



Gender Justice Study Advisory Committee

November 18, 2020
10:00 AM – 12:30 PM
Zoom Webconference



Meeting Minutes

Members Present:

Justice Sheryl Gordon McCloud, Co-Chair
Dr. Dana Raigrodski, Co-Chair
Dean Mario Barnes
Judge Linda Coburn
Sharese Jones, on behalf of Secretary Stephen Sinclair
Justice Raquel Montoya-Lewis
Judge Kathleen O'Connor
Representative Mike Pellicciotti
Becky Roe
Judge Michael Spearman
David Ward
Senator Judy Warnick

Members Absent:

Director Jim Bamberger
Graciela Gomez Cowger
Judge LeRoy McCullough
Karen Murray
Judge Steve Scott
Tarra Simmons
Director César Torres
Secretary Kim Wyman

Guests Present:

Kristi Cruz
Justice Steven González
Bob Lichtenberg
Judge Judith Ramseyer
Constance Van Winkle
Mary Welch

Staff and Research Support Present:

Kelley Amburgey-Richardson
Cynthia Delostrinos
Moriah Freed
Sierra Rotakhina

I. **Welcome and Introductions** – Justice Sheryl Gordon McCloud

- Justice Gordon McCloud welcomed everyone and called roll for members, Leads, presenters, other guests, and staff.
- She thanked the Leads for their work on the sections we are discussing today.
- Shared the five pillars Dr. Raigrodski developed as a framework for organizing the study topics.
- We want to present the information to the public in the most understandable way possible. Keep the pillars in mind as we discuss study topics during the meeting.

II. **Presentation and Discussion of Topics 2.9 and 2.10: Juvenile Justice Topics** – Judge Judith Ramseyer

- Justice Gordon McCloud introduced Judge Ramseyer, Lead for this section, is a King County Superior Court Judge and President of the Superior Court Judges Association.
- Presentation of Research (*See meeting materials for full draft of section*)
 - This is a very important topic, glad that GJC is looking at this.
 - Thank you to Sierra Rotakhina and Claire Mocha for their work on this section.
 - Changes in the law are largely the result of brain science research, which has demonstrated medically that adolescent brains are still in the process of developing into their 20s.
 - Juveniles are more susceptible to outside influences, suggestibility.
 - They are redeemable, can evolve, change.
 - Girls make up about 20% of those detained. Programming doesn't focus on them. Numbers are trending up, particularly with girls of color.
 - There are criminal offenses and status offenses.
 - Percentage of girls in status offense category is higher than in criminal offenses category – about 40% nationally.
 - Definition of what qualifies as a status offense differs from state to state, keep that in mind with national data.
 - Girls tend to have a higher degree of trauma, may be escaping an abusive relationship or home, higher percentage of runaways, instances of depression. Generally, they internalize their trauma rather than acting out.
 - We are moving toward rehabilitation and treatment rather than punishment.
 - Status offenses
 - Discussed Child in Need of Services petition framework.
 - This is a high priority and in need of reform.
 - Need gender specific programming, LGBTQ programming.
 - Discussed legal changes like prohibition on ordering juvenile detained for contempt of court, which will fully go into effect in 2021.
 - Court has very few tools available to help in this situation.
 - Need to develop resources in rural parts of the state.
 - Need better data – this will be a key recommendation from this section.
 - Juvenile criminal offenses
 - System is patterned after adult system, crimes are the same other than a few that are juvenile-specific like “minor in possession” crimes.
 - Law enforcement has some discretion at the front end, some of this depends on severity of offense.
 - Discussed diversion programs.
 - There may be a difference between what robbery in the third degree looks like for a juvenile, but they are charged with the same crime.
 - There are issues with bias in what the plea deal looks like, who plea deals are offered to.
 - Her personal view is to move away from punishment, move toward learning.
 - Can't build the system until we know who these kids are. Need more data that is disaggregated by race, gender, LGBTQ status.

- Justice Gordon McCloud notes where this section is in the five pillars under the “Children, Families and the Courts” pillar and invited feedback on this placement.
- Discussion and Questions
 - Dr. Raigrodski noted via chat that this section has significant intersection with trafficking and commercial sexual exploitation of youth, but because it's such a big area, it is carved out specifically (under 2nd pillar). The second visual slide of the report structure gives examples of how we're thinking of referencing and identifying cross-overs.
 - Dr. Raigrodski asked about data re: disproportionate impact on girls of color.
 - There is some data on this, they are looking for more.
 - Judge Ramseyer mentioned the concept of a juvenile therapeutic response model build around incentives rather than punishment, with behavioral health assessments, and counseling. If successful, charges are reduced or dismisses so the young person can get out from underneath a criminal record.
 - Becky Roe – is there any state that has a different statutory scheme for juveniles?
 - Leads/researchers are not aware of any.
 - Youthful offender statutes used to exist, but were thrown out when pendulum swung in the other direction (toward punishment).
 - Justice Gordon McCloud noted that this was a discretionary model and had some of the usual issues with complete discretion.
 - Some states are moving toward a treatment-oriented response but no one has gone this far. Let's do it!
 - Senator Warnick asked about representation for juveniles. Mentioned dependency pilot in Grant County.
 - Judge Ramseyer – all juvenile offenders have representation. In King County the Public Defender's Office does this and they are excellent. In status offense cases sometimes the parent is also provided an attorney. There is also no right to representation in truancy cases.
 - Dr. Raigrodski noted in chat that, based on what we know about inequities in truancy, it seems important to have some form of representation/advocacy there as well.
 - Justice González – King County system may be good, but there are parts of the state that do juvenile representation by contract. They are underfunded, under-supervised. Juveniles in those areas of the state are not well represented, especially those in poverty.
 - Some opinions coming out of Supreme Court are taking youthfulness into account even if juvenile is charged as an adult.
 - Dr. Raigrodski noted that young adults seem to be as vulnerable, but do not get the same safe harbor and protections as youth. Asked if Judge Ramseyer is trying to address and make recommends with regard to that group? Or are there local or national efforts to address that group?
 - Judge Ramseyer replied that there are many people who would like to see juvenile jurisdiction extend to early 20s so it aligns with brain development resources. There is a movement here in the juvenile system now as

Washington's system allows young adults to stay in juvenile system. That is also happening around the country.

- We welcome additional feedback on this section via email.

III. **Presentation and Discussion of Topic 1.1: Litigants' financial barriers such as costs of legal representation, childcare, travel to and from the courthouse** – Mary Welch

- Dr. Dana Raigrodski introduced Mary Welch, Lead for this section, Statewide Family Law Advocacy Coordinator at the Northwest Justice Project and member of the Commission's Domestic and Sexual Violence Committee.
- Presentation of Research [*See meeting materials for full draft section*]
 - Mary thanked Sierra Rotakhina for her help and patience. She is looking forward to feedback from AC members.
 - It is important when we talk about user fees, it is not just statutory fees.
 - A lot of her draft section talks about family law, where a lot of the fees are found.
 - Extremely expensive, especially if there are children, especially for people who are low income.
 - Would like more data on if women are filing more family law cases than men to help determine disproportionality.
 - The requirement to have a Guardian ad Litem is a barrier.
 - There is a real urban/rural divide with less access to things like GALS in many rural areas.
 - There are fees for: supervised visitation, parenting seminars, court ordered drug testing, court ordered DV treatment/evaluation, counseling, parenting evaluation, substance abuse treatment, mental health evaluations, etc.
 - When things are court ordered and person can't pay, puts a stop on ability to move forward with family law case.
 - Other costs include: copies of pleadings, service fees, ex parte fees. A lot of fees seem minuscule, but for Northwest Justice Project clients these fees can be a huge barrier.
 - Many courts require transcript of original hearing if requesting revision. Person requesting revision must pay for transcript.
 - Pre-COVID, had to pay for court call to participate in hearings via phone. Or, pay costs associated with travel, child care, taking time off work to attend in person.
 - GR 34 Fee Waiver – believes *Jafar v. Webb* holds that if waiver is approved, all fees must be waived. Not all courts agree. When someone has an attorney, it is easier to request and ensure this happens.
 - There are still issues with courts not correctly following fee waiver process in GR 34.
 - Remote participation has been a positive for access during COVID.
 - Ability to afford an attorney is a huge financial barrier to meaningful access/participation.
 - NJP is statewide, but we do not have enough resources to represent everyone who would qualify.
 - There is no right to an attorney in a family law case.

- Data needed
 - Would like a spreadsheet of fees from each county.
 - Would like data on why fees are not waived, which fees are waived when they are.
 - Who is filing first? Are there other additional fees for the person who is filing first?
 - If more women are filing first, could be a disproportionate impact on women.
- Discussion and Questions
 - Judge Spearman thinks frontline clerks are not educated about fee waivers. There may be a person who comes in and says, “I need to do x.” Clerk says, “Fee is y.” They can’t pay and clerk sends them away without offering fee waiver paperwork.
 - Judge Coburn noted that as long as you have the connection between fees received and paying for court functions, it is hard for court staff to be the people saying “you have a right to request fee waiver.” There is tension there.
 - Mary Welch thinks court websites should be required to advertise fee waiver, inform people of their rights. As long as court has a website, should mandate what is on it.
 - Judge Coburn asked if the Supreme Court could tackle this through a rule about what is mandatory for courts to include on their websites. If we have this relief but people don’t know about it, it doesn’t improve access.
 - David Ward
 - Concurs with family law cases being high fee, and also that GALs are a big part of that.
 - At Legal Voice they had a phoneline that anyone could call into—family law cases, GAL fees specifically, was one of the largest complaints. They are a huge financial burden on families.
 - The LLLT program is going away. Need to increase pro bono help available.
 - Pro ses are required to pay to attend family law orientation seminar. Does not, think there are any studies on if these seminars help. Many lawyers are not comfortable doing pro bono work in family law if it is not their area of expertise.
 - Courts require litigants to pay for parenting class, family law facilitator to finalize paperwork. Adding on and on.
 - Should extend waivers under GR 34 to all fees, make that explicit.
 - Justice Gordon McCloud welcomes suggestions for rule changes. Would suggest also looking at Rules of Appellate Procedure, which require complicated steps to request fees waived.
 - Has a former clerk who looked into this quite a bit and can share information. Mary Welch is interested in this.
 - Judge O’Connor
 - Need to look at statutory fees, GAL fees.
 - If courts had more funding to allocate to this sort of thing, it would help.
 - Some counties have county pay for GALs but there’s a cap and it’s often inadequate.

- Sharese Jones asked if there is a sliding scale. Provided example of people on community supervision.
- Mary Welch noted that it would be great to get this information from every county. Perhaps a law student could research this? Often information about the availability of a sliding scale is not posted on the court website, so people have to know to ask about it.
- Courts have taken the position that they can't waive certain costs. E.g., DV treatment. Court says that it is up to provider. But if a person is ordered to treatment and they qualify for a fee waiver in that case, court should waive these fees. Shouldn't be able to order someone to do something (e.g. participate in treatment) if they can't waive the fee.
- The key is funding court from general revenue rather than fees.
 - Justice Gordon McCloud asked – is there is general agreement on this from AC members?
 - Yes.
 - Dr. Raigrodski - we need to figure out systemic ways to uncouple financial aspects from providing justice. Why is family law so expensive?
 - Mary Welch: There are so many decisions that have to be made in every family law case.
 - Judge Coburn – there is a public perception issue with family law cases, with tax payers maybe not wanting to pay for family law as they see that as someone else's personal problems. We need to educate the public about things that happen in court.
 - Even family court benefits the public. What happens in court keeps people safe and benefits all of society even it if does not impact you as a taxpayer individually.
 - If issues don't get addressed, it bubbles out – dysfunctional families, people on state assistance.
- Judge O'Connor – there has been discussion in the past about whether family law fits in the court system.
 - Should they go into dispute resolution?
 - As a Judge, she valued the expertise of people who came in to give the court information.
 - In family law, it is not always possible for people involved to know what they should provide or how to provide it.

IV. Presentation and Discussion of Topic 1.2: Communication barriers to accessing the courts – Justice Steven González, Kristi Cruz, Robert Lichtenberg

- Justice Gordon McCloud introduced Justice Steven González, Chief Justice-elect, Chair of the Interpreter Commission and member of the Gender and Justice Commission.
- Justice González talked about the role of the Interpreter Commission (IC) and its broader work on the issue of language access in the courts.
- Kristi Cruz is an IC member and Bob Lichtenberg serves as Senior Court Program Analyst to the IC.

- Presentation of Research
 - Kristi Cruz wants to recognize Constance Van Winkle's (extern) role in the underlying legal memo. She will help incorporate feedback.
 - Kristi Cruz gave examples of the many barriers that remain for Limited English Proficient (LEP) people.
 - Limited pool of credentialed interpreters.
 - Access to the process required to see fee waiver (scheduling interpreter can be a challenge, courts are imposing fees on litigant).
 - Immigration and LEP individuals – not providing or using inappropriate interpreters.
 - Address need for interpreters beyond Spanish. There are over 150 languages spoken in WA. There is a struggle to providing interpreters in languages not frequently found in a given part of the state.
 - Interpreters not provided for services ordered by the court but not provided by court (assessment, treatment).
 - Clerks are not prepared.
 - GALs are not equipped, bias in reports.
 - There are separate federal and state requirements for Deaf and hard of hearing people. There is a credentialing issue for certified Deaf interpreters.
 - It is a barrier when the need for interpreters is immediate or unscheduled. For spoken language, go-to is telephone interpreters, and courts are not prepared for video interpreters.
 - People don't know that when they are denied an interpreter it's a legal issue. They don't know how to pursue a remedy, address the barrier.
 - Legal memo was drafted before COVID, plan to edit it to incorporate new information with regard to remote hearings and language access.
 - Bob Lichtenberg presented on systemic barriers for LEP individuals.
 - Access to language services in prison. Need to get information from DOC about what this looks like.
 - Not having a chance to communicate with police during arrest. More credibility given to hearing party. Handcuffing of Deaf people has the effect of silencing them.
 - Interpretation needed for participation in court diversion programs.
 - Language Access Plans
 - IC working with courts to update their plans.
 - Plans include how courts communicate resources, inform public about how to get an interpreter.
 - Some court interpreters won't do DV/SA cases because the subject matter is too traumatic. This creates another barrier in those cases.
 - We do not have a feedback system to know whether language service provided by the court are satisfactory.
 - Talked about language card and the idea of a cultural facilitator.

- We don't know what standard judges use to determine whether to provide an interpreter or not.
 - There are areas not in the draft yet that need to be addressed.
 - Would like to understand what happens for people who are trying to file a civil claim.
 - How do they find an attorney to file?
 - How do they find an interpreter to help communicate with the attorney?
- Justice González presented on their draft recommendations
 - Every court should have a robust language access plan.
 - Supreme Court and Courts of Appeal don't have them.
 - Some Court of Appeals judges don't think they are required because litigants don't have a voice in the proceedings at the appeals level (attorney is representing their interests).
 - Make online services accessible.
 - Translate forms and provide assistance understanding forms.
 - Recruit multilingual court staff.
 - Have an independent third party conduct a language access audit.
 - Provide resources to develop new interpreters in a wide variety of languages.
 - Need better data collection in WA to improve language access.
- Discussion and Questions
 - Dr. Raigrodski
 - Wonders if there could there be a robust national database of language resources.
 - Noted that there may be less resistance to providing video interpretation due to COVID. Would like to see this researched and incorporated.
 - Did they find any info on credibility in DV/SA cases for people using interpreter?
 - Kristi Cruz noted that the underlying memo does include this, but they weren't sure if it fits here or in the DV/SA section.
 - Language access is really an issue for all of the study topics.
 - Judge Spearman asked - is there a jury instruction re: how jurors should consider (nor not) a party using an interpreter?
 - Justice González noted that Justice Gordon McCloud is on the Washington Pattern Instructions Committee and may know if it's been updated recently.
 - Justice Gordon McCloud does not think it has. She is interested in knowing if instruction needs updating.
 - Bob Lichtenberg can forward current instruction for dissemination. [Complete]
 - Kristi Cruz noted a few additional bias issues
 - Assuming parent who is Deaf cannot be a good parent.
 - Credibility – if an interpreter is not provided initially, the person uses whatever English they know to respond. Later, with interpreter, provides additional or different information. Is not considered credible witness.

- Justice González emphasized that these are important rights and courts need to slow down and recognize this.
- Bob Lichtenberg shared a story about a Deaf woman who was unfairly treated by police when seeking help in a DV case. When she filed a civil case, jury agreed about the mistreatment, but only awarded \$1 in damages. This shows bias.
 - Justice Gordon McCloud requested that Bob write this down and share it so the authors can use it as one story that demonstrates overlapping issues.

V. Next Steps & Adjournment

- Justice Gordon McCloud thanked AC members for their participation and feedback.
- Shared proposed Advisory Committee dates for 2021: February 10th, April 5th, and July 2nd.
- Dr. Raigrodksi shared a slide with an idea for how to address overlapping topics. We are seeking the AC's guidance on this.
- Justice Gordon McCloud shared that the participants' broad subject matter background, creativity about solutions, and ruthlessness with criticism (especially about things she or the Court can have a hand in changing) are making her feel hopeful.