



## Gender Justice Study Advisory Committee

August 25, 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  
Karen Murray  
Judge Kathleen O'Connor  
Becky Roe  
Judge Steve Scott  
Tarra Simmons  
Director César Torres  
David Ward  
Senator Judy Warnick  
Secretary Kim Wyman

#### Members Absent:

Director Jim Bamberger  
Graciela Gomez Cowger  
Director Anita Khandelwal  
Director Thomas Krzyminski  
Judge LeRoy McCullough  
Representative Mike Pellicciotti  
Judge Michael Spearman

#### Guests Present:

Jennifer Bright  
Judge Joseph Campagna  
Judge Anita Crawford-Willis  
Laura Edmonston  
Dr. Arina Gertseva  
Gabe Hinman  
Elizabeth Hendren  
Judge Kevin Hull  
Judge Jeffrey Jahns  
Miranda Johnson  
Carolyn Ladd  
James Lobsenz  
Dr. Tatiana Masters  
Rob Mead  
Dr. William Vesneski  
Andrea Vitalich  
Mary Welch  
Marla Zink

#### Staff and Research Support Present:

Kelley Amburgey-Richardson  
Moriah Freed  
Claire Mocha  
Sierra Rotakhina

#### I. Welcome and Introductions

- Justice Gordon McCloud called roll for members, Leads, presenters, other guests, and staff.
- Noted that tomorrow is the 100<sup>th</sup> anniversary of the passage of the 19<sup>th</sup> amendment. We know that the right to vote at that time did not include all women.
- Our goal with the report is a data-based analysis of gender bias in the courts, both an update from 30 years ago and new topics. We want to identify disparities between men and women and between subpopulation of women (e.g., Black women and other women).

- We invite your input on content, organization of topics, and whether we are successfully capturing these disparities as they exist in courts today.

## II. Mass Incarceration

- Dr. Dana Raigrodski introduced Marla Zink, Lead attorney on these topics, to present on the research thus far.
- Presentation of Topics 2.5, 2.6, and 2.7: Mass Incarceration Topics (see page 21 for materials) – Marla Zink
  - Excited to hear the feedback everyone has on the section. Please feel free to share during the meeting or via email ([marla@luminatalaw.com](mailto:marla@luminatalaw.com)) after the meeting.
  - Thank you to Judge Campagna, Sierra Rotakhina, and Claire Mocha for their work on this section.
  - In WA, number of women incarcerated has been growing, while number of men has been declining somewhat.
  - There is a lack of WA data and research on this. We can extrapolate national data to the extent possible but there are differences in WA. Hopes these sections will motivate future research so we have better data in WA.
  - Factors that contribute to increased incarceration of women: pre-trial detention, probation violations, untreated trauma to prison pipeline, legislative changes (particularly to drug offenses), policing and prosecuting practices that zero-in on certain offenses in certain communities, persistent growth in sentencing laws that result in lengthier sentences.
  - Would love to hear feedback on anything, but especially on balance of content overall and the tone/voice. Please also share any resources you know.
- Discussion and Questions
  - Detailed descriptions of availability of different sentences. Should these be condensed?
    - Judge Coburn thinks these are necessary because audience is not only judges and attorneys but the general public. Otherwise run the risk of data and information being misrepresented. Length is less of a concern. Being clear is more important.
  - Justice Gordon McCloud is interested in the preliminary conclusion that pretrial detention is one of the factors contributing to mass incarceration of women.
    - Notes pretrial detention has gone down so much during COVID-19. Is there data to show whether this is making a difference?
    - Marla Zink is not sure if we will have WA data on this in time for the report. Noted Minority and Justice Commission is considering a study on pre-trial.
  - Marla Zink noted that some women are getting really long sentencing on stereotyping crimes (e.g., “bad mothering” crimes, turning on an abuser).

- Sharese Jones emphasized the importance of the readers' understanding that the way the general public perceives crime that impacts legislative decision-making.
  - This came later on in the section and was really helpful.
  - Dr. Raigrodski wonders if it should be earlier in the section?
  - Yes, add a short introduction during discussion of Sentencing Reform Act (e.g. how the tough on crime mentality in the community impacted legislation). This would help frame it so readers understand how we as communities impact sentencing.
  
- Judge Steve Scott – right now there is huge pressure to address mass incarceration, whether due to COVID or Black Lives Matter.
  - This came later on in the section and was really helpful.
  - Short term pressures are to get people out and reduce length of sentences.
  - Long term pressures politically are to increase length of sentences for specific crimes. E.g., “War on Drugs” drove sentences up.
  - We get these short term relief valves open, then over time lose ground or end up worse off. This is a problem and has been a problem for the 50 years he has been involved.
  - Dr. Raigrodski – systemic, unjust structures impact certain populations.
    - One goal of the study is to show this is unacceptable, it does need to change.
    - Even if people need to serve longer sentences for certain crimes (putting aside personal views) it should be equitable and shouldn't have disparate impact on certain subpopulations.
  
- Director César Torres – with regard to the earlier point about stereotyping crime, is it a question of whether women can be charged with longer sentences for certain crimes, or is it a factor of trying to enforce stereotype boundaries?
  - Marla Zink – when a women in particular harms children, strikes at a key societal fear. Need to intervene earlier and create a society that gives equal opportunities so people can avoid criminal behavior. Hard to see people who commit crimes, people in prison, as human. This is a judgment throughout the process. We are particularly harsh on them as a society as a result.
  - Director Torres – institutional societal failures is a great contextualization of this.
  - Justice Gordon McCloud – there are studies on this for girls (e.g., adultification of Black girls). What does this mean for the future? What is the solution? Shorter sentences? More available reasons for downward deviation? Proposals would be welcome.
  - Judge Coburn – there are true biases that exist. Black women are getting disproportionately long sentences. But why are we in a circumstance where this crime was committed? Things need to be fixed upstream while also addressing the downstream disparities. Studies show that people have a

- bias that African Americans are more violent than other races across genders.
- Dean Barnes – not surprised by the data, but wants to know if it points us to any particular interventions. Referenced two studies by Jennifer Eberhardt. One in particular is key here – bringing attention to the bias actually strengthens the bias and exacerbates problems. More interested in interventions.
    - Dr. Raigrodski – while research doesn't point to line item recommendations in the same way as the 1989 report did, we are looking to reference promising interventions when they exist.
    - One issue with women possibly getting longer sentences for specific crimes is an older WA study (1989-1992) that shows downward departures in sentences handed out for women due to patriarchal issues.
      - Justice Gordon McCloud's understanding of the law from her Court is that upward departures were the trend not downward.
  - David Ward – appreciates reference to bias against transgender prisoners. Data from Danny Waxwing will be helpful.
    - This is a study on gender bias. How are we supposed to incorporate bias against LGBTQ+ people in every section, not just this one?
    - *Bostock v. Clayton County* - discrimination against LGBTQ people is on the basis of sex. Has been thinking about this for his section.
  - Senator Warnick – suggests coordinating with people working on trafficking of young girls.
    - Marla Zink indicates there is a specific section on this, but needs cross-references here.
    - Senator Warnick – it is not just girls but boys too. She is on a new work group on this. Dr. Raigrodski will reach out about the CSEC section.
  - Presentation of mass incarceration of women pilot project preliminary findings – Dr. Tatiana Masters, Elizabeth Hendren
    - Dr. Raigrodski introduced pilot project. Today's presentation is focused on the disproportionality analysis. The analysis of data on men vs. women is the bigger portion and will come later.
    - Elizabeth Hendren shared the impetus for the pilot and provided an overview of the data sources and limitations.
      - Until coronavirus, we have seen steady growth in women in prison in WA but haven't looked at why.
      - This is a first look using data from the Caseload Forecast Council (CFC) in a new way.

- Data is binary, will refer to people in women’s prisons to acknowledge that not all people in those facilities identify as women.
    - Two women’s prisons in WA – WCCW (Purdy) and Mission Creek. Until coronavirus, there was overcrowding and the trend was increased incarceration of women.
    - Provided overview of limitations of publicly available DOC data analyses. For example, there is an overall racial breakdown, but it is not broken out by gender.
    - CFC data provided racial breakdown based on sentence, but women are not broken out. Data was already collected by CFC but hasn’t been analyzed.
  - Dr. Tatiana Masters presented on findings to date. See power point presentation for additional details.
    - Reported on data used – CFC data and US Census data.
    - Some weaknesses – CFC data doesn’t use same race/ethnicity data as census data.
    - Analyzing four research questions, developed in coordination with study leadership.
    - People are coded based on the highest level offense for which they were convicted.
    - Statistically significant racial disproportionality in all offense categories and in 5 of 6 geographic areas.
    - Because racial proportionality of population differs from county to county, it is important to look at how sentenced women differ from county to county. (see charts in power point)
    - Issues with data: Inconsistencies in coding for Hispanic/Latinx individuals between the CFC and census data sets means data has to be excluded in the disproportionality analysis.
    - Mostly drug and property offenses. Category of sex offenses is too small for statistically valid comparison.
    - In each offense category, can see people of different races represented in data.
    - Created a fraud category because there were so many offenses and there was gender disparity. This is different from Prison Policy Initiative crime categories.
- Questions and Discussion
  - Justice Gordon McCloud asked why data adds up to 100%? Normally this would make sense but people can be both Latinx and Black, etc.
    - Dr. Masters – this is an issue with CFC data. One recommendation from this pilot will be for CFC to change the way they report data.
  - Judge Coburn recommends adding description for why Yakima and Benton-Franklin were chosen as “special focus” in addition to larger counties.

- Dr. Masters – before CFC data issues were identified, part of the reason was to analyze Latinx women.
  - Elizabeth Hendren – Yakima, until recently, also had a third prison location for women and has played a distinct role in incarceration of women. Benton-Franklin had distinct incarceration practices.
- What to take away from this? What is next for this project?
  - Hoping to take a deeper dive into certain offenses
  - Will add more description of data analysis and limitations
- Dean Barnes – can we include socioeconomic status?
  - Dr. Masters would like to, but CFC data doesn't include this.
  - Elizabeth Hendren – this is the first phase in a planned multi-phase study. Next will be court data, but that is beyond scope of this project. One idea is to analyze who qualifies for assigned counsel.
  - Dr. Raigrodski – is interested in including some qualitative data to highlight intersectional issues.
- Factors contributing to increase in women's incarceration.
  - Justice Gordon McCloud was surprised to see that in Marla Zink's section probation violations are a big contributing factor for incarceration of women. This isn't shown in the pilot findings. Why is this?
  - Elizabeth Hendren – probation violations that are felonies are captured under public order category. Data includes very few misdemeanors – only captured if charged along with a felony.
  - There needs to be coordination among these sections, references added.
- Sharese Jones highlighted issues with bias in punishment for parole violations. Not only prosecutors and judges, but DOC hearings officers.
  - Elizabeth Hendren noted that future research needs to look at DOC data, infraction history, and jail data—but CFC was more readily available for this initial research.
    - Claire Mocha noted via chat that Washington Association of Sheriffs and Police Chiefs collects some basic data on Washington jail inmate populations here. The data aren't very detailed as they give Average Daily Population counts rather than 1-day totals, and while there are breakdowns by gender and race from 2010 onward, they don't disaggregate by both.
- Dean Barnes – could API populations be broken out?
  - Elizabeth Hendren – no, this is a limitation on CFC data. All Asian populations are in one category. A big recommendation will be for state to collect data in a way that that promotes better analysis.

- Secretary Wyman – can data be analyzed by marital status?
  - Elizabeth Hendren – they did not look at this, but would be an interesting area for future research.
- Justice Gordon McCloud asked the research team to keep in mind change they would recommend to the Judgment and Sentencing forms

### III. Family Law

- Justice Gordon McCloud introduced David Ward, former Commission member and longtime WA attorney, currently living in New York.
- Presentation and Discussions of Topic 2.2: Civil proceedings as they relate to family law including divorce, maintenance, property division, custody, and child support – David Ward
  - The 1989 report covered family law issues in quite a lot of detail.
    - Subcommittee called “Consequences of Divorce.” A lot of cases at the time involved long term “traditional” marriages.
    - Report focused on fairness of property division, maintenance awards.
  - Things have changed a lot. Tried to capture this in the summary of changes.
    - One of the things we had to cover is that marriages of same sex couples were not on the radar in 1989 and now they are legal nationwide.
    - In addition: shorter term marriages, long term partnerships without marriage, marrying later in life, having children without marrying. The law hasn’t always kept up with these types of changes.
  - In the 1989 study, surveys were sent out and the findings were based on this. Also undertook a study of case files in certain counties.
    - This did not provide a good data set. Difficulties in collecting family law data, conducting research.
    - Data collection is so important, a big issue. Very important to consider how to use data to make recommendations. Think very carefully about what data we need to make changes in the future.
  - This time, we do not have resources to do a complete survey of attorneys and judges in WA. Doing a literature review.
  - Laws are gender neutral, give judges a lot of discretion.
    - In his practice, has not seen systemic complaints about maintenance. Biggest issues were with child support and parenting time.
  - Residential time summary reports were required by law in 2007.
    - Requires information such as whether parties were represented by attorneys, if DV was involved, etc.

- WSCCR did annual reports, as required, but had to report that data is not complete because such a small number of people submit the required form.
  - There is no penalty for not submitting the form.
  - One of the big findings from this data is that equal parenting time is much more common than 30 years ago (20-25% of cases now).
  - Get a lot better results in family law cases when you have a lawyer. Not a surprise. There have been investments in legal aid. More moderate means representation available through WSBA. But still an issue and WA Supreme Court held against appointed counsel in family law cases in *King v. King*.
  - 70% are pro se – handling the most important issues of their lives without a lawyer.
- Hard to do data collection in divorce cases without a complete mandate. There is a mandate but it's not enforced. Interested in hearing from NJP attorneys about downsides of requiring collection.
- Even coming from a perspective that is favorable to women, LGBTQ folks, always found a lack of data when writing a brief.
- Almost all cases are resolved before trial. How do we know this is fair, people weren't pressured, etc.?
- If a parent, in a divorce case, raises SA or DV concerns (which is common), are they penalized by the courts if they can't prove it beyond a reasonable doubt?
  - Attorneys advise parties in family law not to accuse other party because if you don't win, you will be viewed as liar and will get a bad result. This can hurt you even if you raise them in good faith.
  - If the court does not find you credible, you will probably not get custody of your kids.
  - This has a chilling effect.
  - There is a separate section on SA/DV, need to talk more about where this will be covered.
- Other Issues
  - Guardians ad litem are covered in a separate section. This is also a big issue.
  - Civil contempt is an issue.
    - In 1989, large percentage of attorneys reported this was only used rarely, as a last resort.
    - In 2020 session, state legislature passed a law that people won't be required to pay child support if they are incarcerated unless it is proven they can pay.
  - Concern that there is not a form for dissolving non-marriage partnerships (other states have this).



- Becky Roe noted via chat that she strongly agrees with David Ward that we need forms for “non-married” pro se family court litigants.
  - Worked on family law issues in WA State for most of his career, 22 years. It’s a different world, but interesting to see what things have not changed. Fewer marriages now, fewer dissolutions now, even though population has doubled.
- Discussion and Questions
  - Dr. Raigrodski welcomes other suggestions for titles for this section to reflect updates to content from 1989.
  - Justice Gordon McCloud wonders if the section generalizes about women not having to work 30 years ago. Or is this only certain subpopulations of women?
    - “Displaced homemakers” was a big issue then. There were organizations devoted to supporting women with this. These don’t exist now.
    - Fast forward to today, see a lot fewer of these marriages. Has seen some complaints about bad court decisions in these cases, but more common thing today is both parents are working, performing parenting functions. Still thinks data will show that women do more parenting functions and get more residential time.
    - Justice Gordon McCloud agrees that this was focus of 1989 study, but was this accurate? For women in poverty, or lower middle class homes, or women of color, this wasn’t the common model.
  - Should we have done survey of judges?
    - Justice Gordon McCloud thinks this is subjective data.
    - David Ward agrees. This is a hard area to do reliable research on. It is a good idea to dig into the national literature.
  - David Ward highlighted a Joan Meier study re: raising sexual abuse allegations in child custody cases.
    - Hard to prove and can really harm you.
    - Elizabeth Hendren noted that it can result in .191 findings against you for abusive use of conflict, which will follow you for your entire custody case.
  - Elizabeth hears a lot that there is gender bias in favor of women in her practice.
    - Hoping that WA information can be paired with national data.
    - National data show that women are still doing a majority of the childcare related work, are the primary caregivers, even if they are working mothers
    - The presumption in WA is to not interrupt the child’s routine. If women are awarded more parenting time, this doesn’t necessarily mean there is gender bias in the courts in favor of mothers.

- David Ward would love better data on resolutions without going to court. Representation is so important and people don't get it. NJP can't take everyone.
  - Director Torres – because of lack of resources, prioritize family safety issues, children at risk. Absent some of those things, we won't consider cases.
- Director Torres is intrigued by the suggestion of a form for dissolution of “common law marriage.” What could we learn from the utilization of such a form in other states with regard to the data that is gathered? If data shows that people are actually resolving so many things outside of court context, without representation. Development of such a form would have to be accompanied by a significant shift in enforcement of agreements.
  - Justice Gordon McCloud encouraged Leads to go for the wish list of necessary data, and then we can figure out enforcement/encouragement.
  - David Ward is so grateful to NJP for developing a family law packet for committed intimate relationships. Need a court form. Need to make family law proceedings easier for pro ses. Don't have the will to fund representation in our state.

**IV. Discussion of Draft Workplace Harassment in the Courts Survey**

- Presenter: Dr. Arina Gertseva, WSCCR
  - Provided an update on survey status. Changed a subsection on race-based harassment. Need to distribute this for additional review by the Minority and Justice Commission.
  - Also need to go through testing by a small group before distribution.
  - This is a large project, first of its kind in WA. Wanted to get it out this summer but delayed by COVID and wanting to get the instrument right.
- Discussion
  - Send comments via email to Sierra Rotakhina by September 1<sup>st</sup> if possible.
  - Dr. Raigrodski noted that the way work is structured these days looks different than when we started. Would be curious to see if there will be comments on virtual harassment.
  - Added a note at the beginning of the survey to make sure court employees know the survey covers in-office and virtual (pre-COVID and during).

**V. Presentation and Discussion of the Overall Vision for the Final Gender Justice Study Report**

- Tabled for discussion via email or at next meeting. The Co-Chairs will incorporate what they heard today and try to send out a draft soon.

**VI. Next Steps & Adjournment**

- Justice Gordon McCloud thanked AC members for their participation and feedback.
- The next Advisory Committee meeting is on November 18, 2020.
- Between now and the next meeting we will be sending draft sections out to outside commentators. Will likely be circulating to you as well.