rural immigrant populations in the state of Washington or the intersection of gender and rural immigrant populations.

Table 3: Immigrant Population top Washington Counties 2013-2017	
County	Population
King County	467,900
Snohomish County	118,500
Pierce County	79,500
Clark County	47,700
Yakima County	45,300
<i>Source: State Demographic Data - WA, MPI</i>	

¹² Uekert, B. K., Peters, T., Romberger, W., Abraham, M., & Keilitz, S. (2006). Serving limited English proficient (LEP) battered women: A national survey of the court’s capacity to provide protection orders. *National Center for State Courts*.

INTERSECTION OF IMMIGRATION STATUS AND GENDER IDENTITY

In looking at gender bias, it is crucial to not only consider the experience of immigrant women, but also of gender-nonconforming immigrants. For example, transgender immigrants are other populations who experience bias and discrimination regarding access to the courts. It is unclear how many transgender immigrants live in the state of Washington, however national research shows that many individuals flee to the U.S. because of persecution in their countries of origin based on their gender identities.

In the 2015 U.S. Transgender Survey, 1,667 of the survey participants resided in Washington. Of those participants, 14% were unemployed and 28% are living in poverty (*2015 U.S. Transgender Survey: Washington State Report*, 2017). In a 2011 report on the National Transgender Discrimination Survey, 6,450 gender non-conforming and trans participants answered questions about experiencing discrimination. Of the participants, 12% shared they “had been denied equal treatment or harassed by judges or court officials”(Grant et al., 2011) The report also notes that while FTM¹³ respondents report higher rates of mistreatment than MTF, the opposite is true in the courts (Grant et al., 2011). Thirteen percent of participants reported “that a court or judge stopped or limited their relationships with children because of their transgender identity or gender non-conformity” (Grant et al., 2011). Within this group, 29% of Black and 20% of multiracial participants reported court interferences as did 29% of participants with a household income of 10,000/year or less (Grant et al., 2011). This indicates that low income Black trans immigrants experience disproportionate disparities and discrimination in the courts. These survey results reveal high rates of discrimination among trans immigrants and point to the importance of implementing and strengthening trans specific policies in Washington courts that welcome and acknowledge trans and gender non-conforming identities.

Researcher Stefan Vogler discusses adjudication of gender identity, specifically transgender individuals, in U.S. Asylum law.¹⁴ Vogler cites the 2015 case of Edin Avendano-Hernandez, a transgender woman from Mexico, that took place in the Ninth Circuit Court of Appeals. Prior to this case, trans immigrants were tried as a gay people with a sexual identity that

¹³ Female to male transition (FTM) and Male to female transition (MTF)

¹⁴ Vogler, S. (2019). Determining Transgender: Adjudicating Gender Identity in U.S. Asylum Law. *Gender & Society*, 33(3), 439–462. <https://doi.org/10.1177/0891243219834043>

matched their preference. In the case of Avendano-Hernandez, the courts would have labeled her as a gay man with a female sexual identity. However, Avendano-Hernandez was tried as a transgender person thereby creating a distinct trans social group that can seek relief of persecution under immigration law.¹⁵ Vogler also makes several key courtroom observations based on two years of personal ethnographic observations. He notes that the courts prefer applicants who move clearly from one gender to another. Vogler also observed that it was common for the court to use incorrect pronouns when referring to the claimant. Vogler ask the following question based on these observations:

*“It is thus an open question whether the “transgender” category will make room for genderqueer or other gender-nonconforming individuals who do not adopt male or female identities and appearances”.*¹⁶

Although Vogler was commenting on asylum law, his research reveals that immigration courts are still using binary notions of gender and often confuse gender identity with sexual identity. Given this research, Washington courts should also review current policies and courtroom rules that are applicable to trans immigrant populations participating in non-immigration related court proceedings.

[Immigrant Women section – CBO information]

[Implicit bias & credibility section]

GENDER-BASED IMMIGRATION RELIEF & STATE COURT

The National Violence Resource Center and other research stress the importance that judges and lawyers involved in custody related cases and other non-immigration related law understand and screen immigrant victims of crime or abuse for possible immigration relief through various visas.¹⁷ Below is a brief description of commonly mentioned immigration special visas.

Table 4: Description/Eligibility of Special Immigrant Visas
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¹⁵ Vogler, S. (2019). Determining Transgender: Adjudicating Gender Identity in U.S. Asylum Law. *Gender & Society*, 33(3), 439–462. <https://doi.org/10.1177/0891243219834043>

¹⁶ Vogler, S. (2019). Determining Transgender: Adjudicating Gender Identity in U.S. Asylum Law. *Gender & Society*, 33(3), 439–462. <https://doi.org/10.1177/0891243219834043>

¹⁷ *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

Type of Visa	Description and Eligibility
VAWA under 8 U.S.C. § 1154 (a)(1)(A)	Survivors of sexual assault, incest or child abuse can self-petition for a visa to be in the U.S through VAWA. To be eligible survivors must have resided with the abuser at one point. Additionally, the abuser must either be a U.S citizen or LPR parent or spouse or a U.S. citizen son/daughter. When the application is submitted, the information is confidentially submitted to the Department of Homeland Security (DHS) system and protects the individual from deportation. VAWA recipients can pursue LPR and citizenship.
U-Visa under 8 U.S.C. § 1184(p)	Temporary immigration visa for individuals who are the victims of a crime (e.g. trafficking, perjury, involuntary servitude etc.). This visa lasts for four years and includes a possible path to citizenship. (See Appendix A for a legal description of this visa)
T-Visa under 8 C.F.R. §214.11(i)(2)	Intended for “victims of severe trafficking.” This includes: victims who were coerced or forced by other fraudulent means to be involved in the sex trade, as well as individuals who were forced into labor or services. These individuals must be in the U.S. when they apply for the T-Visa. This visa has a pathway to citizenship.
SIJS*	Provides a path to citizenship for adolescents who have been sexually assaulted by a parent. The applicant must be unmarried and under the age of 21 when they apply.
<p><i>Sources:</i> (Amuedo-Dorantes & Arenas-Arroyo, 2019; FATA et al., 2013; <i>SART Toolkit Section 6.12</i> <i>National Sexual Violence Resource Center (NSVRC)</i>, n.d.).</p> <p>*Special Immigrant Juvenile Status</p>	

Findings from a 2017 nationwide survey of judges regarding immigration status and civil and criminal court proceedings show that out of 107 surveys, 64% of respondents noted that they reside in non-signing courts¹⁸ (Rodrigues & Orloff, 2018). Of the 36% of judges who said they work in signing courts, 23% are only able to sign for one of the three aforementioned visas (Rodrigues & Orloff, 2018). Nearly a third of respondents reported lacking knowledge regarding

¹⁸ Signifying that judges in their courts do not sign for special visas or submit findings for SIJS candidates (Rodrigues & Orloff, 2018).

the visas and 23% said they did not know about laws regarding VAWA confidentiality rules (Rodrigues & Orloff, 2018). Courts that were able to sign or provide findings for SIJS were more likely to have policies and procedures in response to the possibility of immigration enforcement entering courthouses (Rodrigues & Orloff, 2018).

This suggests that family and criminal court officials would benefit from continued training to be able to screen individuals for immigration relief through VAWA, U-Visas, T-Visas, and SIJS. This report did not provide information regarding methodology or data analysis. Additionally, the report did not indicate if disparities exist among individuals of different genders attending court proceedings.

1. THE INTERSECTION OF IMMIGRATION AND CIVIL AND CRIMINAL LAW

The legal overlap between immigration and civil and criminal law are widely documented. Research highlights the overlap for immigrant victims of domestic and sexual violence (typically women, female adolescents and children) and for immigrant parents in child custody hearings. A survey of 107 judges in 25 different states across the U.S. (including the state of Washington) administered by the National Immigrant Women's Advocacy Project investigated the intersection of immigration status in family and criminal court proceedings (Rodrigues & Orloff, 2018). The majority of criminal and civil judges (88-94%) expressed concern regarding the negative impact that increased immigration enforcement "could have on access to justice for immigrant and LEP victims and witnesses" (Rodrigues & Orloff, 2018). The report highlights that 57% of survey respondents said that court proceedings were interrupted due to the victim's fear of coming to court in 2017 (Rodrigues & Orloff, 2018). This is an increase from reported interrupted cases (46%) in 2016 (Rodrigues & Orloff, 2018). Moreover, judges noted that immigration status is often used by an opposing party against the victim (Rodrigues & Orloff, 2018). Lastly, seven judges noted an increased need for qualified interpreters especially in rural areas indicating that differences in language continue to be a barrier that many immigrant experience (Rodrigues & Orloff, 2018).

A 2001 study highlights survey results from 37 police administrators, 32 prosecuting agencies in 50 of the largest cities in the U.S. with immigrant populations. The survey asks questions regarding barriers that prevent immigrants from reporting crime and agency's attempts to provide more culturally appropriate services for those communities (R. C. Davis et al., 2001).

In the survey, 58% of officials mentioned that underreporting was not isolated to undocumented immigrants, but rather pertained to immigrants with other statuses as well (R. C. Davis et al., 2001). Among the following ethnic groups: African, Asian, Caribbean, European, Latino or Middle Eastern, officials noted that immigrant groups who underreported the most, were Latino and Asian (R. C. Davis et al., 2001). Officials also noted that the crimes that were the most underreported were domestic violence (35%) and gang violence (23%) (see section below on Victims of domestic and sexual violence for more information) (R. C. Davis et al., 2001).

Officials were also asked about the barriers that immigrants face in going to the court (R. C. Davis et al., 2001). The top listed barriers included: language differences (39%), cultural differences/lack of understanding about legal proceedings (39%), distrust of the system (5%), fear of retaliation (4%), lost wages (4%), official's unresponsiveness (4%) and transportation (2%) (R. C. Davis et al., 2001). Officials listed various efforts to address the barriers that immigrant face. Those efforts include regular meetings with leaders from different ethnic communities, language services (interpretation, flyers, answering administrative questions etc.), training for employees and outreach efforts (R. C. Davis et al., 2001). This report did not include information on methodology or statistical analysis. The survey did not break down gender identity as a contributing factor.

This leads to the following question: What trainings, meetings, language resources or resources currently exist in Washington courts to address the barriers that immigrants face when attending court proceedings?

[Add here: WA-specific anecdotal cases/evidence]

2. *VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE*

Research shows that immigrant women are particularly vulnerable and experience higher rates of domestic and sexual violence compared to U.S. born women.¹⁹ Although there are no statistics correlating the prevalence of gender-based violence to specific immigration statuses, studies do demonstrate that immigration itself may exacerbate abuse. For example, one study reported that 48% of Latina immigrants reported an increase in their partner's violence against them since they immigrated to

¹⁹ *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

the United States.²⁰ These populations experience barriers that increases their vulnerability including “lack of familiarity with their legal rights, misinformation they may have about the U.S. legal system, lack of access to service providers, and language barrier issues”.²¹ Within the immigrant population immigrant women, adolescent and girls with undocumented and temporary immigration statuses are disproportionately prevented from reporting abuse to officials (Amuedo-Dorantes & Arenas-Arroyo, 2019; M. Decker et al., 2007; S. H. Decker et al., n.d.; L. E. Orloff & Kaguyutan, 2002).²² These populations are fearful of deportation if they report (Amuedo-Dorantes & Arenas-Arroyo, 2019; S. H. Decker et al., n.d.; L. E. Orloff & Kaguyutan, 2002).²³

Immigrant women with undocumented or non-immigrant lawful statuses are particularly reluctant to report domestic violence because they are often dependent on their partner for petitioning or changing their immigration status.²⁴ Orloff & Cajudo note that “The rate of abuse is highest when U.S. citizen men marry immigrant women (59.9%) – three times the national average” (L. Orloff & Cajudo, 2017). There is a long history of laws that facilitated resident or citizen spouses exercising control over their partner with respect to lawful status. Many abusive partners threaten to release the immigration status of their partner to prevent their partner from leaving the relationship (Amuedo-Dorantes & Arenas-Arroyo, 2019; Mindlin et al., n.d.).²⁵ This history, in addition to increased immigration enforcement in certain areas, has contributed to misunderstandings and fear regarding reporting.

Many of these women are low-income and depend on their partner for financial resources related to changing immigration status (Amuedo-Dorantes & Arenas-Arroyo, 2019; R. C. Davis et al., 2001; L. E. Orloff & Kaguyutan, 2002). Moreover, when a language barriers exist between

²⁰ See Elizabeth Marsh Das et. al., Family Violence Prevention Fund (predecessor of Futures Without Violence) for Robert Wood Johnson Foundation, *Understanding Children, Immigration, and Family Violence: A National Examination of the Issues* 3 (2005).

²¹ *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

²² *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

²³ *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

²⁴ *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

²⁵ *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

victims and the authorities that the victims must report to, victims run the risk of relying on their abuser to interpret which can result in the abuser distorting the facts and resultingly, the victim is arrested (*Domestic Violence Bench Guide for Judicial Officers*, 2016). This points to the importance of language access services in courtrooms as well to reduce the barriers that many immigrant women experience when accessing court services for orders of protection and domestic violence.

It is also important to note that many immigrants are influenced by the justice system in their country of origin and there are sometimes additional cultural elements wherein women may be ostracized by their communities if they leave their husbands (R. C. Davis et al., 2001; L. E. Orloff & Kaguyutan, 2002).

Immigrant victims are eligible to gain authorized status in the U.S. under the 1994 Violence Against Women Act (VAWA) (see section on Special Visas for more information on VAWA). VAWA allows women who have experienced sexual violence to self-petition for LPR status without their partner's involvement (Amuedo-Dorantes & Arenas-Arroyo, 2019).

A coalition of seven national organizations sent out a survey to advocates and attorneys to investigate immigrant's fear of reporting domestic and sexual violence to authorities. The coalition received 575 completed surveys from advocates who work with survivors of domestic violence across the U.S. The survey results show that 52% of advocates "reported that those survivors dropped their civil or criminal case because they were fearful".²⁶ The survey results do not break down answers based on different states or cite using statistical analysis for their data analysis. They also do not provide specifics on gender identity. However, the results do include that immigrant women frequently withdraw their court case than be separated from their family out of fear of deportation.²⁷ Moreover, 75% of those surveyed said that immigrant survivors are concerned about going to court related to domestic or sexual violence because of the abuser's status (particularly if the abuser is a U.S. citizen.). This also relates to family court proceedings regarding child support.²⁸

[Add here: WA-specific anecdotal evidence]

²⁶ *Immigrant Survivors Fear Reporting Violence*. (2019). <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

²⁷ *Immigrant Survivors Fear Reporting Violence*. (2019). <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

²⁸ *Immigrant Survivors Fear Reporting Violence*. (2019). <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>

3. CHILD CUSTODY HEARINGS

Research shows that immigration intersects with custody hearings especially when one or more of the parents are undocumented, detained or in deportation proceedings. Children of immigrants suffer tremendously in these processes. Of the 464,374 children under the age of 18 with one or more foreign-born parents in the state of Washington, 86% are U.S. citizens (see Table 5).²⁹ This points to the challenges of mixed-status families in family court law and broader immigration policies that prevent mixed-status families from achieving a common status.³⁰ Data from 2012 showed that during a six month period in 2011, ICE deported “46,486 parents of U.S.-citizen children from the United States” and 5,100 children were placed in foster care because their parents were deported.³¹ In custody disputes, it is common that custody is granted to the parent with a more secure lawful status.³² Thronson & Sullivan also note that the courts and social service agencies have difficulty with foster care placements particularly if a placement option is with an undocumented family member.³³ Their publication cites an example where the courts did not allow the parent who was in deportation proceedings to attend her child’s custody hearing despite being geographically nearby. Thronson & Sullivan assert the following:

Table 5: Immigration Status Washington Children under the age of 18 (2017)		
Children with Foreign-and Native-Born Parents	Number	%
Children under age of 18 with	1,576,122	100%
Only native parent(s)	1,111,748	70.50%
One or more foreign-born parents	464,374	29.50%
Child is native	400,509	25.40%
Child is foreign born	63,865	4.10%

Source: State Demographic Data - WA, MPI

²⁹ *Immigrant Population by State, 1990-Present*. (2017). Migrationpolicy.Org. <https://www.migrationpolicy.org/programs/data-hub/charts/immigrant-population-state-1990-present>

³⁰ Thronson, D. B., & Sullivan, J. F. P. (2012). Family Courts and Immigration Status. *Juvenile and Family Court Journal*, 63(1), 1–18. <https://doi.org/10.1111/j.1755-6988.2011.01068.x>

³¹ Thronson, D. B., & Sullivan, J. F. P. (2012). Family Courts and Immigration Status. *Juvenile and Family Court Journal*, 63(1), 1–18. <https://doi.org/10.1111/j.1755-6988.2011.01068.x>

³² Thronson, D. B., & Sullivan, J. F. P. (2012). Family Courts and Immigration Status. *Juvenile and Family Court Journal*, 63(1), 1–18. <https://doi.org/10.1111/j.1755-6988.2011.01068.x>

³³ Thronson, D. B., & Sullivan, J. F. P. (2012). Family Courts and Immigration Status. *Juvenile and Family Court Journal*, 63(1), 1–18. <https://doi.org/10.1111/j.1755-6988.2011.01068.x>

*“The barriers to parent participation in such instances are often created by immigration detention policies and practices. That said, family courts enable immigration actors by failing to demand means to communicate with and ensure the participation of detained parents”.*³⁴

Fata et al. note in their study that immigration status is often used to assert that the parent is not capable of adequately providing for their child (Fata et al., 2013). Further the researchers highlight that when immigration status is used and disclosed in a hearing, it often results in bias in the custody decision (see case of the Welfare of R and N. Churape) (Fata et al., 2013). The National Immigrant Women’s Advocacy Project highlight this as well in comments submitted to the courts in 2017 supporting ER 413. The authors note that abusers often “raise lack of legal immigration status in a custody case in order to win custody of the children despite the perpetrator’s history of abuse” (L. Orloff & Cajudo, 2017).

No information was found regarding gender bias in child custody cases for child immigrants.

This information leads to the following research question: What resources exist in Washington to support attorneys and immigrant families when immigration status is a factor in a child custody proceeding? Do these resources provide enough support?

[Ad here: WA-specific anecdotal evidence]

LIMITATIONS ON INFORMATION

The research on immigration status barriers in the courts and the intersection of gender is limited in the following ways:

- Very little research stratifies by lawful status making it difficult to know how/if immigrants experience barriers differently depending on their lawful status.
- Most studies do not stratify immigrant populations by gender. Further, even less research includes trans, gender non-conforming or genderqueer immigrant populations or acknowledges the disproportionate bias they experience inside and outside of the courtroom.

³⁴ Thronson, D. B., & Sullivan, J. F. P. (2012). Family Courts and Immigration Status. *Juvenile and Family Court Journal*, 63(1), 1–18. <https://doi.org/10.1111/j.1755-6988.2011.01068.x>

- Most studies do not stratify by the immigrant’s country of origin making it difficult to know how/if cultural background and the legal processes from the immigrant’s country of origin affect real and perceived barriers that they experience here in the U.S.
- Rapidly changing immigration law coupled with policies and laws on a state and local level and related public discourse has propelled confusion and fear within immigrant communities. These rapid changes make it difficult to know the effectiveness of policies and resources attempting to curb barriers that immigrants face before arriving to the courthouse and afterwards.

How can the courts responsibly collect information and implement thoughtful policies to address the bias and barriers that immigrants experience in the WA courts?

COURT RULES, POLICIES AND PROCEDURES

1. Court Access

RCW 2.43: LANGUAGE ACCESS AND INTERPRETATION

Immigrants often face language barriers when accessing legal services. According to the Migration Policy Institute, 52.4% of foreign born noncitizens (284,744 people) in the state of Washington, have Limited English Proficiency (LEP)³⁵ and some Washington court records show providing language access services for 160 different languages (*Deskbook on Language Access in Washington Courts*, 2017).³⁶ For noncitizen immigrants with limited access to resources outside of the court system, the additional element of inadequate services to address lower English proficiency or literacy³⁷ can prevent access to justice and legal services (L. Orloff & Cajudo, 2017). The evidence suggests that gender disparities do not exist regarding language access barriers except for women seeking legal relief from domestic violence situations (see Victims of Domestic and Sexual Violence section).

³⁵ Limited English Proficiency is defined as people over the age of five who note that their level of English proficiency is “not at all,” “not well,” or “well” to the question the U.S. Census. *State Language Data—WA*. (2017). Migrationpolicy.Org. <https://www.migrationpolicy.org/data/state-profiles/state/language/WA/US>

³⁶ *State Language Data—WA*. (2017). Migrationpolicy.Org. <https://www.migrationpolicy.org/data/state-profiles/state/language/WA/US>

³⁷ Additional barriers that should be considered regarding language access services include the intersection of lower literacy levels and disabilities (e.g. deaf or blind).

Providing qualified interpretation and translation services in court proceedings³⁸ is a requirement according to federal and Washington law in civil and criminal cases (*Deskbook on Language Access in Washington Courts*, 2017). Federal law outlines these rights in both the Title VI Civil Rights Act of 1964³⁹ and the Clinton administration’s 2000 Executive Order 13166⁴⁰ (Abel, 2010; L. Davis & Isaacson, 2017; *Deskbook on Language Access in Washington Courts*, 2017). The Department of Justice (DOJ) informs courts on the required language access services to reduce barriers in every courthouse interaction including administrative interactions. These settings include: the “clerk’s offices, self-help centers, signs, websites, forms, court offered services, and court appointment professionals including counsel, psychologists, mediators, and other professionals...” who work with LEP individuals (*Deskbook on Language Access in Washington Courts*, 2017). Moreover, courts should be aware that language barriers exist when activities are compulsory as well (e.g. parenting classes) (*Deskbook on Language Access in Washington Courts*, 2017).

The Washington Interpreter Commission is one of the operating groups that provides resources to increase the capacity and training statewide for Washington courts. The Interpreter Commission ensures interpretation services are provided when courts request them and that interpreters have proper certifications⁴¹ (*Washington State Courts—Court Interpreters*, n.d.). Washington RCW 2.43.080 states that all court interpreters must abide the Washington Supreme Court’s Code of Ethics (*Deskbook on Language Access in Washington Courts*, 2017). Not all interpreters however, will be certified and registered⁴² as some languages are not certified

³⁸ According to the *Deskbook on Language Access in Washington Courts*, this includes “court hearings, trials and motions in which the individuals has the right to participate as a party or a witness” (*Washington State Courts—Court Interpreters*, n.d.). Individuals have these rights for the “Fundamental principals of fairness, access to justice, and the integrity of the judicial process” (*Washington State Courts—Court Interpreters*, n.d.).

³⁹ The Civil Rights Act of 1964 prohibits discrimination based on national origin thereby requiring interpretation services and translation of “vital” documents (*Deskbook on Language Access in Washington Courts*, 2017).

⁴⁰ Executive Order 13166 requires “federal agencies to issue guidance to ensure that their grantees comply with Title VI and provide meaningful access to federally funded programs and services to LEP individuals (*Deskbook on Language Access in Washington Courts*, 2017).

⁴¹ The Interpreter Commission’s three main committees include: 1.) Issues Committee (statewide policies and collaborations), 2.) Judicial and Court Administrator Education Committee (provides resources and trainings for courthouse officials using interpreters) 3.) Disciplinary Committee (addresses complaints against interpreters and violations of the code of conduct) (*Washington State Courts—Court Interpreters*, n.d.). Retrieved January 9, 2020, from http://www.courts.wa.gov/programs_orgs/pos_interpret/index.cfm?fa=pos_interpret.display&fileName=interpreterCommission

⁴² Passing oral and written bilingual tests are required to become certified or registered. In 2016, 11 languages had certified interpreters and 30 languages had registered interpreters in Washington Courts. (*Deskbook on Language*

(*Deskbook on Language Access in Washington Courts*, 2017). However, the courts must use a certified or registered interpreter “if the AOC [Administrative Office of the Courts] has credentialed interpreters in a given language” (*Deskbook on Language Access in Washington Courts*, 2017).

The Interpreter Commission has developed various policy manuals and guides for interpretation services for LEP, Deaf, Hard of Hearing and Deaf Blind individuals. The Interpreter Commission recently revised the Model Language Access Plan which outlines courthouse legal language access requirements in the state of Washington in addition to providing best practice tips, resources and frameworks for interpretation services in the courts (*Deskbook on Language Access in Washington Courts*, 2017). Washington law RCW 2.43.090 requires that all courts design a language access plan (LAP) that describes the language access services that that court provides (*Deskbook on Language Access in Washington Courts*, 2017). These services should reflect the needs of the communities that the court serves (*Deskbook on Language Access in Washington Courts*, 2017).

In a 2016 report published by the Interpreter Commission, the AOC describes which jurisdictions received interpreting related reimbursement funds. In 2016, the top three jurisdictions to receive funds included: Clark County Superior Court, Pierce Superior Court/District, and Seattle Municipal Courts (*Washington State Supreme Court Interpreter Commission 2016 Annual Report*, 2017). The languages with the most recorded interpretation hours is included in the chart above (*Washington State Supreme Court Interpreter Commission 2016 Annual Report*, 2017).

Hours per Language	
Language	Hours
Spanish	28831
Russian	2778
Vietnamese	2098
ASL	1431
Chuukese	1348

Source: Washington State Supreme Court Interpreter Commission 2016 Annual Report

The Commission’s information regarding language access services does not mention gender disparities or services specific to different genders.

COMMON BARRIERS

Evidence indicates that courts fail to provide adequate languages access services despite DOJ Title VI and Executive Order 13166 requirements. In a report published by the Brennan

Access in Washington Courts, 2017; *Washington State Supreme Court Interpreter Commission 2016 Annual Report*, 2017). *Washington State Supreme Court Interpreter Commission 2016 Annual Report*. (2017). http://www.courts.wa.gov/programs_orgs/pos_interpret/content/pdf/IC%20Annual%20Report.pdf

Center for Justice, the author categorizes language access barriers into the four categories listed below (Abel, 2010):

- 1.) Partial interpretation (only portions of the proceedings are interpreted)
- 2.) Inconsistent interpreter quality (e.g. lack the skills to interpret in legal settings or inserting personal commentary)⁴³
- 3.) Inadequate technology necessary for interpretation (e.g. poor sound quality)
- 4.) Court forms are not translated

Although the report focuses on immigration court, these are important barriers to consider in state courthouses as well.

Cost of interpretation is another barrier. The entity responsible for the cost of interpretation services is determined by what kind of funding the courts are receiving. Federal⁴⁴ and Washington laws differ in this regard. RCW 2.43 notes that “the court, governmental body, or agency initiating the proceeding must pay for the interpreter in all legal proceedings in which the LEP individual is compelled to appear by the court, governmental body, or agency” (*Deskbook on Language Access in Washington Courts*, 2017). In other settings, the LEP must provide financially or otherwise coordinate to provide for their own interpretation services; this would be an additional barrier for many immigrants with fewer resources causing them to rely on family members or friends to interpret and translate (*Deskbook on Language Access in Washington Courts*, 2017). It is unclear from the research, how often immigrants must pay for their own interpretation and translation services.

Courts that receive DOJ funding must provide interpretation services free of charge to the individual (*Deskbook on Language Access in Washington Courts*, 2017). Individuals may however, choose to waive their right to an interpreter (*Deskbook on Language Access in Washington Courts*, 2017).

SUCCESSFUL WASHINGTON PRACTICES AND AREAS FOR IMPROVEMENT

⁴³ Observers in a New York immigration courtroom observed the following situation occur highlighting the importance of quality interpretation services: “the Immigration Judge informed the respondent that he was eligible for voluntary departure and asked him whether he wanted this relief. The respondent replied that he did not understand what voluntary departure was, so his answer was “no.” The interpreter, however, merely rendered this answer to the Immigration Judge as “no,” resulting in the respondent unknowingly waiving voluntary departure” (Abel, 2010).

⁴⁴ The Federal law on interpreters in the courts is 28 U.S. Code § 1827 (*28 U.S. Code § 1827—Interpreters in courts of the United States*, n.d.). *28 U.S. Code § 1827—Interpreters in courts of the United States*. (n.d.). LII / Legal Information Institute. Retrieved February 8, 2020, from <https://www.law.cornell.edu/uscode/text/28/1827>

A 2013 article published in the Seattle Journal for Social Justice discusses the plain language movement specifically regarding *pro se* litigants. The article notes that, “About 65 percent of family law litigants in Washington State come to the court without a lawyer” revealing the importance of access to easy to read and understandable court documents (Dyer et al., 2012). The article highlights the Pro Se Project taking place in Washington which focuses on rewriting legal documents in plain language to make involvement in the justice system more accessible for lay individuals as legal forms have traditionally been complex and burdensome (Dyer et al., 2012). The authors note that rewriting documents into plain language not only promotes access of information, but these documents take less time and are easier to translate into other languages for LEP speaking populations (Dyer et al., 2012). A study cited in the article notes that 24 states have adopted plain language forms; the state of Washington however, does not have mandatory plain language forms (Dyer et al., 2012). The author’s note that plain language documents address barriers that *pro se* litigants might experience by reducing long term court costs (because the individual has a better understanding of the process) and reducing long term costs to the courts (Dyer et al., 2012). Moreover, the authors suggest that providing plain language forms is a matter of equity for populations that have and continue to have systemic barriers that prevent them from accessing legal services. (Dyer et al., 2012). Dyer et al. do not discuss the intersection of gender with language access services nor do they specifically mention immigration status.⁴⁵

In a 2006 national study investigating if the courts were providing adequate services for LEP populations to receive Orders of Protection, 158 courts responded to a survey. The results showed that an unmet need exists in courtrooms across the country for providing language access services specifically related to individuals seeking orders of protection.⁴⁶ Although the study does not describe gender disparities in-depth, given that women are disproportionately experience domestic violence, it can be assumed that women are disproportionately affected by courts with inadequate language access services⁴⁷. Results from a subset of 40 courts nationwide

⁴⁵ Although the article did not mention immigration status, this author used limited English proficiency as a proxy for immigration status populations.

⁴⁶ Uekert, B. K., Peters, T., Romberger, W., Abraham, M., & Keilitz, S. (2006). Serving limited English proficient (LEP) battered women: A national survey of the court’s capacity to provide protection orders. *National Center for State Courts*.

⁴⁷ *SART Toolkit Section 6.12 | National Sexual Violence Resource Center (NSVRC)*. (n.d.). Retrieved December 22, 2019, from <https://www.nsvrc.org/sarts/toolkit/6-12>

that were surveyed and 84 community based organizations (CBOs) providing services nationwide for individuals seeking orders of protection, show that Spanish LEP communities were increasing in less urban areas and that many jurisdictions had an influx of LEP communities from Eastern Europe, Russia, and Africa.⁴⁸ The courts and CBOs that participated, recommended the following five actions to improve language services:⁴⁹

1. Translate court documents in multiple languages
2. Conduct (and improve) court outreach in LEP communities
3. Collect data
4. Increase language resources
5. Professionalize interpretation

The study does a case study on the King County, Washington Superior Court as a way of highlighting good practices. It is, however, uncertain if jurisdictions outside of the King County Superior Court have similar practices or if unmet needs exist in other areas of Washington regarding access to language services for LEP immigrant populations.

One publication noted language access services require change at a systemic level beyond court provided interpretation services.⁵⁰ For example, pro bono attorneys are sometimes hesitant to take on client's who need interpretation services because of the additional (and often expensive) cost of interpretation.⁵¹

⁴⁸ Uekert, B. K., Peters, T., Romberger, W., Abraham, M., & Keilitz, S. (2006). Serving limited English proficient (LEP) battered women: A national survey of the court's capacity to provide protection orders. *National Center for State Courts*.

⁴⁹ Uekert, B. K., Peters, T., Romberger, W., Abraham, M., & Keilitz, S. (2006). Serving limited English proficient (LEP) battered women: A national survey of the court's capacity to provide protection orders. *National Center for State Courts*.

⁵⁰ Shetty, S. (2004). Equal Justice Under the Law: Myth or Reality for Immigrants and Refugees? *Seattle Journal for Social Justice*, 2(2).

https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1457&=&context=sjsj&=&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fq%253Dimmigrants%252C%252Bcourthouse%252Blanguage%252Bbarriers%252C%252BWashington%2526hl%253Den%2526as_sdt%253D0%2526as_vis%253D1%2526oi%253Dscholar#search=%22immigrants%2C%20courthouse%20language%20barriers%2C%20Washington%22

⁵¹ Shetty, S. (2004). Equal Justice Under the Law: Myth or Reality for Immigrants and Refugees? *Seattle Journal for Social Justice*, 2(2).

https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1457&=&context=sjsj&=&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fq%253Dimmigrants%252C%252Bcourthouse%252Blanguage%252Bbarriers%252C%252BWashington%2526hl%253Den%2526as_sdt%253D0%2526as_vis%253D1%2526oi%253Dscholar#search=%22immigrants%2C%20courthouse%20language%20barriers%2C%20Washington%22

RCW 2.28.300: OPEN COURTS

The United States supreme court has recognized that "the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy," and that a state may therefore adopt measures necessary and appropriate to safeguarding the administration of justice by its courts. *Cox v. Louisiana*, 379 U.S. 559, 562 (1965). In 2011, U.S. Immigration and Customs Enforcement (ICE) issued a memorandum describing its sensitive locations policy. See Memorandum from John Morton, Director, U.S. Immigration and Customs Enforcement, "Enforcement Actions at or Focused on Sensitive Locations" 10029.2 (Oct. 24, 2011). Under the sensitive locations policy, ICE may not engage in immigration enforcement actions in qualifying locations without prior approval. *Id.* As clarified by the January 2018 ICE Directive, however, courthouses do not qualify as sensitive locations. See ICE Directive No. 306-112-002b, *Civil Immigration Enforcement Actions Inside Courthouses* (Jan. 10, 2018). [This presents the following research question: Are there individuals whose access to courts is compromised when courthouses are not considered sensitive locations? If so, whose access is compromised?]

The 2018 Directive formalized ICE's policy regarding civil immigration enforcement actions inside federal, state, and local courthouses. *Id.* at 1. Pursuant to the Directive, ICE agents have discretion to apprehend individuals at courthouses, although the agents may not do so indiscriminately. *Id.* The Directive states that ICE agents should generally limit civil immigration arrests to targeted individuals. *Id.* Targeted individuals may include immigrants with criminal convictions, gang members, national security or public safety threats, or individuals previously removed. *Id.* [Are ICE operations exclusively targeted to the class of individuals described in the Directive? Is there a gender-based disparate treatment among targeted individuals?]

A report released in October of 2019 by the University of Washington's Center for Human Rights, provides documented information that 51 immigration related arrests occurred in courthouses in 16 Washington counties between March of 2016 and October of 2019 ("Justice Compromised," 2019; *Proposed New Washington State Court Rule*, n.d.). The report was drafted

using a variety of sources including requested records using the Freedom of Information Act (FOIA) from ICE, county governments and community advocates (“Justice Compromised,” 2019). While these arrests have taken place across the state of Washington, the report indicates that Grant, Adams, King and Clark counties have experienced the most arrests (“Justice Compromised,” 2019; *Proposed New Washington State Court Rule*, n.d.).

In a document drafted by several organizations urging Washington to adopt a court rule that would require a judicial order for arrest or warrant if an individual is in a courthouse, the organizations note that ICE and CPB,

“are arresting people inside, outside and adjacent to (e.g. on courthouse sidewalks and in courthouse parking lots) Washington district, municipal and superior courts. Additionally, ICE and CBP agents are following people as they leave the courthouse, pulling them over in their cars and arresting drivers and passengers” (Proposed New Washington State Court Rule, n.d.).

The document highlights that the targeted immigrants are often Latinx Spanish speakers or other people of color. Evidence outside of Washington suggests that some judges are collaborating with ICE. Some of the impacts of these arrests are listed in the report and included directly below (*Proposed New Washington State Court Rule*, n.d.):

- Victims and other witnesses are afraid to testify in both civil and criminal cases
- Victims are afraid to seek domestic violence and other forms of protective orders (predominantly affects women).
- People are foregoing payment of traffic fines, seeking marriage licenses and accessing other administrative court services.
- Defendants fear showing up for court dates to answer and defend against criminal charges. They must choose risking additional charges for failing to appear (an offense with severe immigration consequences) or being arrested, detained and possibly deported by immigration enforcement officers. These circumstances compromise defense attorney’s capacity and obligations to defend their clients
- People who would otherwise accompany friends and relatives to court, are now afraid to provide that accompaniment or transportation to court

A 2019 survey with 100 domestic violence legal advocates in the state of Washington conducted by the Washington State Coalition Against Domestic Violence (WSCADV) confirms some of this information. Survey results are listed below (“Justice Compromised,” 2019):

- 97% of advocates reported that the immigrant survivors they work with are fearful of contacting the police to report domestic violence, with most reporting that their clients “worry ICE/immigration will get involved” or that they could risk losing their children, their abusive partners, or other family members to deportation as a result of contacting the police” (“Justice Compromised,” 2019).
- 78% of advocates reported to WSCADV that immigrant survivors have concerns about seeking civil protection orders due to the possible presence of immigration authorities at the court.
- 83% of advocates reported that immigrant survivors they worked with had dropped civil or criminal cases related to abuse due to fear; the most common reason cited for this fear (73%) was concern about alerting immigration authorities.

This survey did not highlight a gender breakdown or the methodology for conducting and analyzing the results of this survey. The Washington Immigration Solidarity Network however states that many of these arrests are “not limited to individuals who have been previously deported or who have been convicted of felony offenses” (*Proposed New Washington State Court Rule*, n.d.). Chief Justice of the Washington State Supreme Court and co-chair of the Board for Judicial Administration, Mary Fairhurst, wrote one letter in 2017 and a follow-up letter in 2019 to the Secretary of Homeland Security, John F. Kelly, requesting that apprehensions in courthouses stop and that courthouses be labeled as “sensitive locations” (*Proposed New Washington State Court Rule*, n.d.).

The report published by the University of Washington’s Center for Human Rights notes that increased civil immigration apprehensions in courthouses are part of a trend nationwide and documented occurrences have taken place in other states including Colorado, New Mexico, New York, Massachusetts and Pennsylvania (“Justice Compromised,” 2019). Most apprehensions are with predetermined targeted individuals; however, some information released by CBP via FOIA, shows that immigration enforcement may also be going to courthouses without an intended and targeted arrest (“Justice Compromised,” 2019). The report highlights that justices across the country are concerned that these arrests are contributing to the *chilling effect* and are not

allowing the courts to do their work (“Justice Compromised,” 2019). The report also highlights that these effects may be particularly concerning regarding gender-based violence and immigrant victims underreporting of sexual and domestic violence but does not extrapolate on what they mean regarding the disparities that certain genders experience (“Justice Compromised,” 2019).

The report looks specifically at three counties in Washington that have experienced the highest numbers of apprehensions, Clark, Grant and Adams, to determine what/if local courthouse entities have collaborated with immigration enforcement. Some counties had publicly visible dockets that allowed officials to view and subsequently pursue targeted arrests. Other counties had formal or informal agreements with enforcement officials and provided docket and other information regularly or when it was requested. In some cases, local enforcement provided immigration officials information regarding scheduled proceedings even when the court proceedings had nothing to do with an individual’s immigration status (“Justice Compromised,” 2019). These records were from 2018. It is therefore difficult to know if things have changed since the Keep Washington Working Act (See Appendix A for legal information regarding the Keep Washington Working Act) became effective in May 2019.

In response, RCW 2.28.300, enacted in 2020, finds that civil arrests in and around Washington's court facilities impede the fundamental mission of Washington's courts, which is to ensure due process and access to justice for everyone. RCW 2.28.300(2) further found that civil arrests at Washington court facilities created a climate of fear that is deterring and preventing Washington residents from safely interacting with the justice system. Though the statute addresses only immigration and not gender, it does identify gender-specific legal needs, such as accessing protection orders and family law hearings.

COMMON BARRIERS

2. Professional Rules

EVIDENTIARY RULE 413

Evidentiary Rule 413 (ER 413) became effective in September of 2018. This rule limits immigration status evidence in non-immigrant related court proceedings. The Washington State Supreme Court adopted Rule of Evidence 413 to restrict unduly prejudicial evidence from influencing jurors. The new rule, which took effect on September 1, 2018, strictly limits the use

of immigration-status evidence in judicial proceedings. *See* ER 413. Under ER 413, immigration-status evidence should not be admitted, unless one of two exceptions are met. In both criminal and civil cases, evidence of a party's or a witness's immigration status will be admissible only if such evidence is "an essential fact to prove an element of, or defense to, the criminal offense." ER 413(a). In criminal cases, such evidence will also be admitted if it is introduced "to show bias or prejudice of a witness." *Id.* If neither exception is met, consideration of immigration status should not be allowed.

Current implementation- barriers

RULES OF PROFESSIONAL CONDUCT 4.4

In 2013, the Washington State Supreme Court adopted a formal comment to RPC 4.4(a). *See* RPC 4.4(a). Under RPC 4.4(a), an attorney in a civil case may not inquire into a person's immigration status "when the lawyer's purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter." RPC 4.4 comment 4. Additionally, RPC 4.4 comment 4 prohibits attorneys from communicating to a party or a witness that "the lawyer will report that person to immigration authorities", if the purpose of the report is "to intimidate, coerce, or obstruct that person." *Id.*

Current implementation- barriers

RCW 7.98: IMMIGRANT VICTIMS OF CRIME

In October 2000, Congress created the U nonimmigrant visa through the Victims of Trafficking and Violence Protection Act (VAWA). *See* "Victims of Criminal Activity: U Nonimmigrant Status." *USCIS*, 12 June 2018. U visas permit victims of qualifying crimes (and their immediate family members) to enter or remain in the US. *Id.* To qualify for a U visa, individuals must be victims of qualifying criminal activity. *Id.* Additionally, victims must be considered to be helpful to law enforcement in the investigation or prosecution of the crime. *Id.* If applicants are under the age of 16 or are unable to provide information due to a disability, a guardian may assist law enforcement on their behalf. *Id.* Immigration relief under VAWA specifically focused on the needs of undocumented immigrant women, who often experience much higher rates of domestic and sexual violence.

In 2018, the Washington legislature found that ensuring that all victims of crimes are able to access the protections available to them under law is in the best interest of victims, law enforcement, and the entire community. Immigrants are frequently reluctant to cooperate with or contact law enforcement when they are victims of crimes, and the protections available to immigrants under the law are designed to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of trafficking in persons, domestic violence, sexual assault, and other crimes while offering protection to such victims.

Current implementation- barriers

RCW 43.17: KEEP WASHINGTON WORKING

In 2019, the Washington State Legislature enacted Senate Bill 5497, the Keep Washington Working Act. *See* S.B. 5497, 2019 Leg., 66th Reg. Sess. (WA 2019). The act establishes a statewide policy to, among other things, protect and control the amount and the type of information that state and local agencies share with federal immigration officials. *Id.* The act adds new sections to multiple chapters of the Revised Code of Washington, defining new model policies to ensure several locations and services “remain safe and accessible to all.” *Id.* at 2.

Section 6 of the act states that state and local law enforcement agencies “may not inquire into or collect information about an individual’s immigration or citizenship status, or place of birth, unless there is a connection between such information and an investigation.” *Id.* at 8. Under Section 5, no state agency, including law enforcement, may use agency funds, facilities, personnel, or any type of resource to investigate, cooperate with, or assist in civil immigration enforcement. *Id.* at 6. [*Have local law enforcement agencies failed to comply with these sections of the act? Are individuals aware of their rights under this act?*]

State and local law enforcement agencies many not provide nonpublicly available personal information about an individual, including individuals subject to community custody. *Id.* at 8. Moreover, any person in state or local custody, including those in community custody or Department of Corrections (DOC) physical custody, must be informed of their right to refuse an interview by federal immigration enforcement authorities or to refuse to disclose nationality. *Id.* at 9. [*Are state and local agents trained to comply with current state laws under this act? Would they be subject to federal prosecution if they failed to comply? What incentives do officers*

have to comply with the act and to protect individuals' personal information? What incentives do employers have to comply?]

Following federal law 8 U.S.C. Sec. 1373, no section of the Keep Washington Working Act limits or prohibits any state or local agency from “sending to, or receiving from, federal immigration authorities the citizenship or immigration status of a person.” *Id.* at 11. *[What information are ICE agents still able to access? Whose information are they able to access? Are they able to collect personal information of witnesses, complainants, or defendants? Do state and local agencies understand what information they are permitted to share or collect? What agencies typically share information?]*

The Keep Washington Working Act states that all of the adopted new policies should be consistent and in compliance with federal and state law. *Id.* at 11. If any part of the act is in conflict with federal requirements, it shall be deemed inoperative. *Id.* at 11. *[What sections of the act should be deemed inoperative? Has the ambiguity in language and lack of clarity in the law negatively impacted the applicability of the act?]*

The intersection of immigration law and civil and criminal law has layered and complex implications nationally and in the state of Washington. Research indicates that immigrant women, adolescents, trans and gender non-conforming populations experience disproportionate bias in the courtroom however, research is limited, and more is needed. Several recently implemented Washington courtroom and state policies such as the ER 413, Rules of Professional Conduct, Keep Washington Working Act and other Sanctuary related policies are all attempts to address institutionally created barriers and fear that Washington immigrants experience. It is still unclear if these policies will help curb the fear that many immigrants experience when reporting and participating in civil and criminal proceedings and processes.

Current implementation- barriers

Public health research?

RECOMMENDATIONS/CONCLUSION

ANECDOTAL EVIDENCE FROM IMMIGRANT SERVING ORGS (WAISN, NWIRP, API CHAYA, CONSEJO, SVLC, NJP, ACRS, SFT, ETC.)

DEFINITION OF TERMS

Gender and Justice Commission Committees

Domestic & Sexual Violence	Incarceration, Gender & Justice	Education
Judge Jackie Shea-Brown, Co-Chair	Elizabeth Hendren, Chair	Judge Rebecca Glasgow, Chair
Erin Moody, Co-Chair	Judge Anita Crawford-Willis	Dua Abudiab
Brandy Andersson*	Judge Karen Donohue*	Claire Carden*
Claire Carden*	Elizabeth Haumann Ford*	Judge Anita Crawford-Willis
Megan Dawson*	Patty Noble-Desy*	Lillian Hawkins
Josie Delvin*	Judge Marilyn Paja	Commissioner Jonathan Lack
Grace Huang*	Tarra Simmons*	Jeffrey Keddie*
Sharon James*	Gail Stone*	Judge Marilyn Paja
Commissioner Jonathon Lack	Sonia Rodriguez True	Dana Raigrodski
Judge Eric Z. Lucas		Judge Charles Short*
Riddhi Mukhopadhyay		Commissioner Indu Thomas*
Michelle Nance*		Mary Welch*
Judge Marilyn Paja		
Sandra Shanahan*		
Mary Welch*		
Kimberly Wyatt*		
Communications	Tribal State Court Consortium	Gender Justice Study
Judge Marilyn Paja, Chair	Chief Judge Cindy K. Smith, Co-Chair	Justice Gordon McCloud, Chair
Dr. Dana Raigrodski	Judge Lori Kay Smith, Co-Chair*	Dr. Dana Raigrodski, Vice Chair
	Judge Lisa Atkinson*	Judge Joe Campagna*
	Chief Judge Michelle Demmert	Laura Edmonston*
	Judge Jerry Ford*	Judge Rebecca Glasgow
	Judge Kathryn Nelson*	Judge Bonnie Glenn*
	Justice Barbara Madsen*	Justice Steven González
	Justice Susan Owens*	Shannon Kilpatrick*
	Judge Mark Pouley*	Dr. Carl McCurley*
		Judge Maureen McKee*
		Rob Mead*
Women's History Month		Jennifer Ritchie
Judge Marilyn Paja, Chair		Vicky Vreeland
Rotating		

Ad Hoc Committees

Judicial Officer & Law Student Reception	Nominations Committee	TBD
Judge Karen Donohue*	Justice Gordon McCloud, Co-Chair	
Law Student Liaisons*	Judge Paja, Co-Chair	
Jennifer Ritchie	Committee Chairs	
Vicky Vreeland		

Gender and Justice Commission

2021 Meeting Dates

Virtual Meetings held via Zoom Videoconference

Contact Moriah Freed (Moriah.Freed@courts.wa.gov) for Zoom access information.

Date	Time	Location
January 22 nd	9:30 AM – 12:00 PM	Zoom Videoconference
March 12 th	9:30 AM – 12:00 PM	Zoom Videoconference
May 21 st	TBD	<i>TBD</i>
June 2 nd Supreme Court Symposium	9:00 AM – 12:00 PM	<i>Temple of Justice Olympia, WA</i>
September 10 th	TBD	<i>TBD</i>
November 19 th	TBD	<i>TBD</i>

Please contact Kelley Amburgey-Richardson with any questions at (360) 704-4031 or Kelley.Amburgey-Richardson@courts.wa.gov.