



Gender Justice Study Advisory Committee

February 10, 2021
10:00 AM – 12:30 PM
Zoom Webconference



Meeting Minutes

Members Present:

Justice Sheryl Gordon McCloud, Co-Chair
Dr. Dana Raigrodski, Co-Chair
Director Jim Bamberger
Dean Mario Barnes
Judge Linda Coburn
Justice Raquel Montoya-Lewis
Karen Murray
Becky Roe
Director César Torres
David Ward

Members Absent:

Graciela Gomez Cowger
Sharese Jones, on behalf of Secretary Stephen Sinclair
Judge LeRoy McCullough
Judge Kathleen O'Connor
Representative Jamila Taylor
Judge Steve Scott
Representative Tarra Simmons
Judge Michael Spearman
Senator Judy Warnick
Secretary Kim Wyman

Guests Present:

Judge Beth Andrus
Kristi Cruz
Judge Rebecca Glasgow
Kelly Harris
Elizabeth Hendren
Judge David Keenan
Shannon Kilpatrick
Judge Barbara Mack
Rob Mead
Mary Welch
Marla Zink

Staff and Research Support Present:

Kelley Amburgey-Richardson
Cynthia Delostrinos
Moriah Freed
Claire Mocha
Sierra Rotakhina

- I. **Welcome and Introductions - Justice Sheryl Gordon McCloud, Gender Justice Study Co-Chair**
- Justice Gordon McCloud called roll and introduced Claire Mocha, Social Science Research Analyst for the Study who has been working on the study team for a while but is joining her first Advisory Committee (AC) meeting.
 - Informed the AC that Representative Jamila Taylor has joined the AC, though she was not able to attend this meeting.
 - Provided an overview of the agenda and highlighted the discussion about recommendations. This is the first time we will be sharing draft recommendations for many of the sections with the AC.
 - As we wrap up the research portion of this project, input from the AC is going to be critical.

II. **Presentation and Discussions of Topic 1.4: Barriers to jury service such as low juror pay, lack of childcare, etc., that contributes to lack of diversity in juries - Judge Rebecca Glasgow, Lead for Topic 1.4**

- Dr. Dana Raigrodski introduced Judge Glasgow. Judge Glasgow joined the Court of Appeals in 2019. Before joining the court, she was a Deputy Solicitor General in the Washington Attorney General's Office and she is a past statewide president of Washington Women Lawyers. She is currently a member of the Gender and Justice Commission and the Lead for topic 1.4 on barriers to jury service.

Presentation

- Judge Glasgow consulted with a number of experts in drafting this section.
- She provided an overview of the proposed jury administrator survey, which would enhance the section.
 - Plans to conduct survey in the near future to gather information about practices and what demographic data is collected.
 - Mostly targeted at finding out what data they have, and then we would seek funding to analyze data.
- Key findings for this section are summarized on pages 12-13 of the meeting packet.
 - Black, Indigenous and women of color are underrepresented in jury pools in WA State.
 - In King County, LGBTQ+ people are underrepresented. Not enough data to analyze this demographic for other counties.
- Not enough data to analyze if they are actually underrepresented on juries (not just pools), hence the reason for the survey.
- Anecdotal information from experts:
 - Women more often excused for hardship due to child, family responsibilities.
 - Women are challenged more often (for cause or peremptory challenges) in certain types of cases – domestic violence, gender, and pregnancy discrimination cases.
- Primary barriers to jury service identified:
 - Economic barriers, exacerbated for women who are Black, Indigenous, or people of color.
 - Hardship due to caregiver role.
- How to address barriers:
 - Employer compensation
 - Caregiving issue → free child care programs.
 - Judge Coburn mentioned that scheduling might really help – e.g., have seen women be excused because they had to pick up kids every day at 3:30 p.m. and wouldn't be able to stay until 5 p.m.
- Further study warranted on:
 - Hardship excusals and challenges
 - Whether LGBTQ+ people are excused or challenged more often in other counties
 - Look at barriers to LGBTQ+ people serving on juries and what simple strategies might be effective in reducing them, such as:

- Ask people for their chosen name and use it
- Non-binary options on forms
- All gender restrooms

Discussion

- What are we missing? What are we incorrect about?
- Judge Coburn mentioned Minority & Justice Commission (MJC) study and juror pay pilot
 - Recalls as a trial judge that most requests for hardship excusal were child care related.
 - Has an idea for a “Juror plus One” statute.
 - A primary caregiver who is summonsed might usually ask for a hardship excusal due to lack of childcare.
 - If they have a partner who could watch the children in theory, but cannot due to work, employment protection, juror pay, would extend to that person.
 - Is there a way to train judges to ask questions, push back about hardship excusal, try to accommodate so people can participate?
- Judge Andrus asked if research found any studies about whether there is disproportionality in who shows up, before you get to the exclusions.
 - Yes, MJC study looked at who responded to summons, showed up for the pool. They analyzed race data for 33 courts. Were able to go back and analyze for gender.
 - We don’t have downstream data.
 - Any recommendations for changing turnout at that point?
 - Will spend some more time with the preliminary report of the Jury Diversity Task Force and talk with Cynthia Delostrinos more about this.
- Cynthia Delostrinos is excited to be able to use this information, with gender added, to further work MJC is still doing with jury diversity.
 - Study that MJC did was a one-time snapshot. We don’t have regular data pulls. Courts don’t collect race data.
 - Judge Glasgow is hoping that the end result of the jury survey will be understanding more about this and encouraging more data collection.
 - Experts thought race and gender data was collected by some courts, later in the process.
 - Bigger counties may have this – perhaps in paper form.
- Karen Murray
 - Loves reading all these reports. Very well done.
 - Why, if this information is so critical to the work we do in so many areas, why can’t we mandate this?
 - Cynthia Delostrinos says that this work is in progress
- Justice Sheryl Gordon McCloud
 - Solving child care problem is a neutral solution that would have a positive impact in so many ways.
 - Would impact primarily women, and especially women in poverty, women of color.
 - What should we recommend?

- Further research
 - Free, universal child care for all
 - Child care at courthouses
 - Bringing court to child care/community centers
 - Virtual court - draw on experience with Zoom to recommend more of that
- Dr. Dana Raigrodski
 - We are addressing child care barriers in the courthouse child care center evaluation pilot, but may not have specifically referenced it here. Should incorporate.
 - Anecdotally, in the King County jury summons asks whether the person summonsed has children and whether they own a car.
 - It also asks whether they would like to contribute their juror pay to a child care center. But nowhere on the summons does it talk about child care options.
 - What about a coupon system? Jurors could be provided a coupon for child/elder care that could be used with any child care provider (e.g. local YWCA) or senior day care center. If you have kids in child care currently, not sure you would pull them out to go to court child care instead.
 - Becky Roe thought that a coupon system is a great idea, would have a tremendous impact, and would be neutral.
- Judge Coburn mentioned that there are countries that offer universal child care.
 - Benefit is much bigger than being able to attend court.
 - Women have more work opportunities and can advance themselves. Thought that universal child care should not be off of the table as a recommendation.
- Judge Glasgow thinks there could be a bullet list of options, unless there is a strategic reason to propose one big solution.
 - Karen Murray did not think that we have to say “either/or” in our recommendations.
- Judge Glasgow asked - people with defense, trial court bench background, what is your reaction to the anecdotal evidence the team of experts included?
 - Judge Coburn
 - It is not a surprise that women who have experienced DV are challenged from juries. More women have experienced this and other forms of gender based violence, harassment, bias. But should this really be a reason for excluding more women?
 - New rule on race covers this issue. More people of color have had bad experiences with police, criminal justice. Rule provides that you can’t exclude jurors based on this unless they actually can’t be fair – then it is for cause (e.g., juror states, “I will never trust or believe the police.”).
 - Karen Murray
 - Recommends training on voir dire – current training is not well done. People don’t go to the next question. Should be an ongoing process. This training should start in the law schools.
 - Seeing this from prosecutors and defense – not asking the right questions, going in with assumptions.

- Judge Coburn agrees – skill level with voir dire is very low. Attorneys don't know how to make the record, ask the questions. Rely on peremptory challenges. There are situations where they should be going for cause.
- Becky Roe
 - For recommendation #10, on legislation requiring large employers to incentivize [Recommendation 10: Washington should consider legislation like New York's regulations requiring larger employers to provide paid time off for jury service].
 - Wouldn't want to spend too much time on this considering how much the work force is moving away from traditional employment to contractors, etc.
 - Would spend more time on child care for all to have a bigger impact.
 - Justice Gordon McCloud mentioned that there are big tech companies that may be moving to contractors, but there are also big employers with hourly employees. E.g., supermarket workers, fast food, who this would benefit.
- César Torres suggested via chat that for additional defense perspective, reach out to newly seated Judge Elizabeth Neidzwski (Skagit County).
- Dr. Raigrodski
 - There is an implicit bias video for jurors in federal court. Could we do this for state courts?
 - Justice Gordon McCloud shared that the Washington Pattern Instructions Committee (WPI) has allocated funds to do this for state court. Noted that she can connect Judge Glasgow within information on this.
 - Becky Roe – WPI Committee was not satisfied with first draft but it's in the works.
 - Dr. Raigrodski – this is good for jurors, but need to educate judges and attorneys as well.
- David Ward
 - A lot of LGBTQ people may not want to self-identify. Or, may think they are discriminated against because of their appearance even if they don't self-identify.
 - A survey is one way for people to share their lived experience.
 - Not sure if asking on a juror form is the right answer.
 - Not sure how King County even had that data.
 - Sierra Rotakhina shared that all courts in the M&J Commission study collected this data on the survey, but King County was the only one with denominator data (estimate of how many LGBTQ people live in county).
- César Torres recommended that Judge Glasgow reach out to the newly seated Judge Elizabeth Yost Neidzwski

III. Approval of Meeting Minutes

- Justice Gordon McCloud called for any additions, edits.
- Seeing none, minutes deemed approved.

IV. Presentation and Discussions of Topic 3.1: Legal financial obligations - Judge David Keenan, Lead for Topic 3.1

- Justice Gordon McCloud introduced Judge Keenan. Judge Keenan is the Superior Court Judges Association Liaison to the Legal Financial Obligations Consortium, was part of a Washington delegation to the National Conference of State Legislatures Fines and Fees

Policy Learning Consortium, and testified in the legislature on behalf of the Minority and Justice Commission on February 3, 2021 concerning Legal Financial Obligation reform legislation. Judge Keenan currently serves on the Access to Justice Board, previously served as board president at Northwest Justice Project, and has personal experience with poverty and the juvenile criminal legal system. Judge Keenan is the Lead for section 3.1 on Legal Financial Obligations.

Presentation

- Legal Financial Obligations (LFOs) are meant to punish, provide restitution, and fund things.
- There is good data on LFOs but not a lot on gender.
- Shared where data is available and who he consulted with, including Dr. Alexes Harris.
- There is a difference between what is preferable and what is possible for recommendations.
- Preferable
 - Don't fund victim services from LFOs or at least means-test victim penalty assessment at sentencing.
 - Most people don't pay
 - Worthy to fund but not this via this means
 - No interest on restitution
 - Limiting jurisdiction
 - On cases after a certain date, Superior Court has unlimited jurisdiction.
 - Right now e.g., a person who has received public benefits could be required to come in every year for their whole life to attest they are on SSDI and can't pay.
 - Expunge all uncollectable debt
- Possible
 - HB 1412 – would allow post-conviction relief from Victim Penalty Assessment. MJC and Superior Court Judges Association support this.
 - Means-testing restitution. No restitution to entities, only to individuals.
 - Limiting jurisdiction for people with unpaid LFOs
 - Eliminate all accrued non-restitution interest
- Wish list
 - Address user fees (e.g., DNA fee)
 - Address LFOs in Courts of Limited Jurisdiction where there are more opportunities to impose them than Superior Court.
 - Unified payment system – mitigates effects on the back end. Fees are still there but easier, more straightforward to pay.
 - Address role of collection agencies (who can impose 50% collection fee)
 - Increased funding for civil legal aid
 - Micro grants – pay off debt of many people who owe
 - Public benefit laws for those with outstanding LFOs– inaccessible
 - Collect more data

Discussion

- Justice Gordon McCloud and Judge Coburn mentioned Tukwila program developed by Trish Kinlow. This is a unified payment system that any court can elect to join, it is voluntary. Unfortunately the state's attempt to develop a statewide program was unsuccessful due to challenges by collection agencies.
- Judge Andrus
 - Felony judgment and sentence form
 - Change form to put all fees put into the judgment and sentence section of form.
 - The DOC supervision fee is embedded in the text of the appendix and not listed with other LFOs.
 - Not highlighted to judge that it is discretionary.
 - Judge Keenan noted that this is a good point, that many judges don't know that they can waive this fee because it is in the appendix.
 - Does post-conviction relief have to go through the court system? Could it be an administrative process through DOC? If a person is on supervision, they will be interacting with DOC anyway.
 - Judge Keenan noted that the statute does not currently allow for this, because they have to go back to the sentencing judge specifically.
 - Is it possible to survey incarcerated women and those under DOC supervision to see what level of LFOs they have, what they are, and what are the impacts of having to pay them? Guessing that it's mostly restitution and Victim Penalty Assessment is a drop in the bucket.
- Judge Keenan
 - GR 39 is published for comment right now.
 - Would make it easier to give judges guidance around the state for handling post-conviction relief. Currently confusion about whether it can be done ex parte.
 - Would provide that if prosecutor files a motion that they want notice, can't, but otherwise can.
 - This would be a work around, but like Administrative approach better
- Dr. Raigrodski mentioned the Supreme Court Symposium put on by MJC a few years ago that featured Dr. Alexes Harris. The afternoon portion held at Seattle U had women speaking from experience about LFOs and it seemed there was data.
 - Judge Keenan will go back and ask again to make sure nothing was missed.
- Dr. Raigrodski asked if there could there be debt restructuring like student loans, credit cards? Could be part of unified payment plan recommendation.
- César Torres
 - Has worked with the Attorney General's Office on having a set, affordable payment.
 - Judge Keenan asked if this reduces the amount owed.
 - Spokane has done the most work in this area and may be reducing the debt.
 - Reducing collection agency role and collection charges it does effectively reduce the liability even if not the underlying fine and helps people feel they can see a way out.
 - Oregon has a statewide system.

- How effective or how amenable is DOC to engage in the type of data collection that would be needed or useful?
 - Not sure yet. Judge Keenan has been focused on what the Administrative Office of the Courts (AOC) and the Washington State Center for Court Research (WSCCR) have.
 - Judge Andrus – based on experience with data provided in personal restraint petitions, they collect a lot of data.
- Judge Keenan
 - One lesson learned from LFO reconsideration days is that when payment is reduced to what people felt was a manageable level, they started to pay.
 - How to institutionalize this system-wide?
- Judge Coburn
 - There are statutes that provide for post-conviction relief, for example RCW 10.01.160(4) and RCW 3.62.010. For more examples see the LFO calculator at: <https://beta.lfocalculator.org/>
 - Courts have not been required to set up a way to inform people about how to do it. A calendar? A motion? A form?
 - Some courts have an online form that people can submit without ever having to show up.
 - Edmonds Municipal Court: <https://weblink.edmondswa.gov/Forms/LFOWrittenHearingsRequest>
 - Supreme Court could address this with court rulemaking powers. If a court has a website, they should be required to post how to request relief.
 - Justice Gordon McCloud asked about whether there could be a review hearing for LFOs.
 - Yes, could have it scheduled after a certain period.
 - As long as it doesn't turn into a failure to appear if they don't come.
 - Jim Bamberger
 - OCLA established Reentry Legal Aid Project at Office of Public Defense/Civil Survival.
 - Heavily involved in LFOs, reconsideration days.
 - It could be a study recommendation that they undertake a request for rulemaking to implement Judge Coburn's recommendations.
 - Dr. Raigrodski recommends judicial education so judges are aware of racial, gender biases and disparate impacts if reconsideration decisions will be discretionary to reduce/restructure LFOs.
 - Judge Coburn raised a gender-specific issue
 - Women pay the debts of other people – bail, bond, electronic home monitoring as the partner/victim/mom.
 - Justice Gordon McCloud mentioned data found on health impacts, but not on financial impacts on women of incarceration of men/others. Anecdotally, when she was in private practice they payer was often the mom, girlfriend, sister, or other women.
 - Recommends including anecdotal information.

- Becky Roe
 - Restitution interest rates are 12% but interest rate for large corporations/insurers is a much lower rate.
 - Judge Keenan – proposed bill says judge doesn't have to require interest.
- Sierra Rotakhina noted in chat that pretrial detention and bail are covered to some extent in the mass incarceration sections.

V. Discussion of Draft Study Recommendations – Justice Sheryl Gordon McCloud, Dr. Dana Raigrodski

- Feel free to put thoughts in the chat, or send via email to co-chairs, Kelley Amburgey-Richardson, Sierra Rotakhina.

Discussion of Mass Incarceration Recommendations (Page 5)

- There are several pages of recommendations and they range from data collection to decriminalizing poverty and trauma.
- Justice Gordon McCloud wants to hear from the AC about what we should take on.
- Dr. Raigrodski noted that for some of the things we are looking at the question is, do we push for the preferable or focus on the pragmatic. And do we put in recommendations about who should be funding or pursuing the recommendation. We are Judicial Branch— what kind of recommendations should we be making?
- César Torres
 - Would recommend identifying particular manifestations rather than the broad brush. E.g., decriminalize homelessness.
 - Needs to be identifiable, translatable. Trauma can manifest in xyz ways, here is how it is criminalized and should not be.
 - Judge Coburn agrees this is too general. Should have an action step.
- Judge Andrus
 - In the *Trueblood* settlement, data is being collected about people continually being sucked into criminal justice system due to mental health issues. How to keep people, women, with mental health issues out of prison/jail in the first place. Can we look at settlement?
 - Have you done analysis of benefits of Parenting Sentencing Alternatives?
 - Yes, some discussion but not a lot of data. Recommends more data.
 - How does dependency fit in?
 - Often saw parent have requirements for random urinalysis (UA) as a result of criminal court and then dependency required separate UA.
 - Women spending time on the bus trying to get these done, failing to get there, and then missing supervised visit with kids.
 - Really impacts likelihood of reconciliation.
 - Elizabeth Hendren is writing section on collateral consequences. Sierra Rotakhina will share this with her.
- Judge Coburn – should recommend automatically issuing a government ID upon release.
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Discussion of Family Law Recommendations (Page 3)

- David Ward notes that his draft recommendations are more pragmatic, fairly conservative
- Mindful of the politics, of this being a Supreme Court Commission, not sure where the boundary is.
- We can build from what we have.
- Becky Roe is in favor of being more restrained, staying in our lane.
 - Recommendations will be more effectively heard if they are less politically laden.
 - E.g., universal child care is political, vouchers are in our lane.
- Judge Coburn noted that we can use rulemaking power, changes to criminal justice system but there are bigger societal issues that require more from all branches of government.
 - People are going to use this report to propose legislative solutions. As long as the tone is right, we can propose bigger things.

Discussion of Report Structure

- Claire Mocha suggested via chat
 - In each section, recommendations can be targeted and specific, but we could also have a general conclusion that talks about bigger issues and acknowledges how central they are to fundamental change.
 - César Torres – great idea.
- Jim Bamberger noted that key to the acceptance of the Civil Legal Needs Study as a policy document, defining urgency, was of course the quality of the data but also a very sophisticated communications roll-out with professional communications strategists over several months.

VI. Next Steps and Adjournment – Justice Gordon McCloud

- Study team will go through all the recommendations, brain storm about how to best address them.
- Give other leads who weren't able to attend the benefit of overall input.
- Next meeting is April 5th from 10 a.m. – 12:30 p.m.