



# GENDER AND JUSTICE COMMISSION

FRIDAY, NOVEMBER 19, 2021 (9:30 AM – NOON)

JUSTICE SHERYL GORDON MCCLOUD, CO-CHAIR

JUDGE MARILYN PAJA, CO-CHAIR

ZOOM: [HTTPS://WACOURTS.ZOOM.US/J/92838343653](https://wacourts.zoom.us/j/92838343653)

PHONE: 253-215-8782 US (TACOMA)

MEETING ID: 928 3834 3653

PASSCODE: 368372



| Agenda   |   | Page     |
|--|---|----------|
| <b>9:30 AM – 9:40 AM WELCOME AND INITIAL BUSINESS</b>          |   |          |
| ➤ <b>Welcome</b>   | Judge Marilyn Paja, Co-Chair                |          |
| ➤ <b>Approval of September 10<sup>th</sup> Meeting Minutes</b> |   | <b>1</b> |
| <b>9:40 AM – 10:40 AM HB 1320 STAKEHOLDER GROUPS</b>           |   |          |
| ➤ <b>Presentation</b>  | Judge Jackie Shea-Brown,                    | <b>7</b> |
| ➤ Report   | Erin Moody, Project Co-leads                |          |
| ➤ Recommendations  |   |          |
| ➤ <b>Commission Feedback</b>                                   | All   |          |
| <b>10:40 AM – 10:50 AM STRETCH BREAK</b>                       |   |          |
| <b>10:50 AM – 11:05 AM GUESTS</b>                              |   |          |
| ➤ <b>Fee Waivers and Name Changes</b>                          | Rhea Yo and Gabriel Neuman,                 |          |
| ➤ Judicial Education Proposal                                  | Legal Counsel for Youth & Children          |          |
| <b>11:05 AM – 11:55 AM REPORTS AND DISCUSSION ITEMS</b>        |   |          |
| ➤ <b>2022 Legislative Session</b>                              | All   |          |
| ➤ Members share bills of interest                              |   |          |
| ➤ <b>Potential New Liaison – Council on Public Defense</b>     | Justice Sheryl Gordon McCloud               |          |
| ➤ <b>Study Implementation Committee</b>                        | Justice Gordon McCloud, Dr. Dana Raigrodski |          |
| ➤ <b>Racial Justice Consortium Update</b>                      | Judge Rebecca Glasgow, Dua Abudiab          |          |
| <b>11:55 AM – 12:00 PM ADJOURNMENT</b>                         |   |          |



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## Agenda

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- **Next Steps and Adjournment** Justice Sheryl Gordon McCloud,  
Judge Marilyn Paja, Co-Chairs

## APPENDIX

- Gender Identity and Expression CJC Proposal (Commissioner Lack) **19**
- Office of the Treasurer Letter **46**
- 2022 Gender and Justice Commission Meeting Dates **47**

**NEXT MEETING – January 21, 2022**



**Gender and Justice Commission**  
**Friday, September 10, 2021**  
**9:30 AM – 12:00 PM**  
**Zoom Webconference**



**MEETING NOTES**

**Members & Liaisons Present**

Justice Sheryl Gordon McCloud (Co-Chair)  
 Judge Marilyn Paja (Co-Chair)  
 Dua Abudiab  
 Honorable Melissa Beaton  
 Laura Edmonston (Embedded Law Librarian)  
 Professor Gail Hammer  
 Lillian Hawkins  
 Elizabeth Hendren  
 Commissioner Jonathon Lack  
 Erin Moody  
 Riddhi Mukhopadhyay  
 Dr. Dana Raigrodski  
 Jennifer Ritchie  
 Barbara Serrano  
 Olivia Shangrow (SU)  
 Judge Jackie Shea-Brown  
 Chief Judge Cindy Smith  
 Vicky Vreeland

**Members & Liaisons Absent**

Roberta Blood (UW)  
 Judge Anita Crawford-Willis  
 Judge Michelle Demmert  
 Judge Rebecca Glasgow  
 Kelly Harris  
 Lauren Jaech (UW)  
 Casey Kinross (GU)  
 Ivy-Rose Kramer (L&C)  
 Sal Mungia (ATJ Board)  
 Sloan Nicker (GU)

**Guests**

Nicole Ack  
 Chief Justice Steven González  
 Representative Roger Goodman  
 Justice Barbara Madsen  
 Lorrie Thompson

**Staff**

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

**WELCOME AND INITIAL BUSINESS**

**Welcome and Introductions**

The meeting was called to order at 9:33 AM

## May 21<sup>st</sup> Meeting Minutes

The meeting minutes were approved as presented.

### Extending Gratitude and Thanks

Justice Gordon McCloud emphasized the importance of gratitude in today's meeting. She extended thanks to the following individuals for their help with the Gender Justice Study:

- Justice Barbara Madsen, former Chair of the Gender and Justice Commission
- Chief Justice Steven González, former member of the Gender and Justice Commission and former Chair of the Interpreter Commission
- Representative Roger Goodman
- Nicole Ack and Lorrie Thompson, AOC Communications
- All who worked on the Gender Justice Study Report
  - Research leads
  - Lawyers and judges who conducted research and wrote sections
  - People with lived experience who gave input
  - Pilot leads

Justice Gordon McCloud presented a special thank you plaque to the following individuals for their work and leadership on the Gender Justice Study:

- Sierra Rotakhina, Gender Justice Study Project Manager
- Dr. Dana Raigrodski, Co-Chair, Gender Justice Study
- Kelley Amburgey-Richardson, Senior Court Program Analyst, Gender and Justice Commission
- Judge Marilyn Paja, Co-Chair, Gender and Justice Commission
- Justice Barbara Madsen, former Chair of the Gender and Justice Commission

Commission members thanked Justice Gordon McCloud for her leadership on the study. Justice Gordon McCloud also recognized Lynda Zeis, her judicial assistant, for her essential ongoing administrative support throughout the multi-year project.

### Welcome Representative Roger Goodman

- Judge Paja welcomed and introduced Representative Roger Goodman, D-45, longtime friend of the Gender and Justice Commission.
- Representative Goodman thanked the Commission for its work on the past legislative DV Work Groups and requested guidance on elements of a “trailer bill” that will be drafted for the 2022 session, before certain provisions E2SHB 1320 go into effect.

## GENDER JUSTICE STUDY – PRIORITIES FOR IMPLEMENTATION

## Legislative Priorities

- Justice Gordon McCloud share some legislative recommendations from the study with Representative Goodman ahead of the meeting:
  - Caseload Forecast Council data collection recommendations
  - Sentencing recommendations
    - Current sentencing practices harm women
    - Mitigating factors and sentencing relief
  - Good time recommendation
    - DOC Secretary Strange is supportive of the Commission's efforts and partnered with the Gender and Justice Commission through the Advisory Committee
  - Funding Courtroom Navigators
  - Studying prosecutorial discretion
- Representative Goodman noted the broad intersectional view of gender issues in the report and expressed agreement with the following recommendations:
  - Data about survivors of gender based violence
  - Victim defendants and sentencing relief / mitigating factor
    - There was a bill on this last session and it may be back in 2022. It has received pushback.

## Discussion: Which two priorities from the Study should the Commission plan to work on first?

- Dr. Raigrodski shared her priorities from the commercial sexual exploitation section of the study:
  - Found that adult survivors often suffer from substance abuse and justice system engagement stems from being a survivors of commercial sexual exploitation. Drugs as a means of coercion.
  - Goal to reframe how we think about these issues.
  - Data needs to be disaggregated at a granular level. Use of binaries in data collection are not giving an accurate picture. Needs to be examined to reform laws in a meaningful way.
- Commission members expressed that the data issue should be a holistic goal for all state agencies, and could be an overriding legislative enactment. We are currently missing shared vocabulary for identification of groups.
- Justice Gordon McCloud added that the data collection piece also affects juveniles a lot. There is county by county information that is difficult to capture.
- Commission members supported funding for technology that would allow information sharing about protection orders.
  - Judicial reliance on technology in decision making.
  - Issue of conflicting orders between Tribal court and state court. State courts cannot see Tribal court orders. Chief Judge Smith shared the workaround her

court has created with Kitsap County Superior Court, but added that Judge Demmert has not had the same success in her jurisdiction. A lot of the workarounds that seem to work can disempower the tribes. They rely on the cooperation of the state closing the loop.

- There is currently no access to tribal, military or federal orders from the state side. E2SHB 1320 workgroups will be working at precisely this technology issue.
- Not all courts are adopting Odyssey. If all used the same program, information sharing would be much simpler.
- Riddhi Mukhopadhyay emphasized the recommendation about using technology to make courts more accessible. Need litigants to be able to have better access. Funding and court culture issue.
  - Waiving fees – LFOs, and work with indigent clients. Criminal system has exceptions built in, but the civil side does not. Identify ways that our courts can be funded and not reliant on user fees. Income based fee structure.
    - Name change filing fees and inability to waive the auditor’s fee in cases of indigence. There have been some workarounds by jurisdiction.
- Representative Goodman thanked the Commission, and will discuss study recommendations with colleagues.

### **Media Inquiries**

- The 2021 Study will be published next Thursday (9/16/21)
- AOC Communications will be handling the media rollout
- Seeking volunteers to provide commentary on specific study topics to media inquiries.
  - Judge Shea-Brown, Vicky Vreeland, Judge Paja, Riddhi Mukhopadhyay, and Elizabeth Hendren volunteered.
- Vicky suggested developing talking points for those who speak to the media.
- Lorrie discussed the types of media inquiries these reports typically receive.
  - The report is a living document. There will be ongoing rollout efforts timed to specific events, such as legislative session.
  - Will develop guidelines on responding to inquiries if individuals are contacted directly.

### **Next Steps for the Study – Implementation Committee**

- Convene implementation committee to ensure recommendations move forward.
- Establishing GJC priorities, and working with other groups to determine priorities they are best equipped to handle.
- Seeking volunteers for implementation:
  - Judge Shea-Brown, Elizabeth Hendren, Dr. Dana Raigrodski, Laura Edmonston

## E2SHB 1320 WORKING GROUPS

### Project Updates

- Laura Jones, Project Coordinator for the E2SHB 1320 working groups, shared a PowerPoint to provide an overview of the work plan. Judge Jackie Shea-Brown introduced the workgroups, including staff and workgroup leads.
- The project consists of 3 workgroups with set deliverables:
  - Research and Information Sharing
  - Technology
  - Litigant Rights & Access

### Subcommittee Updates

- Erin Moody provided background on the passage of E2SHB 1320. The legislature enacted directives to the Gender and Justice Commission to produce two reports, one to the legislature and one to the courts.
- BOX is being used to facilitate information gathering and sharing. Examples of documents shared include drafts of the report, bill language from other states, and data requests from AOC.
- A number of surveys have been drafted and will be distributed to AOC listservs. These surveys include:
  - State courts and Tribal courts survey on technology
- Litigants Rights & Access survey distributed to advocates via Washington Coalition Against DV, Washington Coalition of Sexual Assault Program, Washington State Women's Commission.
- Groups have begun meeting on a regular schedule. Some have deliverables due in December. The December deadline is approaching quickly. It is possible that not all information will be received by that time, and the report might not be encompassing all the data that the group would like to include.
- Some of the pending questions in E2SHB 1320 were not able to be adequately addressed in the bill given the time constraints in getting it passed. The workgroups will be answering these questions and providing recommendations on legislative follow-up.

## ANNOUNCEMENTS

### LFO Convening - October 6

- The Minority and Justice Commission is hosting an LFO convening in partnership with Civil Survival on October 6 from 9-12. The Gender and Justice Commission is seeking a representative to attend. Judge Paja and Elizabeth Hendren volunteered to attend.

**ACTION:** Judge Paja and Elizabeth Hendren will attend the LFO Convening on behalf of the Gender and Justice Commission.

### **BJA Court Recovery Task Force**

- Judge Paja and Judge Shea-Brown have been non-voting members on the BJA court recovery task force. The Court Recovery Task Force is looking at a variety of issues, including remote court proceedings, and is assessing benefits and shortcomings to provide best practices.
- All BJA reports are available on: [https://www.courts.wa.gov/programs\\_orgs/pos\\_bja/](https://www.courts.wa.gov/programs_orgs/pos_bja/)

### **Gender Justice Study Dissemination**

- The Gender and Justice Commission Co-Chairs encouraged members and guests to share the Gender Justice Study report widely once it released, and to ask if any groups are interested in a presentation.
- Judge Paja suggested a one hour lunch presentation to WSBA legal lunchbox.

## **ADJOURNMENT**

The meeting was adjourned at 12:01 PM.



# Memo

**To:** Gender and Justice Commission

**Date:** 11/10/2021

**Re:** Draft introduction & summary of recommendations to the legislature for your review

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As you are aware, during the 2021 legislative session, the Washington State Legislature passed E2SHB 1320 - Modernizing, harmonizing, and improving the efficacy and accessibility of laws concerning civil protection orders. Sections 12, 16, and 36 assigned the Administrative Office of the Courts, through the Washington State Supreme Court Gender and Justice Commission, with convening stakeholders to make recommendations to both the Legislature and to the courts on a variety of protection order-related issues.

Drafting is currently well underway for the report narrative and recommendations due to the Legislature on December 1, 2021, which addresses the following issues:

1. Information sharing between state courts and tribal courts, military tribunals, and courts from other states;
2. Subject matter jurisdiction for protection order proceedings;
3. Best practices for minor petitioners and respondents; and
4. Coercive control.

Please find enclosed, the DRAFT Introduction and Summary of Recommendations on issues 1, 2, 4 above.<sup>1</sup>

**If you have suggested edits or feedback, please let us know by Friday, November 19, 2021.** We are also happy to provide the drafts of any report sections upon request.

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<sup>1</sup> Recommendations re: best practices for minors are still in development.

Gender and Justice Commissioners involved in this project include:

- Judge Jackie Shea-Brown, DSV Committee Co-Chair, HB 1320 project lead
- Erin Moody, DSV Committee Co-Chair, HB 1320 project lead
- Riddhi Mukhopadhyay, Co-lead of Litigant Rights & Access Group
- Elizabeth Hendren, Co-lead of Technology Group and stakeholder to Litigant Rights & Access Group
- Judge Cindy Smith, Co-lead of Research & Information Sharing Group
- Judge Michelle Demmert, Co-lead of Research & Information Sharing Group
- Judge Anita Crawford-Willis, stakeholder to Research & Information Sharing Group
- Honorable Melissa Beaton, stakeholder to Technology Group

In addition to the DSV Committee Co-chairs and GJC commissioners named above, DSV Committee members involved in this project include:

- Claire Carden, stakeholder on Litigant Rights & Access Group
- Grace Huang, stakeholder on Litigant Rights & Access Group and facilitator of WSWC listening sessions
- Sandra Shanahan, stakeholder to Litigant Rights & Access, Research & Information Sharing, and Technology Groups
- Mary Welch, stakeholder to Litigant Rights & Access and Technology Group

## Introduction

In 2021, the Washington State Legislature passed E2SHB 1320 - Modernizing, harmonizing, and improving the efficacy and accessibility of laws concerning civil protection orders. Sections 12, 16, and 36 assign the Administrative Office of the Courts, through the Gender and Justice Commission, with convening stakeholders to make recommendations to both the Legislature and the courts on a variety of protection order-related issues.<sup>2</sup> The directives related to this report are to consider and develop recommendations regarding:

**HB 1320, Sec. 36(e)**: Best practices, including proposed training and necessary forms, in partnership with the Washington tribal state court consortium to address how:

- Washington state court judges of all levels can see the existence of, or parties to, tribal court, military, and other jurisdiction protection orders, in comity with similar state court orders;
- Tribal courts can enter their protection orders into the judicial information system used by courts to check for conflicting orders and history; and
- State Courts can query the national crime information center to check for tribal, military, and other jurisdictions' protection orders prior to issuing protection orders.

**HB 1320, Sec. 12**: Jurisdictional division of authority and responsibility among superior courts and courts of limited jurisdiction for protection order proceedings, and the differing approaches to jurisdiction among the types of protection orders. The work shall assess whether jurisdiction should be harmonized, modified, or consolidated to further the stated intent of this act. The work shall consider the underlying rationale for the existing jurisdictional division, assess whether the jurisdictional division creates barriers to access, gather data on usage and

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<sup>2</sup> Chapter 215, Laws of 2021

financial costs or savings, and weigh other relevant benefits and ramifications of modifying or consolidating jurisdiction.

**HB 1320, Sec. 36(f)**: Best practices for minor respondents and petitions in civil protection order proceedings, including what sanctions should be provided for in law.

**HB 1320, Sec. 36(g)**: Assess how the civil protection order law can more effectively address the type of abuse known as “coercive control” so that survivors can seek earlier protection intervention before abuse further escalates.

### ***The Washington State Supreme Court Gender and Justice Commission***

The Gender and Justice Commission (hereafter “the Commission”) was established following the publication of “Gender and Justice in the Courts” in 1989, and its mission is to:

- Identify concerns and make recommendations regarding the equal treatment of all parties, attorneys, and court employees in the State courts, and
- Promote gender equality through researching, recommending, and supporting the implementation of best practices; providing educational programs that enhance equal treatment of all parties; and serving as a liaison between the courts and other organizations in working toward communities free of bias.

The Commission recently published [2021: How Gender and Race Affect Justice Now](#),<sup>3</sup> a groundbreaking new study on how gender and race impact justice, and the intersection of gender and other identities and experiences (e.g., LGBTQ+, poverty).

The Commission was honored to be selected as the convener of stakeholders. The co-chairs of the Commission’s Domestic and Sexual Violence Committee, Judge Jackie Shea-Brown and Erin Moody led the project. Several Commissioners also participated in this work as

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<sup>3</sup> <https://www.courts.wa.gov/?fa=home.sub&org=gjc&page=exploreStudy&layout=2&parent=study>

topical leads or stakeholders. Recommendations made in this report are those of the stakeholder groups and do not reflect the official position of the Gender and Justice Commission or its chairs and members, except insofar as individual members may also have participated in the Work Group.

### ***Washington Tribal State Court Consortium (TSCC)***

Founded in 2013, the Tribal State Court Consortium is a joint effort between state and tribal court judicial officers and other judicial branch members to expand communication and collaboration. The TSCC is focused on domestic and sexual violence issues, dependency cases involving Indian children, and the disproportionate number of Indian youth in the juvenile justice system. Enforcement of Tribal Court protection orders is a key concern of the TSCC.

### ***Washington State Women's Commission (WSWC)***

The Washington State Women's Commission was established in 2018 to gather data and make policy recommendations regarding issues pertaining to women in Washington, including matters of economic security and opportunity, safety, health, and intersectional equity. Its mission is to improve the life of every woman by ensuring equitable opportunities and removing systemic barriers through engagement, advocacy, and public policy, while being inclusive of our diverse populations.

For this project, WSWC hosted and facilitated eight listening sessions to hear directly from victim advocates, survivors, and other interested stakeholders from around the State of Washington.

### ***Project Structure***

Judge Jackie Shea-Brown and Erin Moody led the overall project on behalf of the Commission, with the deliverables divided among three topical working groups:

1. **Research & Information Sharing Group** (Topical Leads: Chief Judge Michelle Demmert, Chief Judge Cindy Smith, Judge Tanya Thorp)

- In partnership with the Washington Tribal State Court Consortium, develop best practices re: how state courts can see protection orders entered by Tribal courts, military courts, and other jurisdictions, which are enforceable in state court

Due to Legislature: December 1, 2021

- Develop best practices in data collection and sharing to promote research and transparency, in consultation with research entities

Due to the Courts: June 30, 2022

2. **Litigant Rights & Access Group** (Topical Leads Riddhi Mukhopadhyay, Judge Averil Rothrock)

- Whether jurisdiction over civil protection orders should be harmonized, modified, consolidated
- Best practices for minor litigants in civil protection order cases, including what sanctions should be available
- How the civil protection order law can more effectively address coercive control

Due to Legislature: December 1, 2021

- Standards for filing evidence in protection order proceedings to protect victims safety and privacy
- Recommendations to improve access for unrepresented litigants
- Best practices where civil and criminal proceedings concern same alleged conduct

Due to the courts: June 30, 2022

3. **Technology Group** (Topical Leads: Tim Fitzgerald, Elizabeth Hendren)

- Develop standards for the courts regarding requirements to private vendors who provide services related to filing systems for protection orders and what data should be collected
- Develop standards for the courts regarding uses of technology to reduce administrative burdens in protection order proceedings

Due to courts: June 30, 2022

### *Stakeholders*

We are extremely grateful for our stakeholders--who included superior, district and municipal court judicial officers; court clerks; court administrators; victim advocates; attorneys; and academics from across the State--for contributing their time and expertise to this project. Please refer to **Appendix A** for a complete list of all stakeholders to each group.

### **Summary of Recommendations**

Access to justice was of paramount concern for the legislature when it passed E2SHB 1320 in 2021. It acknowledged that Washington has been “a national leader in adopting legal protections to prevent and respond to abuse, violence, harassment, stalking, neglect, or other threatening behavior through its civil protection orders.”<sup>4</sup> However, in order for litigants to access these “essential tools,” the law needed to be simplified and streamlined for both petitioners and respondents.<sup>5</sup>

Two sections of E2SHB 1320 directed the Administrative Office of the Courts, through the Gender and Justice Commission, to convene stakeholders to make recommendations to the

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<sup>4</sup> Chapter 215, Laws of 2021 at p. 2

<sup>5</sup> *Id.* at p. 3

Legislature.<sup>6</sup> In carrying out this directive, we viewed the relevant issues through an accessibility lens. Accordingly, this stakeholder group recommends:

### ***Research & Information Sharing***

*Best practices re: how state courts can see protection orders entered by tribal courts, military courts, and other jurisdictions*

- Two solutions are proposed to this issue, both of which require additional time to investigate the feasibility and cost of each option. Those options are that:
  - The Administrative Office of the Courts (AOC) develop a new application/user interface to allow tribal courts to enter tribal protection orders directly into the Washington State judicial database (Judicial Information Systems – JIS), or
  - The Washington State Courts obtain access to the National Crime Information Center databases (NCIC) to allow state judicial officers or court staff to search for existing protection orders.
- In the interim, the legislature could adopt the following recommendations to improve information sharing:
  - Update the protection order petition form to expressly ask petitioners to disclose any tribal court cases, military court cases, out of state cases, or out of country cases involving the parties or their minor children.
  - Akin to communications courts undertaken pursuant to the UCCJEA, require state courts to communicate with tribal courts and military courts regarding protection orders that address child custody provided that the Administrative Office of the Courts (AOC) provides all relevant information to the state courts, i.e. contact

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<sup>6</sup> *Id.* at pp. 21-22, 33, pp.57-58



information for tribal and military courts prior to implementation of this requirement.

- The courts might also consider the following:
  - Adopt a best practice that the judicial officer ask the parties on the record about tribal affiliation any other court involvement and include a question on the form petitions developed by AOC to elicit this information.
  - CR 82.5 applies to superior courts and tribal courts only. A similar rule could be created for state court judges to openly communicate with military courts or non-Washington courts, and also be expanded to courts of limited jurisdiction provided that AOC provides all relevant information, i.e. contact information for tribal and military courts prior to implementation of this requirement.

### ***Subject Matter Jurisdiction***

- Regarding access for survivors, the current jurisdictional structure remains supportable and justified by the considerations that shaped the original division. These include creating broad access to physical locations for filing and promoting efficient allocation of judicial resources including use of superior court resources for complex cases and certain subject areas already connected to the superior courts, while utilizing district courts to relieve superior court congestion. No major revisions appear obviously necessary or desirable from a survivor/access perspective. Geographical differences—rather than differences between the levels of courts—appear to produce more disparities regarding access and the user experience.
- While current requirements regarding transfer of cases should remain, improvements are suggested. The transfer process itself could be improved, including the creation of a

uniform transfer form. Additionally, the court administrator and user experience would benefit if courts formulated and posted written procedures addressing transfer. Because of the different courts involved and the varying circumstances and considerations of the different courts and geographies, circumscribing the procedures through legislative enactment is not recommended but best practices could be encouraged.

- The following are suggested recommendations for the Legislature’s consideration to improve the transfer process:
  - Standardize the circumstances that require a petition for a Sexual Assault, Domestic Violence, Stalking or Antiharassment Protection Order to be transferred to the superior court. For example, unify the provisions controlling these four protection order types by requiring that superior courts handle full hearings when any of the following five criteria are met:
    - Any party is under 18 years of age;
    - The action involves title or possession of real property;
    - The action would have the effect of interfering with a minor child’s residential schedule or contact with minor children of the parties at issue;
    - The action involves vacating a party from the parties’ shared residence or a request for exclusion from a dwelling; or
    - A superior court has exercised or is exercising jurisdiction over a proceeding involving the parties.<sup>7</sup>

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<sup>7</sup> These five criteria should be listed in the suggested uniform transfer form.

- Permit direct filing in the superior court of antiharassment and stalking petitions where circumstances are alleged that would require a transfer; this would obviate the need for the mandatory transfer process for qualifying petitions.
- The legislature should appropriate funds for training of judicial officers and court staff to be administered by the judiciary, which could include the creation of bench cards on transfer requirements and other subject matter jurisdiction issues. This recommendation aligns with other recommendations in this report for the provision of funding to develop more robust training resources.
- The legislature should evaluate the existing jurisdiction of municipal courts in light of constitutional concerns.
- The legislature should evaluate the benefit of additional information gathering regarding budgets, costs, and resource allocation by the courts to civil protection order proceedings. Further evaluation could illuminate whether its prior goals for the jurisdictional approaches are being met, including whether the courts have sufficient resources to implement the legislative intent. This may be a particularly pressing question as to district courts in light of the numerous instances where the legislature placed proceedings at the district court level to avoid congestion of superior courts.

### ***Best Practices for Minors***

[RECS STILL IN DEVELOPMENT]

#### ***Coercive Control***

- Add coercive control as conduct that is included in the civil definition of domestic violence listed in RCW 7.105.010(8)(a) and (b). This civil definition will also need to be updated where it appears outside of Chapter 7.105 RCW. [List out those sections]

- Include a definition for “coercive control” in RCW 7.105.010 to provide guidance to judicial officers regarding the types of non-physical harm that constitute domestic violence. Suggested elements to include in the definition are:
  - Objective standards:
    - Would a reasonable person, with the same knowledge that the controlling partner had at the time, have known that the behavior would have a serious effect on the victim?
    - Would the conduct cause a reasonable person to suffer substantial emotional distress?
  - Specific examples of tactics and abusive behaviors that are coercive and controlling, e.g. those listed on pp. \*\*-\* of this report.
- If the definition is amended, coercive control should be included in RCW 7.105.255 as a subject that judicial officers should receive training about. The Legislature should also allocate funding to the Administrative Office of the Courts for development of evidence-based training on this topic, as well as resources for judicial officers.
- If the definition is amended, an additional section should be added in Chapter 7.105 RCW to mandate data collection about protection order cases that include allegations of coercive control in order to evaluate the efficacy and impact of this change. Funding should be allocated to the Administrative Office of the Courts to implement an additional data field for protection orders. This will likely also require additional fields on the protection order petition.

401 N 4<sup>th</sup> Street  
Kent, WA 98032  
206-263-0767  
jblack@kingcounty.gov

October 12, 2021

Ms. Erin Lennon  
Clerk of the Supreme Court  
PO Box 40929  
Olympia, WA 98054-0929  
**By Email: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)**

Dear Ms. Lennon:

For the eight years I have served as a Commissioner for the Superior Court, first in Thurston County, and now in King County. In that capacity, I have had the opportunity to adjudicate numerous cases involving people who are transgender. In working with other judicial officers and court staff throughout the State of Washington, I have found there is an inconsistency in how gender identity and expression are handled in the court.

In January, the New York Advisory Committee on Judicial Ethics issued an Opinion finding that the failure to recognize a person's preferred gender pronouns to be a violation of the New York Code of Judicial Conduct. (Opinion 21-09 attached.) Upon researching the issue in Washington State, I was surprised to discover that gender identity and gender expression are not protected under the Washington Code of Judicial Conduct. I believe this should change.

In August of this year, the Washington Court of Appeals, Division II, issued a Commissioner ruling which recognized the right of a person to be referred by their chosen pronouns. (In the Matter of the Welfare of M.D., a minor child, No. 55647-2-II, attached.) This ruling painstakingly outlines the medical, psychological, and emotional reasons for this decision.

I trust you will agree that for *everyone* to be confident that the court will treat them fairly and without bias, courts need to recognize people for who they are and they should not be prejudged because of their gender expression or identity. As such, I propose the Washington Code of Judicial Conduct, specifically, Rule 2.3 Comment [3] be amended to read:

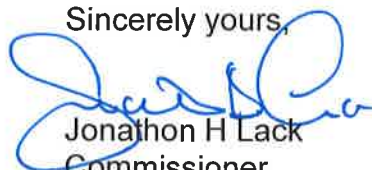
Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

Erin Lennon  
Page 2  
October 12, 2021

I presently serve on the Superior Court Judges Association, Equality and Fairness Committee. That committee has wholeheartedly endorsed this amendment to the Code of Judicial Conduct. If you have any questions about this proposal, please do not hesitate to contact me.

Thank you for your consideration.

Sincerely yours,



Jonathon H Lack  
Commissioner  
King County Superior Court

Enclosures

GENERAL RULE 9

RULE AMENDMENT COVER SHEET

PROPOSED AMENDMENT TO WASHINGTON CODE OF JUDICIAL CONDUCT

RULE 2.3, COMMENT [3]

1. Proponent Organization: Commissioner Jonathon Lack (in his individual capacity)
2. Spokesperson and Contact information: Jonathon Lack, [jlack@kingcounty.gov](mailto:jlack@kingcounty.gov)
3. Purpose of Proposed Rule Amendment  

Washington State law prohibits discrimination based on gender identity. RCW 49.60.030; RCW 49.60.040(27); WAC 162-32-040. This amendment would conform the antidiscrimination provision of the Code of Judicial Conduct with chapter 49.60 RCW and WAC 162-32-040.
4. Is Expedited Consideration Requested? No.
5. Is a Public Hearing Recommended? No, because it conforms the JPC with the RCW and WAC.

Proposed amendment

Washington Code of Judicial Conduct, Rule 2.3 Comment [3] should be amended to read:

Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.



## Opinion 21-09

January 28, 2021

Digest: Where a party or attorney has advised the court that their preferred gender pronoun is “they,” a judge may not require them to instead use “he” or “she.”

Rules: 22 NYCRR 100.2; 100.2(A); 100.3(B)(4)-(5); Opinion 19-50.

### Opinion:

A judge asks if they may “require a singular pronoun be used for a singular person” in order to “keep order in the courtroom, and to have a clear record.” That is, when a party expresses a preference for gender-neutral plural pronouns (they/them), the judge wishes to require them to instead choose a singular pronoun, he/him or she/her. The judge is concerned that the use of “they” could create confusion in the record as to the number of persons to whom a speaker is referring.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2) and must always act in a manner to promote public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A]). A judge must “perform judicial duties without bias or prejudice against or in favor of any person” (22 NYCRR 100.3[B][4]). For example, a judge must not, “by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon ... sexual orientation, gender identity [or] gender expression” (*id.*). A judge “shall require staff, court officials and others subject to the judge’s direction and control to refrain from such words or conduct” (*id.*). The judge’s responsibility for curbing such manifestations of bias and prejudice in the courtroom even extends to “lawyers in proceedings before the judge” (22 NYCRR 100.3[B][5]).

The “courthouse and courtroom must convey to the public that everyone who appears before the court will be treated fairly and impartially” (Opinion 19-50). While a judge may take reasonable steps to ensure the clarity of the record, including courteously referring to an individual by surname and/or their role in the proceeding as appropriate, a judge must be careful to avoid any appearance of hostility to an individual’s gender identity or gender expression. We can see no reason for a judge to pre-emptively adopt a policy barring all court participants, in all circumstances, from being referred to by singular “they,” which is one of three personal pronouns in the English language. That is, “they” has been recognized as a grammatically correct use for an individual (*see e.g. Merriam-Webster, 2019 Word of the Year: They*, <https://www.merriam-webster.com/words-at-play/word-of-the-year-2019-they/they>).

Adopting and announcing the sort of rigid policy proposed here could result in transgender, nonbinary or genderfluid individuals feeling pressured to choose between the ill-fitting gender pronouns of “he” or “she.” This could not only make them feel unwelcome but also distract from the adjudicative process. Thus, as an ethical matter, we believe the described policy, if adopted, could undermine public confidence in the judiciary’s impartiality.

In sum, we conclude that, where a person before the court has advised the court that their preferred gender pronoun is “they,” the inquiring judge may not require them to use instead “he” or “she” in the proceeding. We trust judges to handle an expressed preference for the use of singular “they” on a case-by-case basis, adopting reasonable procedures in their discretion to ensure the clarity of the record as needed. We also note that there is no ethical impropriety in making adjustments over the course of a proceeding, if a judge finds that an initial approach was unsuccessful or confusing.

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<sup>1</sup> Of course, the rule “does not preclude legitimate advocacy” by attorneys when sexual orientation or other similar factors “are issues in the proceeding” (22 NYCRR 100.3[B][5]).

<https://nycourts.gov/legacyhtm/ip/judicialethics/opinions/21-09.htm>

August 24, 2021

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

IN THE MATTER OF THE  
WELFARE OF:

M.D.,<sup>1</sup>

A minor child.

No. 55647-2-II

RULING GRANTING  
DISCRETIONARY REVIEW,  
REVERSING IN PART, AND  
REMANDING; AND  
GRANTING MOTION TO  
CHANGE CAPTION

Eleven-year-old M.D. moves for discretionary review of the juvenile court's denial of his motion related to pronoun use by the court and parties. RAP 2.3(b). The Department of Children, Youth, and Families (Department) cross-moves for discretionary review. The Department also requests a change of caption to *In re the Welfare of M.D.*, to reflect M.D.'s new name. RAP 3.4.

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<sup>1</sup> For the reasons set out in this ruling, this court is granting the motion and cross-motion for discretionary review, and the motion to change the caption to *In re the Welfare of M.D.* This ruling, therefore, uses the new caption, the initials "M.D." for the child's name, and the child's requested male pronouns.

This court grants M.D.'s motion and the Department's cross-motion for discretionary review. It also grants the Department's motion to change the caption. RAP 3.4. Under RAP 18.13A(a), this court reverses the juvenile court's decision in part and remands for further dependency proceedings.

#### FACTS

M.D. was assigned the sex of female at birth. In December 2018, the Department became involved with the family for the second time<sup>2</sup> after receiving a report that M.D. had fallen asleep at school and was difficult to wake. The school was unable to reach his mother, D.D. So law enforcement drove M.D. home.

Two months later, in February 2019, D.D. contacted the Department asking for assistance. She requested the Department place M.D. in a long-term psychiatric facility because M.D. was not sleeping and was trying to access pornography at night.

In March, the Department held a Family Team Decision Making (FTDM) meeting where D.D. said she "does not feel safe with [M.D.] in the home and she does not know how to help [M.D.]" Mot. for Disc. Rev., Appendix at 54. D.D. agreed to in-home services, such as Family Preservation Services (FPS). But the FPS referral was closed after two attempts to engage D.D. in services. And on May 15, 2019, D.D. refused to let a social worker into her home.

Two days after the social worker's attempted visit, M.D. was hospitalized after stabbing himself in the neck with an unidentified object. During M.D.'s stay, hospital staff could not reach D.D. for several days. While he was hospitalized, M.D. asked a social

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<sup>2</sup> An earlier dependency action was dismissed on May 4, 2018.

worker for help. M.D. also said that at times he did not want to live. D.D. reported to a social worker that she did not know what to do and said she could not resolve M.D.'s mental health issues.

In September 2019, D.D. entered into an agreed dependency. The Department placed M.D. in a therapeutic residential group home in Kennewick, Washington. There, M.D. received counseling and behavioral services to address a history of trauma.<sup>3</sup>

In counseling, M.D. said he wanted to identify as male and use male pronouns. M.D.'s attorney then contacted D.D., the Department, the guardian ad litem (GAL), and D.D.'s attorney by e-mail in early January 2021, informing them of M.D.'s request to be referred to as "he/him/his and boy" and his related request for a haircut. Mot. for Disc. Rev., Appendix at 74. But D.D. opposed both the use of male pronouns and the haircut. D.D. blamed an earlier foster home placement for encouraging M.D. to "live a gay lifestyle" and stating that before that placement, M.D. had never mentioned a male gender identity. Mot. for Disc. Rev., Appendix at 80.

In January 2021, M.D. moved to have the juvenile court and parties use his male pronouns.<sup>4</sup> M.D. also requested a short haircut to allow him to better conform to his male identity. M.D. additionally requested the juvenile court to "determine whether any additional services may be necessary" for the parents "based on their inability to

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<sup>3</sup> The dependency petition alleges that M.D.'s father and the father of a half-sibling sexually abused M.D.

<sup>4</sup> The father supported M.D.'s motion. But his parental rights were terminated sometime after the juvenile court heard the pronoun motion.

recognize the needs of [M.D.'s] gender identification.” Mot. for Disc. Rev., Appendix at 72. The Department supported M.D.'s requests.

M.D.'s motion included studies, research, and a hand-written declaration from M.D. stating usage of male pronouns would help him feel “comfturble in ‘MY’ body.” Mot. for Disc. Rev., Appendix at 105. M.D. wrote, “I want to be preffered as him/he/his. I want to get my hair shaved because I want somebody to look at me and say I am male. . . . I’ve been wanting to make this change for 3 years. ‘I WANT TO BE A BOY.’ ‘AND THATS OK.’” Mot. for Disc. Rev., Appendix at 105-106.

The juvenile court heard argument on M.D.'s motion on February 1, 2021. M.D. made a statement at the hearing, affirming that “I do feel like I should be represented as he/him.” He added that if he had been in court in person, as opposed to on the phone, “I would have broke up in tears.” Mot. for Disc. Rev., Appendix at 8 (Report of Proceedings (RP) Feb. 1, 2021 at 8). He also said that a haircut “would represent me as male or help represent me as male.” Mot. for Disc. Rev., Appendix at 8-9 (RP Feb. 1, 2021 at 8-9). D.D. responded that the gender issue “has never come up before.” Mot. for Disc. Rev., Appendix at 10 (RP Feb. 1, 2021 at 10). D.D. “wanted to hear from a counselor” about the situation and wanted a psychological evaluation for M.D.

Laura Gustavson, the GAL, then spoke to the court. She emphasized that gender identity issues were “deeply important” for a “child’s sense of self-esteem.” Mot. for Disc. Rev., Appendix at 14 (Report of Proceedings (RP) Feb. 1, 2021 at 14). She noted that M.D.'s identity issues were “not a new thing” and that he was exploring them in individual counseling and “finding [his] voice in terms of what [he] wants.” Mot. for Disc. Rev., Appendix at 14 (RP Feb. 1, 2021 at 14). She recommended that the family have

therapeutic support to address this issue. Finally, Gustavson opined that ordering M.D. to undergo a psychological evaluation simply because of his request “seems a little bit heavy handed and concerning.” Mot. for Disc. Rev., Appendix at 16 (RP Feb. 1, 2021 at 16).

The juvenile court permitted M.D. to cut his hair<sup>5</sup> but denied his motion to use male pronouns. The court reasoned that a “ten-year-old does not get to make these kind of choices for themselves.” Mot. for Disc. Rev., Appendix at 29 (RP Feb. 1, 2021 at 29). The court also noted that M.D.’s brain is “still so developing.” Mot. for Disc. Rev., Appendix at 29 (RP Feb. 1, 2021 at 29). So “[t]here is no way the court can let a youth of that age have a significant say in this.” Mot. for Disc. Rev., Appendix at 29 (RP Feb. 1, 2021 at 29). It declined to order a psychological evaluation. It did not address whether additional services were necessary under the circumstances.

M.D. moved for reconsideration, providing more research and guidance. He submitted a second hand-written declaration, which stated “I am very triggerd when someone calls me female. . . . I Want to look male, and say im male!!” Mot. for Disc. Rev., Appendix at 108. The juvenile court denied the motion, reasoning that there was no basis for the court to reconsider its initial decision.

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<sup>5</sup> At the hearing, the mother’s counsel acknowledged “[t]he haircut is not the major issue.” Mot. for Disc. Rev., Appendix at 10 (RP Feb. 1, 2021 at 10). The court allowed the haircut because of its temporary nature, noting “[t]he great thing about hair, it always grows back.” Mot. for Disc. Rev., Appendix at 28 (RP Feb. 1, 2021 at 28).

M.D. moved for discretionary review of the juvenile court's decisions. Rather than answer the motion, the Department cross-moved for discretionary review.<sup>6</sup> The Department also moved to change the caption of the case to *In re the Welfare of M.D.* to reflect M.D.'s new name. RAP 3.4. The Washington Defender Association, Lavender Rights Project, ACLU-Washington, Legal Counsel for Youth and Children, and QLaw Foundation submitted an amici curiae brief in support of the motion and cross-motion for discretionary review. RAP 10.6.

On August 2, 2021, the trial court issued an order clarifying its ruling on M.D.'s February 1, 2021 motion. The order states that "no party may refer to the child by the pronouns he/him/his or a name other than [P.D.]." Department Resp. to Amici Curiae Br., Appendix C at 13. It also notes the pronoun issue is pending in this court.

## ANALYSIS

### I. Discretionary Review

Washington strongly disfavors interlocutory review, and it is available only "in those rare instances where the alleged error is reasonably certain and its impact on the trial manifest." *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591, review denied, 169 Wn.2d 1029 (2010); *Right-Price Recreation, LLC v. Connells*

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<sup>6</sup> M.D. and the Department served D.D.'s juvenile court counsel with the notices of discretionary review in March and April 2021. But D.D. did not appear here. In addition, although D.D. had not appeared, M.D. served D.D. with a copy of his motion for discretionary review on July 29, 2021.

After service of M.D.'s motion on D.D., his appellate counsel filed a declaration on July 29, 2021, stating she would not object if D.D. requested an extension of time to respond to M.D.'s motion. Court Spindle, Declaration of Tiffinie B. Ma, Jul. 29, 2016, at 2. As of this ruling's filing date, however, this court has not received anything from D.D.



*Prairie Cmty. Council*, 146 Wn.2d 370, 380, 46 P.3d 789 (2002), *cert. denied sub. nom, Gain v. Washington*, 540 U.S. 1149 (2004). Under *Minehart*, “Where there is a weaker argument for error [under RAP 2.3(b)(1) or (2)], there must be a stronger showing of harm.” *Minehart*, 156 Wn. App. at 463.

This court may grant discretionary review only when:

- (1) The superior court has committed an obvious error which would render further proceedings useless;
- (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
- (3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or
- (4) The superior court has certified, or all the parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b).

M.D. seeks discretionary review under RAP 2.3(b)(2) and (3). The Department cross-moves for discretionary review under RAP 2.3(b)(2).

A. RAP 2.3(b)(2)

Probable Error

RAP 2.3(b)(2) requires the moving party to show the superior court committed probable error, which had a substantial effect on the status quo or the freedom of the

parties to act. The moving parties argue that the juvenile court committed probable error by misgendering<sup>7</sup> M.D. and denying his motion to use male pronouns.

Generally, this court reviews orders issued in dependency cases for an abuse of discretion.<sup>8</sup> *In re Dependency of D.C-M.*, 162 Wn. App. 149, 158, 253 P.3d 112 (2011). A juvenile court abuses its discretion when its decision is manifestly unreasonable, rests on untenable grounds, or is made for untenable reasons. *D.C-M.*, 162 Wn. App. at 158; *In re Dependency of T.L.G.*, 139 Wn. App. 1, 15, 156 P.3d 222 (2007). A decision is manifestly unreasonable if it goes beyond acceptable choices, given the facts and the applicable legal standard. *T.L.G.*, 139 Wn. App. at 15-16. A decision is based on untenable grounds or is made for untenable reasons if the court applied the wrong legal standard or relied on unsupported facts. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

It is undisputed that parents have a fundamental liberty interest in the care and welfare of their minor children. *In re Dependency of Schermer*, 161 Wn.2d 927, 941, 169 P.3d 452 (2007). But the state also has an interest in protecting the physical, mental, and emotional health of children. *Schermer*, 161 Wn.2d at 941. Thus, in a dependency, it is well established that “[w]hen the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail.” RCW 13.34.020. And as a dependent child’s legal custodian,

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<sup>7</sup> “Misgender” means to refer to the gender of a person incorrectly. MERRIAM-WEBSTER DICTIONARY, <https://www.dictionary.com/browse/misgender> (last visited Aug. 24, 2021).

<sup>8</sup> M.D.’s brief does not identify the underlying standard of review that he believes applies to a pronoun decision. The Department uses the abuse of discretion standard.

the Department has the responsibility to provide M.D. with “conditions free of unreasonable risk of danger, harm, or pain.” *Braam ex rel. Braam v. State*, 150 Wn.2d 689, 700, 81 P.3d 851 (2003); see also *T.L.G.*, 139 Wn. App. at 15 (holding that the safety of the child prevails over the rights of the parents when in conflict in a dependency matter); *Matter of the Dependency of W.W.S.*, 14 Wn. App. 2d 342, 359, 469 P.3d 1190 (2020) (when the right of a parent conflicts with that of the child, the child’s right prevails).

M.D. and the Department argue that the juvenile court’s decision was probable error under RCW 13.34.020<sup>9</sup> and the evidence M.D. provided in support of a minor’s decision to socially transition.<sup>10</sup> This court agrees.

<sup>9</sup> Along with RCW 13.34.020, M.D. relies on the Washington Law Against Discrimination (WLAD), RCW 49.60. He argues that this statute prohibits discrimination based on gender identity, RCW 49.60.040(26) through (27). He adds that the Office of the Superintendent of Public Instruction and the Department have interpreted the WLAD to require them to respect a minor’s pronoun usage. Mot. for Disc. Rev. at 12 (citing Susanne Beauchaine, et al., *Prohibiting Discrimination in Washington Public Schools: Guidelines for School Districts to Implement Chapters 28A.640 and 28A.642 RCW and Chapter 392-190 WAC*, WASH. SUPERINTENDENT OF PUB. INSTRUCTION, OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION (Feb. 2012), [https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/Prohibiting\\_Discrimination\\_in\\_Washington\\_Public\\_Schools\\_February2012%28RevisedSep.2019Disclaimer%29.pdf](https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/Prohibiting_Discrimination_in_Washington_Public_Schools_February2012%28RevisedSep.2019Disclaimer%29.pdf) (last visited Aug. 24, 2021), and Washington Department of Children, Youth, and Families, *Supporting LGBTQ+ Identified Children and Youth*, Policies & Procedures 6900, Policy (2)(a)(b) (Jul. 1, 2018), <https://www.dcyf.wa.gov/6000-operations/6900-supporting-lgbtq-identified-children-and-youth> (last visited Aug. 24, 2021)). But because M.D. cites no opinions adopting this interpretation of the WLAD and because the law surrounding RCW 13.34.020 is well established, this court need not reach the WLAD issue to determine whether the juvenile court committed probable error.

<sup>10</sup> See Motion for Disc. Rev. Appendix at 112 (discussing what it means to socially transition); see also HUMAN RIGHTS CAMPAIGN, *Glossary of Terms*, <https://www.hrc.org/resources/glossary-of-terms>, para. 30 (stating that “[t]ransitioning . . . typically includes social transition, such as changing name and pronouns.” (boldface omitted)) (last visited Aug. 24, 2021).

M.D. presented the juvenile court with many studies and reports from reputable sources showing the harmful effects of misgendering. The evidence also shows that a minor's gender expression should be supported. The mother did not counter this evidence.

The juvenile court, though, ruled there was "no way the court can let a youth of that age have a significant say in this." Mot. for Disc. Rev., Appendix at 29 (RP Feb. 1, 2021 at 29). This ignored M.D.'s statement he became aware of his gender identity at eight years old, and studies showing that (1) most children have a stable sense of gender identity at a young age and (2) supporting a child's expressed gender is linked to better mental health outcomes. See Mot. for Disc. Rev. at 7-8, 7 n.3 (citing James R. Rae, Sulin Gülgöz, Lily Durwood, Madeleine DeMeules, Riley Lowe, Gabrielle Lindquist, and Cristina R. Olson, *Predicting Early Childhood Gender Transitions*, ASS'N FOR PSYCH. SCI., 669, 671 (Mar. 29, 2019), <https://journals.sagepub.com/doi/pdf/10.1177/0956797619830649> (last visited Aug. 24, 2021); and Ed Yong, *Young Trans Children Know Who They Are*, THE ATLANTIC (Jan. 15, 2019), <https://www.theatlantic.com/science/archive/2019/01/young-trans-children-know-who-they-are/580366/>, para. 3 (last visited Aug. 24, 2021) (stating children who later transitioned had a "strong sense of their identity" from the start)); see also Mot. for Disc. Rev., Appendix at 98-100 (stating that the American Academy of Pediatrics and its norms for gender identity in children note that by four years old children have a stable sense of gender identity); Mot. for Disc. Rev., Appendix at 105-106 (M.D.'s statement that "I've been wanting to make this change for 3 years. 'I WANT TO BE A Boy.' 'AND THATS OK.'").

In addition, statistics from The Trevor Project<sup>11</sup> showed that out of 400,000 LGBTQ teens surveyed in 2020, 42 percent “seriously considered attempting suicide”; and over 60 percent of transgender youth and nonbinary youth reported self-harm. Mot. for Disc. Rev., Appendix at 70, 82; *National Survey on LGBTQ Youth Mental Health 2020*, THE TREVOR PROJECT (2020), at 1, 14, <https://www.thetrevorproject.org/wp-content/uploads/2020/07/The-Trevor-Project-National-Survey-Results-2020.pdf> (last visited Aug. 24, 2021). But these high numbers can be combated by supporting an individual’s expressed gender, leading to better mental health outcomes. Mot. for Disc. Rev., Appendix at 70, 82; *National Survey on LGBTQ Youth Mental Health 2020*, THE TREVOR PROJECT (2020), <https://www.thetrevorproject.org/wp-content/uploads/2020/07/The-Trevor-Project-National-Survey-Results-2020.pdf> (last visited Aug. 24, 2021).

Here, M.D. informed the court that misgendering distresses him. Mot. for Disc. Rev., Appendix at 108 (“I am very triggerd when someone calls me female. . . . I Want to look male, and say im male!!”). He also has already exhibited some of the significant mental health concerns mentioned by the statistics. For example, M.D. expressed suicidal thoughts after being hospitalized for stabbing himself in the neck.

In light of this information, the juvenile court’s ruling that M.D. could not make this type of decision because of his young age was unsupported. See Mot. for Disc. Rev.,

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<sup>11</sup> The Trevor Project describes itself as “the leading national organization providing crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender, queer & questioning (LGBTQ) young people under 25.” <https://www.thetrevorproject.org/about/> (last visited Aug. 24, 2021).

Appendix 29 (ruling that M.D. “does not get to make these kind of choices” due to his brain “still so developing. . . . [t]here is no way the court can let a youth of that age have a significant say in this.”). In addition to the studies already referenced, M.D. submitted the letter-declaration of Aidan Key, co-chair of the Gender Clinic at Seattle Children’s Hospital. Key directly addressed best practices for a child expressing a new gender identity in preadolescence, which include requested pronoun usage.

Key also listed harmful practices, which include “refusing to use names and pronouns that are in congruence with [the] child’s gender identity.” Mot. for Disc. Rev., Appendix at 112. Key also acknowledged that a minor’s social transition, such as name changes, pronoun changes, and other gender expressions, may end up being temporary, but best practices support allowing a child to make these decisions to “explore their gender identity.” Mot. for Disc. Rev., Appendix at 112. Key further stated that supporting “reversible social transition steps”<sup>12</sup> “will *not* make a child’s gender identification change,” rather the support will “ensure that [the] child is confident in the love and support of their family as they explore their gender identity.” Mot. for Disc. Rev., Appendix at 112 (italics in original).

In light of RCW 13.34.020 and the extensive and uncontroverted documentation submitted by M.D. showing that his decision to socially transition should be supported and that children are at a significant risk of harm when these decisions are not honored,

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<sup>12</sup> The juvenile court’s decision to allow M.D. to cut his hair tracked Key’s recommendation to allow a child to take steps to socially transition. The court relied on the fact that a haircut is temporary. But it did not explain why this reasoning did not extend to pronoun usage, another potentially temporary social transition step.

this court concludes that both M.D. and the Department satisfy the error prong of RAP 2.3(b)(2).

#### Effect Prong

Besides finding probable error, RAP 2.3(b)(2) also requires this court to determine that the juvenile court's decision "substantially alters the status quo or substantially limits the freedom of a party to act." M.D. argues that the decision limits his freedom to use his "[correct]<sup>13</sup> pronouns in court and in pleadings." Mot. for Disc. Rev. at 14. The Department adds that the juvenile court's decision changes the status quo by altering the Department's written policy, Policy 6900, that directs it to "mirror[] language the [dependent] child or youth uses to describe themselves." Department Resp. and Cross-Mot. for Disc. Rev., Appendix B at 3 (Washington Department of Children, Youth, and Families, 6900. *Supporting LGBTQ+ Identified Children and Youth*, Policies & Procedures 6900, Policy (2)(a)(b) at 3, (Jul. 1, 2018); also available at: Washington Department of Children, Youth, and Families, 6900. *Supporting LGBTQ+ Identified Children and Youth*, Policies and Procedures 6900, Policy (2)(a)(b) at 3 (Jul. 1, 2018),

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<sup>13</sup> M.D.'s motion for discretionary review actually states, "using his *preferred* pronouns in court . . ." Mot. for Disc. Rev. at 14 (emphasis added). This court, however, recognizes that the term "preferred pronouns" is falling out of favor, so this court replaces "preferred" with "correct" here. See generally Ashlee Fowlkes, *Why You Should Not Say 'Preferred Gender Pronouns'*, FORBES (Feb. 27, 2020, 10:22 PM EST), <https://www.forbes.com/sites/ashleefowlkes/2020/02/27/why-you-should-not-say-preferred-gender-pronouns/>, at para. 2 ("[T]he phrase 'preferred gender pronouns,' while well-intended, gives the impression that pronouns other than the ones specified are acceptable.") (last visited Aug. 24, 2021); see also generally *Gender Pronouns*, TRANS STUDENT EDUC. RES., <https://transstudent.org/graphics/pronouns101/> (last visited Aug. 24, 2021) ("We also do not use 'preferred pronouns' due to people generally not having a pronoun 'preference' but simply having 'pronouns.' Using 'preferred' can accidentally insinuate that using the correct pronouns for someone is optional.").

<https://www.dcyf.wa.gov/6000-operations/6900-supporting-lgbtq-identified-children-and-youth> (last visited Aug. 24, 2021)).

M.D.'s harm argument at first appears untenable given *State v. Howland*, 180 Wn. App. 196, 207, 321 P.3d 303 (2014), *discretionary review denied*, 182 Wn.2d 1008 (2015), which requires a superior court's decision to have some effect outside the courtroom. But because the juvenile court's decision, although arguably limited to pronoun use in court proceedings and pleadings, goes directly to M.D.'s identity and autonomy, this court determines that *Howland* does not preclude granting review. See *generally Taking Offense v. State*, No. Co88485, 2021 WL 3013112, at \* 20 (Cal. Ct. App. 5th Jul. 16, 2021) (Robie, J., concurring) ("One's name or the pronoun that represents that name is the most personal expression of one's self."); see *also* WASH. CONST. ART. I, sections 3 and 7 (autonomous decision making is a fundamental right); *Butler v. Kato*, 137 Wn. App. 515, 527-28, 154 P.3d 259 (2007) (stating that the right to autonomous decision making is given the "utmost constitutional protection. . . ."); *State v Koome*, 84 Wn.2d 901, 904, 530 P.2d 260 (1975) (stating that the "constitutional rights of minors, including the right of privacy, are coextensive with those of adults"). M.D. shows that the juvenile court's decision substantially limits his freedom to act to express his identity and have his identity acknowledged. In addition, the Department's argument that the decision alters its status quo is well taken.



## B. RAP 2.3(b)(3)

M.D. also argues that the juvenile court's decision warrants review under RAP 2.3(b)(3) because it departs "from the accepted and usual course of judicial proceedings." This court agrees. The juvenile court had sufficient guidance on pronoun usage best practices—both from M.D. and the Department, as well as from other opinions and juvenile and LGBTQ bench guidebooks—which it did not follow.

First, opinions from our state courts and other courts routinely respect a party's pronouns. *Matter of Detention of C.S.*, No. 80655-6-I, 2021 WL 2313409, at \*1 n.1 (June 7, 2021) (cited under GR 14.1 (c)) ("The record reflects that C.S. prefers the pronouns 'they/them/their.' We defer to C.S.'s preferred pronouns."); *State v. Perry*, No. 35476-8-III, 2020 WL 550253, at \*12 n.1 (Feb. 4, 2020) (cited under GR 14.1 (c)) (using feminine pronouns to refer to the appellant but only for periods after gender reassignment for clarity (because witnesses referred to Perry as male during the trial) and noting the court's departure from its usual practice while meaning no disrespect); *see also Farmer v. Haas*, 990 F.2d 319, 320 (7th Cir. 1993) ("Farmer prefers the female pronoun and we shall respect her preference.").

Second, the National Council of Juvenile and Family Court Judges issued guidance in 2017, directly addressing the issue at hand. It states that juvenile courts are "ethically obligated to promote access to justice for all impartially, competently, and diligently regardless of race, ethnicity religion sexual orientation, gender identity, and gender expression." *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE)*, at intro., NAT'L COUNCIL OF JUV. & FAM.

CT. JUDGES (2017), [https://www.ncjfcj.org/wp-content/uploads/2017/08/SOGIE\\_Benchcard-7-15-17.pdf](https://www.ncjfcj.org/wp-content/uploads/2017/08/SOGIE_Benchcard-7-15-17.pdf) (last visited Aug. 24, 2021).

To do so effectively, the benchbook highlights these practices: (1) supporting an individual's expression of gender identity by using their name and pronouns of choice, (2) demanding professionalism and prohibit use of derogatory pronouns, including "he-she" and "it" for Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Gender Non-Conforming (LGBTQ-GNC) individuals by ensuring all in court use the individual's chosen pronouns, and (3) where issues relating to youth's gender identity are raised, carefully considering any existing law, research, best practices, and standards of care before issuing a decision. *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE), Unique Considerations at Every Stage of the Case*, Bench card 2, para. 9, NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES (2017), [https://www.ncjfcj.org/wp-content/uploads/2017/08/SOGIE\\_Benchcard-7-15-17.pdf](https://www.ncjfcj.org/wp-content/uploads/2017/08/SOGIE_Benchcard-7-15-17.pdf) (last visited Aug. 24, 2021). Here, as discussed, M.D. presented significant un rebutted evidence on best practices and current standards of care.

Third, for several years our state courts have the benefit of a bench guide issued by QLaw of Washington for the Washington State Supreme Court's Gender & Justice Commission. *Judges' Bench Guide on the LGBTQ Community and the Law*, QLaw FOUND. OF WASH. & QLaw ASSOC. (3d ed. 2017), <http://www.courts.wa.gov/committee/pdf/LGBTQ%20Bench%20Guide.pdf> (last visited Aug. 24, 2021). This document is readily available online and has been cited by this court

in at least one ruling.<sup>14</sup> This guide advises correct pronoun usage in court. *Judges' Bench Guide on the LGBTQ Community and the Law*, ch. 2, § 2, QLAW FOUND. OF WASH. & QLAW ASSOC. (3d ed. 2017), <http://www.courts.wa.gov/committee/pdf/LGBTQ%20Bench%20Guide.pdf> (last visited Aug. 24, 2021) (“Inclusive Language and Tone”). It does not exempt juvenile courts.

In sum, discretionary review is warranted under RAP 2.3(b)(2) and (3).

## II. Caption Change

The Department also moves for a caption change<sup>15</sup> under RAP 3.4 to reflect the initials of M.D.'s new name and not his deadname.<sup>16</sup> RAP 3.4 provides in relevant part:

Upon motion of a party or on the court's own motion, and after notice to the parties, the Supreme Court or the Court of Appeals may change the title of a case by order in said case.

See *Matter of Welfare of K.D.*, No. 98965-6, 2021 WL 3085557, at \*1 (Wash. Jul. 22, 2021).

In *Matter of Welfare of K.D.*, our Supreme Court held that RAP 3.4 and this court's general order for changes to juvenile case captions require that identifying information

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<sup>14</sup> *In re Detention of Adel Pittman*, COA No. 52331-1-II, Ruling Denying Review at 1 n.2 (Sept. 6, 2018) (also citing Heidi K. Brown, INCLUSIVE LEGAL WRITING, *We Can Honor Good Grammar and Societal Change Together*, 104-APR A.B.A. J. 22 (April 2018)). The *Pittman* ruling is cited neither as binding nor persuasive authority. See generally GR 14.1(c). Rather it is cited only to show that this court uses the QLaw bench guide as a reference.

<sup>15</sup> At argument, M.D. joined this motion.

<sup>16</sup> “[D]eadname” refers to the birth name of a LGBTQ+ individual who no longer uses it. MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/deadname> (last visited Aug. 24, 2021).

about juveniles be removed from the case title in dependency and termination appeals and be replaced with a child's initials. See Gen. Order for the Court of Appeals, Div. Two, 2018-2, *In re Changes to Case Title* (Wash. Ct. App. Aug. 22, 2018), [https://www.courts.wa.gov/appellate\\_trial\\_courts/?fa=atc.genorders\\_orddisp&ordnumber=2018-2&div=II](https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=2018-2&div=II) (last visited Aug. 24, 2021); *K.D.*, 2021 WL 3085557, at \*1. The purpose behind the rule and order is to protect the children involved and their privacy.

Here, the Department moves for a change of the case caption, contending that it would further M.D.'s mental health and allow the Department to comply with its own policies to meet M.D.'s needs while in its care. Changing the caption of the case to replace the deadname initials does not place M.D.'s privacy at risk or go against the purpose of RAP 3.4. In fact, as previously noted by scientific data provided to the juvenile court and M.D.'s own words and wishes, changing his initials in the caption for this case would further M.D.'s wellbeing and mental health outcomes. Thus, under RAP 3.4, this court grants the Department's motion.

### III. RAP 18.13A(a)

The moving parties show that the court should accept discretionary review. RAP 2.3(b)(2) and (3); RAP 6.2(a). This court takes review and, under RAP 18.13A(a) and for the reasons stated in this ruling, it reverses in part the juvenile court's denial of the child's motion to be identified as male by the parties to this case, the juvenile court, and by his parents.<sup>17</sup> Specifically, the Department and the dependent child are allowed to use the

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<sup>17</sup> This court accepts review and issues a merits decision in the same ruling because child welfare matters are time sensitive and this family remains subject to active dependency proceedings. RAP 18.13A(a); RAP 7.3; see generally *In re K.J.B.*, 187 Wn.2d 592, 613,

initials "M.D." (and M.D.'s corresponding full name) and to use male pronouns for M.D.; the juvenile court is required to do so; but D.D. may use the name and pronouns that she believes are warranted in light of M.D.'s wishes, the evidence he submitted about best practices, and feedback D.D. may receive from service providers and M.D. in this dependency.

The context in which this dispute arises informs this court's decision not to order D.D. to use M.D.'s name and pronouns. This family is in an active dependency. The child welfare system exists because when a parent seriously jeopardizes a child's physical or mental health, "the State has a *parens patriae* right and responsibility to intervene to protect the child." *In re Dependency of Schermer*, 161 Wn.2d 927, 942, 169 P.3d 452 (2007) (quoting *In re the Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980)); *In re the Welfare of Shantay C.J.*, 121 Wn. App. 926, 935, 91 P.3d 909 (2004). Once legal custody of a child transfers to the Department, it is charged with providing the parent with services necessary to achieve family reunification, the goal of any dependency. See RCW 13.34.180(1)(d).

To that end, the juvenile court has ordered D.D. to engage in individual and family therapy.<sup>18</sup> M.D. is also receiving ongoing supports in his placement, including individual

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387 P.3d 1072 (2017) (González, J., dissenting) ("In matters of juvenile justice, getting to the right result quickly is a priority.").

<sup>18</sup> As of February 1, 2021, D.D. had not started family therapy, although the parties had discussed it and M.D. advocated for it. And as of the March 15, 2021 dependency review hearing, family therapy had still not started. M.D. continued to express that he wanted to start family counseling.

counseling. And there is some consensus that M.D.'s request for his mother to use male pronouns should be addressed through these services.

For example, at the initial hearing on pronouns, GAL Gustavson emphasized that the conflict between M.D. and D.D. about M.D.'s wishes should be "facilitated" with a therapist to allow D.D. to have "therapeutic communication with her [child.]" Mot. for Disc. Rev., Appendix at 14-15. D.D. also indicated that she wanted to hear from mental health providers about M.D.'s decision. And at a March 15, 2021 dependency review hearing, the juvenile court ordered family counseling to start "immediately" and identified it as "an integral part of moving towards a return home." Mot. for Disc. Rev., Appendix at 47 (RP Mar. 15, 2021 at 14).

As in any dependency, these services are in place to assist D.D. and M.D. in addressing their relationship to facilitate their planned reunification.<sup>19</sup> Department Resp. to Amici Curiae Br., Appendix at C at 10 (setting a trial return home date of September 26, 2021). D.D. has not completed these necessary services and a court order for D.D. to use male pronouns in court proceedings will do nothing to address the underlying conflict between M.D. and his mother on this issue. Nor will it facilitate reunification. Accordingly, it is hereby

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<sup>19</sup> Amici contend that the juvenile court denied M.D.'s request for additional reunification services for his parents. Amici Curiae Br. at 2. But at the February 1, 2021 hearing, the juvenile court did not appear to rule on M.D.'s request to consider additional services. And any party remains free to request additional necessary services at future periodic dependency review hearings. See *generally* RAP 2.3(b)(2) (effect prong requires substantial change in the status quo or limitation on freedom of party to act).

This court expresses no opinion as to whether additional services will be required during the dependency. That determination is left to the juvenile court, with input from D.D., M.D., the Department, the GAL, and current service providers.

ORDERED that M.D.'s motion and the Department's cross-motion for discretionary review are granted. It is further

ORDERED that the juvenile court's denial of M.D.'s motion for the court and the parties to use male pronouns is reversed in part, and this matter is remanded for further dependency proceedings. And it is further

ORDERED that the Department's motion to change the caption from *In re the Welfare of P.D.* to *In re the Welfare of M.D.* is granted.



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Aurora R. Bearse (she/her)  
Court Commissioner

cc: Tiffinie B. Ma  
Elizabeth A Baker  
Andrew D. Pugsley  
Christopher Torrone  
D'Adre Cunningham  
Megan Dawson  
Nancy Talner  
Yvonne Chin  
Antoinette M. Davis  
Erin L. Lovell  
Denise Diskin  
Hon. Christine Schaller



September 20, 2021

The Honorable Sheryl Gordon McCloud  
Administrative Office of the Courts  
PO Box 41170  
Olympia, WA 98504-1170

The Honorable Marilyn G. Paja  
Kitsap County District Court  
614 Division St. #106  
Port Orchard, WA 98366

Dear Justice Gordon McCloud and Judge Paja:

Thank you for sharing with me the Washington State Supreme Court Gender and Justice Commission study report, 2021: How Gender and Race Affect Justice Now. Your leadership in focusing research around gender inequities in the State's justice system will help Washington better address systematic biases.

The topic of equity for all people continues to be an important issue for me. As a representative, I co-sponsored HB 1783 creating the new State Office of Equity; and as State Treasurer, I am implementing a Diversity, Equity, and Inclusion focus within the Office of the State Treasurer.

Thank you for the opportunity to serve on the 2021 Gender Justice Study Advisory Committee, and thank you both and Sierra Rotakhina, in particular, for all of your efforts in publishing this report.

Respectfully,

A handwritten signature in blue ink, appearing to read "Mike Pellicciotti", is written over a faint, larger version of the same signature.

Mike Pellicciotti  
State Treasurer

cc: Sierra Rotakhina





# Gender and Justice Commission

## 2022 Meeting Dates

Virtual Meetings held via Zoom Videoconference

Contact Moriah Freed ([Moriah.Freed@courts.wa.gov](mailto:Moriah.Freed@courts.wa.gov)) for Zoom access information.

| Date                      | Time               | Location             |
|---------------------------|--------------------|----------------------|
| January 21 <sup>st</sup>  | 9:30 AM – 12:00 PM | Zoom Videoconference |
| March 4 <sup>th</sup>     | 9:30 AM – 12:00 PM | TBD                  |
| May 27 <sup>th</sup>      | 9:30 AM – 12:00 PM | TBD                  |
| September 9 <sup>th</sup> | 9:30 AM – 12:00 PM | TBD                  |
| November 4 <sup>th</sup>  | 9:30 AM – 12:00 PM | TBD                  |

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