



**Gender and Justice Commission**  
**Friday, May 29, 2020**  
**9:30 AM – 12 PM**  
**Zoom Webconference**

**MEETING NOTES**

**Members & Liaisons Present**

Justice Sheryl Gordon McCloud (Chair)  
Judge Marilyn Paja (Vice Chair)  
Judge Anita Crawford-Willis  
Ms. Josie Delvin  
Ms. Laura Edmonston  
Judge Rebecca Glasgow  
Justice Steven González  
Ms. Gail Hammer  
Ms. Elizabeth Hendren  
Ms. Grace Huang  
Judge Eric Lucas  
Judge Maureen McKee  
Ms. Heather McKimmie  
Ms. Erin Moody  
Ms. Riddhi Mukhopadhyay  
Mr. Sal Mungia  
Ms. Renée Pilch  
Dr. Dana Raigrodski  
Ms. Sonia Rodriguez-True  
Judge Jackie Shea-Brown  
Judge Cindy K. Smith  
Ms. Vicky Vreeland

**Guests**

Ms. Erika Evans  
Ms. Shannon Kilpatrick  
Ms. Ivy-Rose Kramer  
Judge Mary Logan  
Mr. Rob Mead  
Ms. Claire Mocha  
Mr. David Ward  
Ms. Marla Zink

**Staff**

Ms. Kelley Amburgey-Richardson  
Ms. Moriah Freed  
Ms. Laura Jones  
Ms. Sierra Rotakhina

**Members & Liaisons Absent**

Ms. Lillian Hawkins  
Ms. Elaine Kissel  
Ms. Eleanor Lyon  
Judge Rich Melnick  
Ms. Michelle Gonzalez  
Ms. Stephanie Verdoia

**WELCOME AND INITIAL BUSINESS**

**Welcome and Call to Order**

The meeting was called to order at 9:35 AM.  
Justice Gordon McCloud conducted a roll call of attendees.

**January 31, 2020 Meeting Minutes**

The meeting minutes were approved with member edits provided via email.

## **Proposed Amendment to Commission Bylaws (Page 9)**

- The purpose of the proposed amendment is to change officer position of Commission Vice Chair to Commission Co-Chair.
- Justice Gordon McCloud, who proposed the amendment, explained her intent to have the title accurately reflect Judge Marilyn Paja’s leadership role in the Commission.
- **VOTE**: Justice Gordon McCloud moved to adopt the amendment. Justice Steve González seconded. Amendment unanimously adopted by Commission voting membership.

## **COVID-19 DISCUSSION**

### **Discussion: Impacts and Priorities**

#### **Introduction**

- Justice Gordon McCloud did not want to do committee reports as usual for several reasons. Some activities are not happening due to pandemic, and committees may have new priorities.
- Judge Paja shared briefly about the ABA webinar she attended (report on Page 10)
  - Three Supreme Court justices from across the country spoke about what was happening in their jurisdictions.
  - Planning, challenges faced by courts. Litigation and budget concerns.
  - Fascinating webinar, discussion. Parallels in many ways the challenges faced in WA.

#### **How has COVID-19 impacted the work of your committee?**

- Justice Gordon McCloud requests members share:
  - For the people your work is focused on, are there increased problems? New technology? Creative solutions that might be maintained even after this is over? Or, alternatively, terrible solutions that the rest of us should avoid?
- Elizabeth Hendren, Chair, Incarceration, Gender & Justice Committee
  - Huge impact in prisons, concern with spread of virus within facilities.
  - Family connectedness issues – in-person have been visits cut off for several months now. Programming has also been cut off and people are feeling isolated.
  - It is difficult to get information about what is happening in facilities. Ms. Hendren is dependent on JPAY to get information and does not have the same access as before to facilities. JPAY has been crashing, not working properly.
  - There are gender-specific issues for incarcerated pregnant women. Small studies indicate COVID-19 is damaging for pregnant women’s health. The same family of viruses have been shown to be detrimental to pregnant women. Not enough data yet for CDC to have something more official.

- It appears jails are not holding pregnant women and DOC has released a lot of women who are pregnant and post-partum.
  - There is a question about federal prisoners held in DOC facilities
    - Is DOC giving them federal defender contact information?
    - WDA has provided to it to DOC but hasn't been able to get the names of prisoners.
    - Note: Most current federal litigation is out of Danbury, CT.
  - Concerns about a second wave and a need for additional prison releases. Victim safety needs to be taken into account.
- Grace Huang, Member, Domestic and Sexual Violence Committee
    - Immigrant and LEP survivors
      - Issues getting information about the virus in their language.
      - Having to rely on abuser as source of information.
      - Or, relying on advocacy organization for everything – as their only connection to resources and information.
    - Delays for people applying for immigration status, not able to get work authorization.
    - Many immigrants are essential workers. Even if new electronic access to various services and court processes is an improvement from in-person, they don't have breaks, have limited phone time.
    - Public charge issues – immigrants who are out of work are worried about applying for public benefits because of later repercussions.
    - Ms. Huang is monitoring federal funding developments for services and programming related to gender based violence.
  - Riddhi Mukhopadhyay, Member, Domestic and Sexual Violence Committee
    - Filing fees are no longer being waived for U-Visa applications, VAWA self-petition.
    - Has seen an increase in firearms purchases since COVID closures.
    - Increase in DV criminal reports, but not necessarily protection order petitions.
    - Perpetration the advocacy community is seeing is more violent.
    - Court access is county to county, inconsistent. How is information getting out to survivors? Some counties have been great about updating info on websites, but not every county is updating.
    - Survivors feel like they can't get a protection order. Sexual Violence Legal Services has been trying to educate the public that emergency POs are still accessible per Supreme Court orders.
    - Anticipating eviction and housing cases. Sexual coercion in exchange for unpaid rent.

- PO proceedings, public access differs from county to county – livestreaming, posting number on website so anyone can call in. Privacy concerns. Just wanting to make sure that survivors know this is happening so they can make decisions about what to file.
- Stalking – it is easier to stalk someone when they are home all the time.
- Employment
  - Has seen situations where an employee filed a complaint before COVID-19, the employer uses the pandemic as an excuse not to investigate, then fires the complainant.
  - Survivors working in much more unsafe conditions – employer not making accommodations for survivors who have been assaulted by a coworker, forced to work alongside.
- New Title IX Regulations go into effect in August.
  - They have rolled back best practices that many advocates had been pushing for on campuses and K-12.
  - Starting to get questions from students.
  - Anticipate students turning to state court system rather than school administrative process because it's not providing protections like it did before.
- Open courts discussion
  - Courts are using YouTube to livestream hearings. Courts have open phone lines where anyone can call in to listen to a proceeding.
  - Judge Paja notes that courts are balancing open courts policy with social distancing concerns.
  - There is an issue with abusers using recording of YouTube PO hearing to dox survivor, post the video online with their contact information.
  - Not sure what the right answer is. In some ways it's good – able to file electronically in counties they weren't able to before.
  - Justice Gordon McCloud requests that if SVLC develops best practices, please share them. Judges would be open to hearing other solutions.
  - Some courts are having YouTube taken down immediately after, they are aware that's not perfect because of screen shots, etc.
  - Aware that in-person may be preferable to survivors to avoid the YouTube posting. Public, but more limited than an online proceeding.
- Judge Cindy K. Smith, Co-Chair, Tribal State Court Consortium
  - Regional meeting was scheduled for May 15<sup>th</sup> at the Temple of Justice and Nisqually Tribal Court. It has been cancelled due to the pandemic and the TSCC is working on webinars instead.
  - Work groups are continuing – branding and messaging group is doing regular highlights of tribal courts. Protection order enforcement survey is in final stages

and then will disseminate. There is a plan to conduct follow-up calls depending on responses.

- Justice Gordon McCloud asked about incarcerated Native women.
  - Suquamish Tribal Court had one situation where a pregnant woman was released to treatment.
  - Kitsap County Jail isn't holding these women. Not issuing warrants for failure to appear, only holding most extreme/violent cases.
- Justice González spoke with Representative Goodman. He has been contacted by public defenders with a request that legislature mandate certain data collection during COVID-19.
  - Grace Huang – would like data collection regarding survivor access, family court proceedings.
  - Justice Gordon McCloud – maybe we should make a list of areas where we think data should be collected, so if it's addressed by legislature, things that impact women are included.
  - Dr. Raigrodski – can the study project be the clearinghouse that collects info re: COVID impacts? Tentatively collecting information. Please send via email.

**What would you like to see the Commission or your committee prioritize over the next few months?**

- Dr. Raigrodski proposed a GJC ad hoc committee to collect information about what is happening, how the Commission can address.
- Justice Gordon McCloud shared info about new BJA court recovery task force. Wants to learn more to see if this is worth asking a member to take the time for this. If it is, may be a good source of information.

**GENDER JUSTICE STUDY**

**Research Updates and Discussion** (Study Update Page 13)

**Mass Incarceration Section** – Ms. Marla Zink, Lead, Mass Incarceration Sections (Page 15)

- Justice Gordon McCloud introduced Ms. Zink. She is a criminal defense attorney handling appointed and private direct appeals and other post-conviction matters in both the federal and state systems. Her professional bio includes nearly a decade with the Washington Appellate Project.
- Ms. Zink presented briefly on her research and led a discussion to obtain feedback from the Commission on questions posed in her introductory memo on Page 15.
  - Little WA data on women, on intersectional identities.

- WA trend is increased incarceration of women. Posited reasons for this as well as some possible solutions.
- Asked for feedback on overall content (anything missing, etc.), changes in tone, resources members can point to?
- Dr. Raigrodski highlighted the study pilot project that is analyzing existing WA data. She contextualized the materials – there is a lot of national data in the draft, and we are seeking feedback about whether it should be reduced.
- Heather McKimmie noted that there is a lot of important information in the draft, but should highlight WA information more, because there are differences. It gets lost a bit in the midst of the national information.
- Judge Paja highlighted Kitsap County Girls Court.
  - Ms. Zink had a visit with them. She is not sure if this will be covered in her section or one of the others, but it's a great model and will be highlighted.
  - Judge Paja also referred Ms. Zink to the NAWJ "Girls in Trouble" video.
- Justice Gordon McCloud noted that the overall goal is to say this is where we were at in 1989, it wasn't great, and we made recommendations for change. This is where we are in 2020.
  - In 1989, we didn't have a baseline, this wasn't in original report. Need to establish a baseline now.
  - Need to tie it into history, building it into what came before.
- Elizabeth Hendren thanked Ms. Zink for work to date and shared specific feedback:
  - Immigration detention is missing. Should this be included here or elsewhere? If it's elsewhere, it should be referenced here.
  - There is a federal detention facility in WA. The focus of this section is rightly on WA State incarceration, but this should be mentioned.
  - In the draft, page seven notes an upward trend of women in jail. The Prison Policy Initiative put out a report in 2019 indicating that over half of women serving time are in jail. Office of Corrections Ombuds' report includes some LGBTQ data.
  - Family and Offender Sentencing Alternative (FOSA) -Susie Leavell has collected gender-based data. It's not great for women – they recidivate at higher rates, would love to know why.
- Ms. McKimmie noted that Danny Waxwing's report on trans prisoners hasn't come out yet but DRW is using the data in other negotiations. May be able to provide this to Ms. Zink.
- Ms. Huang – Do we not have WA data about race? WA has one of the higher state populations of Asians and Pacific Islanders (API), and this is not in the report.

- Ms. Zink has encountered data issues, the way data is collected, how people are being identified and who is identifying whom. Will continue to look into this.
  - Ms. Hendren noted two specific race data issues. Asian Americans are all lumped into one category, and there are issues with Hispanic/Latinx data (ethnicity vs. race check boxes).
- Ms. McKimmie does not think civil commitment section needs to be included, but is curious what others think. In the facility, there is one cisgender woman, and a decent amount of trans women. They are considering getting rid of women's unit because having gendered units is more like a prison than a treatment facility (Western State Hospital does not have this).
- Dr. Raigrodski – one of the key things we are doing with the study is pointing out lack of data and flagging problems with the available data (aggregation for example). Important to know that people on the ground are seeing this too.
- Ms. Zink thanked the Commissioners for their review and input and requested additional feedback via email. This is very helpful. We want to make a real difference and hopefully sooner than 20 years from now.
- Justice Gordon McCloud thanked Ms. Zink for the time she is taking away from her practice to devote to this.

**Family Law Section** – Mr. David Ward, Lead and Mr. Rob Mead, State Law Librarian (Supplemental Materials)

- Dr. Dana Raigrodski introduced Mr. David Ward and Mr. Rob Mead.
  - David Ward is a former member of the Gender & Justice Commission and served as a staff attorney for many years at Legal Voice in Seattle. He is currently living in New York, but plans to return to Washington State next year. Mr. Ward is leading the family law sections and also serves on the Gender Justice Study Advisory Committee.
  - Rob Mead is the State Law Librarian and has made huge contributions to the Study by doing the preliminary research and writing on all of the topics addressed in the 1989 report, including this section on family law.
- Mr. Ward and Mr. Mead presented on their research (Supplemental Materials) and lead a discussion to obtain feedback from the Commission.
  - Questions that have arisen in writing this section:
    - Mr. Mead – In 1989, the focus was on economic consequences. Is this still an issue? What is the role of the courts in the continued feminization of poverty that happens post-divorce or outside of marriage? Are there other topics that are not economic in nature that should be covered in this chapter?

- Mr. Ward – There are fewer divorces now, fewer people getting married in WA. Family court is not necessarily where they are resolving issues. If they are marrying, they are marrying later in life. Should we be focusing on some of the issues that are not captured here?
    - Mr. Ward shared that only one of the 1989 recommendations was implemented. The 1989 study of this issue was an intensive look involving stakeholder groups but there was no hard data. Is this topic as important now as it was in 1989?
  - Discussion of child support/maintenance calculation:
    - Judge Paja – Even if people are not marrying, they are still having children (dealing with custody, trying to resolve parenting plan issues) or they have real estate that needs to be divided. Maybe we have a brief statement about why fewer people are marrying, but also talk about other ways that people are resolving those issues when they are not married. And how does this disparately impact women?
    - Ms. Hendren has represented parents on both side of the child support issue. She noted that one major change since '89 has been the rise of the tech industry. The formula and presumptive child support ceiling results in high earning parents getting leniency despite capacity to pay. Low-income parents get the book thrown at them when they do not meet obligation. There is also often an issue with only the higher earning parent being represented. The section could include laws on child support and data on who is self-represented.
    - Mr. Ward noted that, while you can ask for a deviation above the presumptive amount, if a parent is not represented they are unlikely to know to ask.
    - Ms. Huang noted that spousal maintenance is also an issue.
    - Dr. Raigrodski - This is the kind of field/anecdotal information we need to collect.
    - Judge Paja shared that when child support worksheets were first established everyone did the work using one software system. That company was possibly keeping data that may still exist.
  - Professor Hammer stated that people are going to court re: financial issues within a committed intimate relationship action. Those are not treated as family law.
    - There are increased numbers using this process. Not sure if there are enough to have an impact on financial effect on women.
  - A major family law issue is that in more than half of the cases, neither party has a lawyer.
  - In 2007, there was a big revision to WA parenting act.

- Required parties to file a document with the clerk providing a residential time summary and stating whether they were represented.
  - WSCCR publishes a report regularly on this. However, people are not complying with this law, so can't draw conclusions.
- Discussion of custody evaluators/family law facilitators
  - Ms. Huang noted that there has been a shifting of responsibility for monitoring family law matters to paid custody evaluators/GALs/family court facilitators.
  - Judge Paja wonders if family court facilitators collect data. Staff to the SCJA may know the answer.
  - Judge Maureen McKee does not think her court's family law facilitator collects data. The Family Law Information Center provides support for pro se litigants and Early Resolution Case Managers (in King County) provide mediation and general help.
- Judge Jackie Shea-Brown - Would WSBA be a resource for data on unbundled resources?
  - The SCJA has a Self-Represented Litigant (SRL) Work Group.
  - Riddhi Mukhopadhyay notes that the moderate means program may have data. Also notes, this is one of the most paper-driven types of cases.
  - Economic issues remain relevant. Self-represented litigants may give up fighting for financial support in order to get custody.
  - Mr. Mead noted that the trade off between child custody and money was found in the '89 report and that we need to flag this as a gap in the current data/research.
- Mr. Ward – Economic consequences are real, the difference is that parties are splitting thing up outside of divorce cases because people are not married.
- Ms. Hendren shared that in King County family law is the main filing. Even with divorce going down, we are still dealing with family law.
- Domestic violence and family law
  - Ms. Hendren emphasized that within a family law context, DV abusers use the court to perpetrate abuse. It doesn't matter if they are married. The factor is if they have children.
  - Ms. Mukhopadhyay appreciates the abusive litigation section of the section.
- Professor Hammer – Theorists have interesting ideas about the effect of economic realities on marriage, divorce, etc.
  - The idea of the economic unit used to be the nuclear family because one person could earn enough to support a nuclear family. That is no longer true.

- Since economic unit is now seen as individual, people tend to think of themselves separately from a family and that shows up in marriage trends and breakup trends.
- Dr. Raigrodski – it may be that the inequities still exist, but the courts are playing a different role in the process.

**Consequences of Violence Section – Judge Jackie Shea-Brown and Ms. Laura Jones, Leads (Page 66)**

- Judge Shea-Brown and Ms. Jones provided a brief update on their work and requested feedback via email from the Commission on specific questions, outlined in their memo.
- Judge Shea-Brown noted they have tried to capture the intersection of court processes, access to justice, and social science research. They appreciate Sierra Rotakhina’s support with the social science aspects.
- Ms. Jones – Are there any big gaps? Are there areas we have addressed that should be in more depth? If you have knowledge of resources, please let us know what/who they are. Please point out where we are using legalese.
- Justice Gordon McCloud asked the leads, to the extent that the pandemic has created a different situation, is there any data we can capture or can we make a note for future research?
- Ms. Huang will share additional resources via email. Also notes that the section focuses on criminal matters. Is there room to include civil remedies more?

**ACTION: Please provide feedback deadline to Judge Shea-Brown and Ms. Jones by June 5<sup>th</sup>.**

**DOMESTIC VIOLENCE WORK GROUPS**

**Mandatory Arrest Discussion**

- One task that the work groups have been assigned is:
  - Research, review, and make recommendations on whether laws mandating arrest in cases of domestic violence should be amended and whether alternative arrest statutes should incorporate domestic violence risk assessment in domestic violence response to improve the response to domestic violence, and what training for law enforcement would be needed to implement an alternative to mandatory arrest. E2SHB 1517 Sec. 803 (4)(a)(1)
- Ms. Laura Jones provided a brief overview of mandatory arrest research (Page 100), the history of and current state of WA law.
  - Studies are very mixed about the effectiveness of mandatory arrest in reducing recidivism.

- Studies also point out disparate impact on people of color, women, LGBTQ people.
  - There is no specific WA study on this issue.
- Judge Eric Lucas, Judge Mary Logan, and Judge Marilyn Paja facilitated a discussion.
- Judge Logan shared that there is strong sense that victims are being disregarded on the scene. An officer has something in mind about what they need to do, but do not understand that arrest may escalate the domestic violence.
- Judge Lucas's primary concern is, given current environment, causal factors, what constitutes progress in the area of mandatory arrest?
- Judge Paja would like to hear the perspective of the commissioners because Commission is convener of the project and has a voice on the legislative work group.
- Justice Gordon McCloud - this is unique to DV calls. Perhaps the control group is other types of calls. If data doesn't drive a conclusion, shouldn't we be choosing the least intrusive means? No arrest unless it's by officer discretion.
- Judge Lucas noted that when we get a critique of the current system, it is that it has a disproportionate impact on people of color, both survivors and alleged abusers.
  - Grace Huang noted that there are also disproportionate impacts on immigrants and LGBTQ survivors.
- Dr. Raigrodski wants to make sure this is captured in DV/SA section of report. To the extent this is not in legislative mandate, cover it in study.
- Ms. Huang shared:
  - Survivors want the abuse to stop. Law enforcement did not take concerns seriously. This was intent of mandatory arrest.
  - We should be measuring misogyny – are women believed, is abuse taken seriously?
  - WSCADV's fatality review reveals issues. Jail time is minimal.
  - After all this time, DV and accountability hasn't shifted all that much. People around the country are working on other solutions, putting time into prevention.
  - Ultimately, what is our goal? Hopefully whatever we do, it's because we want abuse to stop.
  - How should resources be used if mandatory arrest is not making significant change? It is not trauma-informed, doesn't listen to survivors, it is expensive. It might be time to allocate resources to a different solution.
  - We need to hear the voices of women, voices of people of color. Why are we relying on systems run by white men to make these decisions? Wants to start from a different place.
  - She will try to capture additional feedback in writing and distribute.

**ACTION: Commission members please share any additional feedback about this with Work Group Co-Chairs or Laura Jones.**

## **NEXT STEPS AND ADJOURNMENT**

### **Next Steps for Commission – COVID-19**

- The Co-Chairs encouraged Committee Chairs and members to further explore challenges and new priorities before the next meeting.

**The meeting adjourned at 12:05 p.m.**