

E2SHB 1320 Litigant Rights & Access Group Meeting Minutes

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**Gender and Justice Commission (GJC)
E2SHB 1320 – Litigant Rights & Access Group Meeting
Wednesday, August 11, 2021
12:00 PM – 12:45 PM**



MEETING NOTES

Stakeholders Present

Megan Allen
Samantha Boggs
Debbie Brockman
Claire Carden
Dr. Dana Cuomo
Jenn Davis Nielsen
Tara Dieng
Vonnie Diseth
Michelle Dixon-Wall
Natalie Dolci
Yuridia Equihau
Commissioner Patricia Fulton
JoDee Garretson
Carolyn Gray
Commissioner Jackie High-Edward
Judge Gregg Hiramawa
(Ret.) Judge Anne Hirsch
Grace Huang
Katie Hurley
Natasha Johnson

Michelle Lucas
Frank Maiocco
Dirk Marler
Dee Morill
Riddhi Mukhopadhyay
Amy NoOneElse
Ruby Ochoa
Karen Pillar
Angela Rogness
Amanda Rodriguez
Laurie Schacht
Judge Ketu Shah
Sandra Shanahan
Judge Jackie Shea-Brown
Kyler Steffe
Mary Welch

Staff

Moriah Freed
Laura Jones

Overview of E2SHB 1320

Welcome, participants invited use chat for introductions. Goal to keep wrap up in 30 minutes.

Overview of HB 1320 project structure and deadlines:

- Recommendations to Legislature due December 1, 2021
- Recommendations to the courts due June 30, 2022

Overall project leads: Judge Jackie Shea-Brown and Erin Moody

- Research & Information Sharing Group
- Technology
- Litigant Rights & Access

Legislative sponsors attended initial stakeholder meeting on July 28, 2021 and emphasis on practical exercise. Focus in on recommendations that can be implemented, not on fancy report

LOGISTICS AND WORK PLAN FOR DECEMBER 1st DELIVERABLES

- At least through December, we plan to meet twice monthly:
 - 2nd Wednesday of the month
 - 4th Friday of the month
 - Action Item: Reach out to Laura Jones if you have not received these calendar invites
- After today, that leaves 6 meetings. Plan to focus on topics sequentially as opposed to all at once:
 - August 27, September 8: Coercive control
 - September 24, October 13: Best practices for minor litigants
 - October 29, November 10: Jurisdiction
- The first meeting on each topic will focus on review of available materials, identifying missing resources and information, and initial discussion
- The second meeting on each topic will continue the discussion, zeroing in on recommendations and best practices
- A survey will be sent out following the second meeting on a topic for feedback and additional information
- Review and feedback will be solicited for final recommendations
- Action Item: Stay tuned for more information from Laura Jones re: online share drive (Box)

ADJOURNMENT & NEXT STEPS

Action Item: Homework before our next meeting on August 27th:

1. Review E2SHB 1320 (Sections 12, 16, 36 in particular)
2. Read materials on share drive related to coercive control
 - a. What are the missing resources?
 - b. Review definition from original bill – Is this a good starting point? What works and doesn't work?
3. Calendar upcoming meetings



**Gender and Justice Commission (GJC)
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Friday, August 27, 2021
12:00 PM – 1:00 PM**



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Francis Adewale
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Judge Elizabeth Berns
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(Ret.) Justice Bobbe Bridge
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Karen Pillar
Amanda Rodriguez
Judge Averil Rothrock
Dawn Marie Rubio
Laurie Schacht
Judge Ketu Shah
Judge Jackie Shea-Brown
Kim Todaro
Mary Welch
Staff:
Laura Jones

WELCOME, OVERVIEW

Welcome and administrative reminders: correct name/title on Zoom to capture attendance, given the number of participants please use chat or raise hand function

Focus of the meeting on coercive control (first of two meetings on this topic). Encouraged those who have not done so already to review materials on Box.

WHY ARE WE CONSIDERING INCLUSION OF COERCIVE CONTROL IN DV DEFINITION?

The last time the DV definition was updated was in 1995 when stalking was added. Those who work with DV survivors know that there are many behaviors not encompassed in definition.

Example shared of perpetrator controlling and micromanaging victim's life, had absolute control, but nothing that met the DV definition in RCW 26.50.

From fatality reviews, theme of mismatch between DV and what survivors experience in everyday life. David Adams' research strongly suggests that controlling/possessive behavior is a significant risk of lethality.

Coercive control is the crux of DV. Gives survivors a way to explain history of DV happening post-separation.

The point is to get the decision maker to understand that DV is not just an isolated act of violence. Long-term infringement on safety.

CONCERNS ABOUT INCLUSION OF COERCIVE CONTROL IN DV DEFINITION

Abusers twist the law to manipulate

- Similar to protective behaviors in contested custody cases
- Cross petitions in DV context
 - o Note: There is language in definition as initially proposed re: "vexatious or abusive litigation against the petitioner"
- Biases built into the system, lack of education and training
- That very manipulation is the pattern of coercive control. The examples cited in (g) include ways that abusers misuse the legal process. We should prepare for the way the statute may be manipulated, but it cannot prevent us from moving forward.
- Reference to NW Network training about how almost any behavior can be used by an abuser to control, or by a survivor who is attempting to resist control. Sometimes survivors' resistance is angry, or loud, and could look like aggression if the context is not considered
- Mention re: determining primary aggressor with regard to mandatory arrest. Supposed to involve critical thinking and analysis that doesn't always happen. Used against immigrant women, women of color, etc.

What is the specific problem we're trying to solve and how can we think more expansively about what might help those folks?

- Providing housing and other resources outside of the legal system does not exclude also refining the legal definition of DV for survivors who are still being stalked and controlled after they try to leave

Concerns about whether courts are equipped to implement

COERCIVE CONTROL DEFINITION AS PROPOSED IN INITIAL HB 1320, REFERENCED DURING DISCUSSION

"Coercive control" means a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty and is used to cause another to suffer

physical or psychological harm. Examples of coercive control include, but are not limited to, unreasonably engaging in any of the following:

- (a) Making threats of harm, dependence, isolation, intimidation, and/or physical forms of violence;
- (b) Isolating the other party from friends, relatives, or other sources of support;
- (c) Depriving the other party of basic necessities or committing other forms of economic abuse;
- (d) Controlling, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or access to services;
- (e) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status such as threats to contact federal agencies, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage;
- (f) Using technology, including, but not limited to, cyberstalking, monitoring, surveillance, impersonation, or distribution of intimate images, to harass, stalk, or abuse;
- (g) Engaging in vexatious or abusive litigation against a petitioner to harass, coerce, or control the petitioner; to diminish or exhaust the petitioner's financial resources; or to compromise the petitioner's employment or housing;
- (h) Engaging in psychological aggression; and
- (i) Frightening, humiliating, degrading, or punishing the other party.

DISCUSSION RE: BRIGHT LINE DEFINITION / REASONABLENESS STANDARD

Makes it easier for the court, law enforcement, petitioners

Proposed language: "Domestic violence is defined as harassment or stalking [add additional items if not sufficient] as used in sections [once 1320 is codified we will know the sections] and the relationship between the petitioner and the respondent is either that of intimate partners as defined in section [once 1320 is codified] or household or family members as defined in section [once 1320 is codified]"

- Intended to include more DV cases. Not stop us from including a large number of other cases, goal is to expand the definition to include harassment and stalking which might not be included now

"a pattern of behavior that in purpose or effect causes another to suffer physical, psychological, social, or financial harm"

- Is the suggestion that the phrase "or effect" be deleted from the opening paragraph of the model definition? Perhaps as a way to distinguish "defensive" behaviors from "aggressive" ones? Or at least get slightly closer to a brighter line?

Is it workable to add to the definition what is NOT coercive control? "Coercive control does not include actions by a party to resist or defend against harm by another party" and/or "In evaluating whether coercive control is established, courts must consider the dynamic of the

relationship, the evidence of a pattern, and indicators of manipulation of the circumstances by an abusive partner.

We need to have the “unreasonable” type language- if it’s just a bright “if X happened, you grant the order” it’s going to be much easier for an abusive partner to get an order against someone if they can point to specific instances of the behavior engaged in by the respondent

Concerns about how reasonableness language could be used against victims

Training needed for judicial officers re: what patterns of behavior “unreasonably interfere with a person’s free will and personal liberty....”

- ICE: Intent, context, effect

Context is everything—context in the statute can help judicial officers by grounding the reasonableness factor

“Reasonable” language should be deleted. No abuse can be considered reasonable, and allowing judges to even consider the reasonability of an abusive act contradicts the purpose of protection orders, which is to provide some sense of safety

Language as in Maryland’s proposed statute could be a barrier: “the individual engaging in the behavior knows or reasonably should know”

“Unreasonably” may not be particularly helpful—largely because the examples in the proposed definition already include a lot of limiting caveats, e.g. “vexatious or abusive” in subsection (g)

We might consider keeping unreasonably at the beginning (unreasonably interferes), but strike it later so that the last phrase reads: “but are not limited to any of the following” In this way, the findings the court will focus on are (1) pattern of behavior that unreasonably interferes with free will/liberty and (2) used to cause another to suffer physical or psychological harm. The judge is looking to make those two findings. Having “unreasonably” may help the abuser from turning the situation around on the survivor, and is a touchstone of judicial evaluation. Then the examples are simply examples and don’t add extraneous language.

DISCUSSION RE: INCLUSION OF EXAMPLES/BEHAVIORS IN THE STATUTE

Important to include examples because statute will roll out faster than training

- Withholding of basic necessities (e.g. medication)
- Technology-enabled coercive control, as a pattern of coercive and controlling behavior
- Suggestion to add criminal records to (e) in originally proposed definition- opposing parties utilize lack of legal access while the mother is incarcerated to get parenting plan by default or restrictive parenting plan
- Access to work or ability to work
- Pet abuse

- Abuse of others (cases where people who are trying to support the survivor are threatened or intimidated)

Look at whole pattern of behavior and intentionality of tactics

What we're talking about is a collective pattern of behaviors—emphasize that. These behaviors interfere with personal liberty. Analyze impact on parties through that lens.

Suggestion to include what is NOT coercive control. Without guidelines or a definition, survivors are hurt more. Have to look for a pattern.

Context has to be considered—whose world is “getting bigger” and whose world is “getting smaller” with these behaviors?

Maryland's proposed statute: “the individual engaging in the behavior knows or reasonably should know” could be a barrier

An alternative or compliment to having a long list of examples in the legislation is that there can be language included in the intent section and/or use an approach taken by Model Codes where there is a commentary section

TRAINING

Part of a judge's job is to sort out what is really going on. ONGOING training is a great part of that package. A combination of practical issues of working through the orders and a more philosophical aspect involving power and control

Also need to educate attorneys

Judges and attorneys are required to take a certain amount of ethics education each year. If there was enough affordable DV training available across the state that might be possible, but making it mandatory would likely draw opposition

Consistent training on DV is offered to judges, including coercive control. Additionally, court-specific training on DV for those who are actively addressing these cases on a daily basis. Stressing the importance of this training and getting judicial officers to really engage (and attend) is where we could use more support

Note: Sec. 35 of bill mandates training. Original bill included training on “evolving uses of technology as part of coercive control techniques”

WHAT ADDITIONAL INFORMATION DO WE NEED?

Hear from victims/advocates: surveys of advocacy organizations, Washington Women's Commission listening tours

Training resources

- Ret. Judge Hirsch can share some national resources

Used in the immigration context—allowed to get status if “extreme cruelty.” Look to regulatory language and case law.

ADJOURNMENT & NEXT STEPS

Next meeting at noon on Wednesday, September 8th

Plan to send out a survey after the next meeting—not everyone had an opportunity to speak up or share in the chat, want to make sure to give everyone the opportunity to weigh in

Send additional resources or information to Laura, Judge Rothrock, Riddhi to share with the group.



**Gender and Justice Commission (GJC)
E2SHB 1320 – Litigant Rights & Access Group Meeting
Wednesday, September 8, 2021
12:00 PM – 1:00 PM**



MEETING NOTES

Stakeholders Present:

Francis Adewale
Megan Allen
Amber Barcel
Samantha Boggs
Debbie Brockman
Claire Carden
Dr. Dana Cuomo
Keith Curry
Tara Dieng
Vonnie Diseth
Michelle Dixon-Wall
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Carey Morris
Riddhi Mukhopadhyay
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Amanda Rodriguez
Angela Rogness
Judge Averil Rothrock
Laurie Schacht
Sandra Shanahan
Judge Ketu Shah
Kyler Steffe
Kim Todaro
Mary Welch

Staff:

Moriah Freed
Laura Jones

WELCOME, OVERVIEW—JUDGE ROTHROCK & RIDDHI

Welcome and administrative reminders: correct name/title on Zoom to capture attendance, use chat or raise hand function

SURVEY UPDATE – LAURA JONES

In order to get broad advocate feedback, we are in the process of finalizing survey questions that will be sent out by WSCADV and WCSAP to their member programs statewide. This survey delves into all of the issues to be considered by this work group, for recommendations to the Legislature and the court. It will also be sent out to invitees to the Washington State Women’s Commission listening tour, and to the Family Law Task Force.

We also anticipate getting feedback via the Washington State Women's Commission listening tour, and WSCADV plans to hold a couple of focus groups next month.

Are we missing any list serves?

- Tracee Parker can share with the Coalition Ending Gender-Based Violence Family Law Work Group (send to her e-mail address)
- Mary Welch suggested the Pro Bono Council

EDUCATION

Training called out in Sec. 35 of the bill, what about adding coercive control to this?

- Including a funding provision?
 - Support from the group for a recommendation re: funding for training
- Name an entity to implement training?

Training Resources:

- National Judicial Institute on DV (tailor training to WA State?)
- Center for Court Innovation
- Battered Women's Justice Project (SAFeR project)
- International Coercive Control Conference

Other training-related considerations:

- Mandatory
- Ongoing
- Judges need tools

Question raised by some participants: Could we think about training now, and whether the definition can be changed later? Fits within our role to ASSESS how to respond to coercive control.

- Counterpoint: At the end of the day, judicial officers rely on the letter of the law, not the training. Our definitions need to be accurate to what people are actually experiencing that is causing harm

How can we ensure that those who need this training attend those sessions?

The training issue is not just about judges. Advocates also struggle with how to assess how coercive control is operating in an abusive relationship when both people are using problematic behaviors, or both people claim to be survivors. It takes ongoing training but also support and supervision, and tools, and importantly, lots of time to do well. Everyone who "touches" the life of a survivor/victim should undergo training. None of us should be exempt.

We need to consider the perspective that some of the challenges we face have to do with class, and training needs to take that into consideration. Need to bring perspective of marginalized

communities to the table—coercive control looks different for people with resources than for those without

DEFINITION OF COERCIVE CONTROL

Concern that the decision has already been made that we are adding coercive control to the definition. Where was the discussion about the pros and cons of changing the definition, and how survivors can be negatively or positively impacted?

Discussion about the role of the work group and role to make recommendations

Our ultimate report will be better (and better fit the legislature's directive) if it contains a frank discussion of cons, as well as pros. Hope that some of our members will be willing to research and report on the reasons some practitioners and/or states have opposed or limited the addition of coercive control to PO statutes. This includes where legislation has not passed. Need to do due diligence to examine all aspects of this issue.

Points made in support of including coercive control in DV definition:

- We all agree coercive control is domestic violence. Unjust not to name it in statute.
- People being hurt by current system; it doesn't serve survivors well. These behaviors have gone unacknowledged for decades.
- There is no redress for victim defendants, particularly with their family law matters, without acknowledgement of coercive control.
- Unintended consequences of inaction: people most impacted by coercive control are children
- Not in the statute now, judges will not find it to be part of DV if it's not in the definition. Judges could be reversed if they use it as the basis to enter orders.
- We cannot train judges on something the law doesn't permit.

Points made against including coercive control in DV definition:

- Could allow perpetrators to weaponize the courts against survivors: e.g. to get protection order against victim who engaging in defensive behaviors that fit coercive control definition. That could then lead to potential criminal consequences if they violate the protection order
- Slippery slope—one we include in the civil definition, does that lead to criminalizing coercive control? (E.g. Hawaii)
- The civil system is not separate from the criminal system- survivors looking for protection orders to increase their safety. Requires law enforcement to enforce the order.
- Would require massive and ongoing investment in training and good tools

There is a national clearinghouse for defense of battered women. For states that have implemented coercive control definition, how many calls are they getting from the victim defendant side?

There can be argument that some of these coercive and controlling behaviors fall within the definition of stalking, which incorporates the definition of harassment.

- Can be implied, but the burden is on the survivor then
- We have not seen pro se litigants successfully make those arguments and uphill battle with counsel
 - Most clients will not have representation so unless the definition is more explicit it is not recognized or able to be really utilized to seek protection
 - Concern for people who don't work with advocates. There are many cases in court where petitioners do not have advocates, and don't want a system that only works for people who have access to find and work with an advocate
 - Survivors who have attorneys don't have access to the protection order advocacy program (King County) and some attorneys they may work with are not as experienced with these issues

Coercive control is not about one or two acts. It takes into account the dynamics of the relationship; who exerts the most control over the other; and how that use of control impacts each partner. What needs to happen to be able to show that pattern?

Suggestion to look at Vulnerable Adult Protection Order (VAPO) definition ([RCW 74.34.020\(2\)](#)), which is similar to definitions being discussed. When we get into statutory interpretation, if you are saying the same thing in two different parts of the statute, then say the same thing. If we are talking about isolation/control re: VAPOs, let's adopt that language without the disability or age requirement.

ADJOURNMENT & NEXT STEPS

Our next meeting will be at noon on Friday, September 24th

Action item: Next two meetings focus on juvenile litigants, that folder on our Box drive is empty, so please send resources that you have to Laura

Action item: Once we get survey information, feedback via listening sessions and focus groups, will draft recommendations and send to the group. If we determine we need an additional meeting to discuss, will set a separate meeting likely sometime in November.



**Gender and Justice Commission (GJC)
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Friday, September 24, 2021
12:00 PM – 1:00 PM**



MEETING NOTES

Stakeholders Present:

Megan Allen
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Riddhi Mukhopadhyay
Ruby Ochoa
Karen Pillar
Angela Rogness
Judge Averil Rothrock
Laurie Schacht
Sandra Shanahan
Leah White

Staff:

Moriah Freed
Laura Jones

WELCOME, OVERVIEW

Agenda: Best Practices for Minors in Civil Protection Order Hearings (Meeting 1 of 2)

1. Understanding our task
 - a. What went on during legislative session
 - b. What is our directive from the legislature?
2. Volunteers needed for:
 - a. Drafting
 - b. Gathering relevant materials & information
 - c. Who else should we be consulting with on this topic?

UNDERSTANDING OUR TASK – LEGISLATIVE SESSION & DIRECTIVE

HB 1320 was an opportunity to improve the protection order process and to make processes for different orders consistent.

Overview given of our legislative directive and the approach to addressing the issues that this group is to consider in sequence vs. all at once

There were some improvements with a focus on youth made during session, e.g. school transfer. Document sent out in advance of meeting containing all provisions of HB 1320 related to youth petitioners and/or respondents.

Emphasis on civil process, although potential overlap with criminal on the sanction issue.

VOLUNTEERS

Objective for today's meeting is to identify volunteers who can gather more materials and information, do reach outs, to inform the group. Help us locate other consultants we may want to reach out to. Be thinking about that as we start the conversation.

Following our two meetings, we will need volunteers to put together a working draft.

Action Item: If you'd like to work on this issue, follow up with Laura Jones after the meeting.

DISCUSSION

Themes/topics identified:

1. Right to education

- a. Divert people out of the legal system for problems.
- b. TeamChild working on obtaining data re: respondents being barred from school. Is there similar data for victims being unable to stay in school?
- c. Schools will not protect victims without a court order, especially if the assault did not occur at the school. The victim's education is disrupted by trauma and constant exposure to the perpetrator. Victims may choose to drop out or leave school, and this changes their life trajectory. Then not only dealing with trauma but have a loss of community, prosocial activities.
 - i. Experience of schools refusing to enforce sexual assault protection orders for the survivor saying they don't apply to the school
- d. School transfer
 - i. Do smaller districts have the means to pay for transportation to another school?
 - ii. What is the determining factor for if a parent cannot afford to pay for it?
- e. What are peoples' experiences working with school officials?
 - i. Generally speaking, hear a lot of complaints about how schools handle
 1. Not helpful/effective in responding to victim safety
 2. Sometimes schools make problems worse
 3. Schools often direct victims to seek protection orders saying their hands are tied without an order.
 - ii. Nuance between antiharassment and other cases

- iii. Recommend another task force to address these issues outside the court system
- f. What kind of information is out there? What kind of research is out there?

2. Forum for protection order proceedings

- a. If they were heard in juvenile court, this would be a more developmentally appropriate response.
- b. Not necessarily the where, but the how- systems, process, access. If you direct these proceedings only to juvenile court, it will limit victims' access to file.
- c. These are civil matters. We need to reduce barriers and keep separate from criminal. There is a discussion about age happening in Sex Offender Policy Board groups, but very different from civil needs to seek safety and protection. Victims are often seeking protection orders because all other systems have failed them.
- d. Concern about decreasing issuance of criminal no contact orders in juvenile court—would juvenile courts have a better track record with civil protection orders?
- e. Victims who have not received sexual assault protection orders in juvenile court have reported feeling dismissed by the court and lacking trust in the fairness of the legal process, some wishing they had never reported.

3. Attorneys for youth

- a. Given the significance of these proceedings for juveniles, there should be a built-in right to counsel
- b. Resource-wise, may be unrealistic to appoint an attorney for everyone with a PO filed against them, and not sure we want to go that route with a remedy that is supposed to be accessible to pro ses. Concern about how much more litigious the process gets when attorneys are involved.
- c. Sec. 14(11) allows the court to appoint a guardian ad litem for a petitioner or respondent under age 18 who are not represented by counsel at no cost to either party. [Unfunded]

4. Mental health

- a. Mental health issues are often at play in youth antiharassment orders. Manifestation of disabilities are used as examples of harassment. Which can be concerning from a disability perspective.

5. Sealing juvenile records (beyond ERPOS, already authorized by HB 1320 Sec. 16(1)(d) and Sec. 48(1) and (2))

- a. Not uncommon for the court files in these cases to contain information and allegations about both Respondent and petitioner
- b. Make these proceedings confidential, similar to how dependency proceedings are treated.
- c. Look at case captioning- use initials rather than full names

- d. Protection orders sit in the “file” for any police officer alongside warrants so that any youth stopped by police will be viewed with that additional lens. It increases all police contact for BIPOC youth that the cops see them having a protection order whenever they are stopped by cops for any reason

6. Sanctions

- a. Potential criminal implications for violation of a protection order
- b. How do you have a sanction that will hopefully act as a deterrent? If you get the phase of imposing such sanction, what should it be?
- c. Do sanctions fit with restorative justice model?
- d. What is the purpose of protection order? Punish vs. protection?
 - i. Difficult for a victim to seek a sexual assault protection order and write out in detail about the crime. It’s felt more punitive of the victim than punitive toward the respondent.
 - ii. Survivors who have gotten Domestic Violence Protection Orders have experienced discrimination in housing and employment for getting a protection order
- e. Who can victims call when an order is being violated if the no contact conditions are just a release condition?

ADJOURNMENT & NEXT STEPS

Thank you all for your collaborative approach to this topic.

Our next meeting will be at **noon on Wednesday, October 13th**



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Kyler Steffe
Kim Todaro
Leah White

Staff:

Laura Jones

WELCOME, OVERVIEW

Agenda: Best Practices for Minors in Civil Protection Order Hearings (Meeting 2 of 2)

1. Report back re: International Coercive Control Conference
2. Updates re: surveys, timelines
3. Continued discussion re: best practices for minors

COERCIVE CONTROL CONFERENCE REPORT BACK (SANDRA SHANAHAN)

- Coercive control is a human rights violation
- Hallmarks are domination, control, punishment, micromanagement of intimate partners and children

- Dr. Karen Williams: Historically conceptualized DV as physical violence, but other fears are equally damaging
- Perpetrated by anyone but works best against women because of gender inequity
- Persistent, accelerates post-separation
- Purposeful behavior- physical violence is a tactic, but not all coercive control includes physical violence (Dr. Stark- 90% of violence within coercive control is “non-injurious”)
 - If you can get compliance without violence, why would you risk arrest?
- Constellation of coercive control behaviors includes: isolation, economic abuse, manipulation, mind games (gaslighting), micromanaging and setting rules, stalking, degrading, using children, physical violence, reproductive coercion....
- Dr. Campbell- coercive control is a red flag for lethal violence, shows up in unique ways to the relationship- abuser purposefully targets things most important to survivor and children
 - “Manipulative kindness” to disorient and further entrap survivor
 - Offenders are most dangerous when they believe that they are about to be left or exposed
- Impact on children
 - Children are direct prey and are often used as pawns to enable coercive control
 - Children socialized into belief system that this is what love looks like
 - What does this look like in children?
 - Hypervigilance or dysregulation (misdiagnosed as ADD, ADHD)
 - Negative impact on children is the same as adult victims
 - “Fawning” behavior from children or survivor to “make nice” for their own safety- align with abuser to protect themselves
 - Fight, flight, freeze, or fawn
 - Children blame themselves, fear consequences for abuser AND/OR no consequences, how that will blow back on non-abusing parent
- When we don’t acknowledge or enumerate coercive control, harms survivors (disproportionately women or children)
 - Misdiagnosed or over diagnosed with mental health disorders
 - Survivors are getting arrested when they call the police- behaviors they are recording may not be DV, but they engage in defensive violence
- Women have children taken away from them for “failure to protect” when their abusers harm the children
- Implicit biases
- Most important reason to address:
 - Opportunity to IDENTIFY, INTERVENE, and DISRUPT
 - Without official recognition, harms persist into next generation and across communities
 - Overburdened systems cannot afford to be vehicles that perpetuate coercive control
 - Survivors and children need relief and protection to regain autonomy and liberty
- Questions: What is the trend? Coercive control coming to law in jurisdictions? Are we at a cusp?

- UK, NZ, Ireland: Adopting coercive control into vernacular of DV, chosen to do so on the criminal side
- Most researchers at the conference talked about it conceptually
- Comment: Coercive control reminiscent of grooming in the context of sexual assault.
- Action Item: Sandra hopes to be able to receive materials in a format that can be shared. PowerPoint slides shared via Box.

SURVEYS, TIMELINES (LAURA JONES)

Survey responses of Victim Advocates/Attorneys and of state court clerks, judges and administrators are available on Box in “Surveys” subfolder. There you’ll find a pdf of the individual responses, as well as a pdf with the summaries of responses to each question. We also pulled out each of the topics for our December deliverables into a separate pdf, so you can find all the responses related to Coercive Control, Minors, and Jurisdiction.

The survey of Tribal court judges, clerks & administrators is still open.

On Box, inside the Litigant Rights & Access subfolder, you will also find a Timeline document that maps out the project through our December deliverable, including remaining meetings, when we anticipate circulating drafts, and when feedback will be do. You’ll notice that as of now, we are right on track. A huge thank you to all who have volunteered to draft portions of the report with tight turnarounds!

Please let Laura know if you have any difficulty accessing Box. We have a lot of information available there, and anticipate using it a lot during the drafting process.

DISCUSSION – BEST PRACTICES FOR MINORS (WORKING OUTLINE/DRAFT)

Working draft outline circulated in advance of the meeting, start with the topic of sanctions: How to balance rehabilitation and protection? What sanctions might have a deterrent effect re: violation?

- Research demonstrates that for juveniles, being identified as doing something wrong is a sufficient deterrent (Letourneau).
- Letourneau’s work relies heavily on recidivism rates based on reconviction, not true re-offense rates
- For sex offender policy board looking at juveniles, presentation that looked at long-term recidivism and re-offense. For those offenders who received treatment, including conditions and supervision, recidivism rate more reduced than general population.
- Not just identify, but hold children accountable. We do for all kinds of things as parents, and in other aspects of our lives. Separate from punishment, that accountability piece is more important with youth to shape them into responsible adults. How do we intervene in a meaningful way?

- If a protection order is issued, that is a warning to a youth that their behavior is not okay. Then the next step we're actually talking about is a sanction. Bad behavior identified wasn't enough to modify behavior. What about community service? Something meaningful for the community to account for their behavior?
- Anecdotally, work with a lot of clients when there are protection order violations, both juvenile and adult, and no action is taken on those.
- The parents of the parties are also a significant influence on whether or not the minor recognizes the protection order as a warning vs. miscarriage of justice
- Cannot talk about sanctions without recognizing the disproportionate impact on BIPOC youth
 - o Research also supports that disproportionality is an issue with BIPOC victims
- Therapy for kids who violate POs?
 - o If we are going to require therapy, there needs to be funding for that or low income families may not be able to comply.
 - o Mental health treatment is covered under all insurance plans because of ACA. All children are also eligible for Apple Care.
 - o It isn't always about paying specifically for the counselor, but paying for getting to a counselor, taking time off work or school, transportation, etc.
 - o Youth offending against other youth doesn't have place to acknowledge harm they've done. Not much restoration. In favor of more therapeutic interventions than punitive.
- How to recognize that a good portion of juveniles engaging in these behaviors have experienced or are experiencing violence?
- In school-based issues of harassment, the protection order is not the first time a youth is told their behavior is not ok. The school has already intervened, explained the problematic behavior, often imposed a response under discipline procedures. So protection orders are not the first alert in most cases that involve behavior at school.
- Discuss what the first response is, and should be rehabilitative for youth, and there needs to be funding attached to that.
- Don't know how to think about sanction/treatment for minors across spectrum of all protection orders with combined civil protection order. Likes the idea of combining for adult cases, in minors it is a struggle.
- Data questions:
 - o Is the number of protection orders involving minor petitioners and/or respondents able to be broken down by order type?
 - o Does AOC have data on how many youth are ordered to do detention as a result of a civil protection order? This is not something we see in SAPOs- along with the fact that the orders are effective and we see a small number of respondents who violate.
 - o What is the data on AHOs? Is detention being ordered frequently or is this just an option available for more egregious situations? If those numbers are not high, leave discretion to judges. Diverse degree in situations.
 - o Action Items: Laura Jones to follow-up re: AOC data questions. Sandra to ask a colleague from juvenile division about the number of violations they are getting.

- Sense of powerlessness, lack of autonomy- our ability to help put in place protections and create a safety response should be at the core of what we're doing
- With Referendum 90 passing, and now looking at sex education in the schools, there opportunities there when we're talking about school intervention that we can shape from the gender-based violence perspective? Education happen much earlier, consistently across the state. ****This was in the working outline****
- Think about the lens that we look at this with. If violations are happening, then the petitioner is not safe because the protection order is not doing what it was intended to do. At the center of this bill and this work is providing remedies for victims to access safety. It's easy to center on the individual who is causing harm. Long-term financial, emotional, educational impacts on victims. Same disproportionality. How do we intervene in a way that creates safety, and not just look at impacts on respondent?

The group has a lot of shared values. We don't have to provide the exact perfect solution. Talk about ideas we're sharing and goals for how to approach.

Other related topics:

- Based on survey responses from Victim Advocates/Attorneys, there are inconsistent practices from across the state about how protection order hearings are run. Some comments that require too much from youth, others not enough. May be a topic to address—how to address best practices within the hearing specifically for youth? How to let them have their voice heard in a way that keeps them safe?
- Some counties not allowing advocates in court

Washington State Women's Commission finishing their listening tour, will provide a written report.

ADJOURNMENT & NEXT STEPS

Our next meeting will be at **noon on next Friday, October 22nd** and the discussion topic will be jurisdiction.



**Gender and Justice Commission (GJC)
E2SHB 1320 – Litigant Rights & Access Group Meeting
Friday, October 22, 2021
12:00 PM – 1:00 PM**



MEETING NOTES

Stakeholders Present:

Francis Adewale
Megan Allen
Amber Barcel
Judge Elizabeth Berns
Claire Carden
Dr. Dana Cuomo
Jenn Davis Nielsen
Tara Dieng
Vonnie Diseth
Natalie Dolci
Chelle Hunsinger de Enciso
Yuridia Equihua
Judge Michael Finkle
Commissioner Patricia Fulton
Carolyn Gray
Elizabeth Hendren
Commissioner Jacquelyn High-Edward

Judge Gregg Hirakawa
Grace Huang
Frank Maiocco
Dirk Marler
Erin Moody
Riddhi Mukhopadhyay
Jennifer Pence
Karen Pillar
Judge Averil Rothrock
Sandra Shanahan
Kim Todaro
Mary Welch
Patrick Wells
Leah White

Staff:

Moriah Freed
Laura Jones

WELCOME, OVERVIEW

Agenda: Jurisdiction (Meeting 1 of 2):

1. Municipal Court Jurisdiction
2. Discussion
3. Transfers

MUNICIPAL COURTS

King County law librarian helped to put together a research memo on the legislative history for jurisdiction. Protection orders are cases in equity. In *State v. Brennan*, the court found it was a constitutional violation for district courts to be granted authority to hear antiharassment protection orders. 76 Wn. App. 347, 356 (1994). As litigation was pending, the Washington State constitution was amended to expand jurisdiction of the district court to include cases in equity.

We will need to advise the Legislature of this jurisdiction issue.

DISCUSSION – JURISDICTION GENERALLY

Struck by how confusing this issue is because there are a couple of different problems. Question of where to file and gain immediate relief vs. where you ultimately want the case to be heard.

Theme from the advocate/attorney surveys was they preferred a court based on judicial training, resources.

Similar argument can be made for moving protection order cases involving minors to juvenile court.

Being able to file anywhere is imperative for access. Keep available and open everywhere—filing is a ½ day to full day event. Limiting where orders can be filed limits access. Need to view this through the lens of what litigants need vs. what the system needs.

On the ground problem of being turned away because in the wrong court. Instructing petitioners to go to court in an effort to create access may actually create barriers. Also, even if correct courthouse in close proximity, barriers for people with disabilities (crossing the street, go through security)

Some courts have the same judge hear the temporary order that will do the full hearing. This way, the temporary might be more thoroughly reviewed to ensure that it meets the statutory requirements before the full hearing. Other courts have different commissioners/judges in ex parte hearings than will preside over the full hearing.

Each court has its own forms. HB 1320 will update forms into single petition.

Is this a legislative issue or a customer service issue?

Leave existing structure as is with improvements:

- Training
- Centralization of calendar (rotations create unpredictability)
- Extend this to the transfer process. One-size-fits-all approach won't work.

One of the pieces of HB 1320 is to make courts virtually accessible. Does e-filing remove access barriers of not being able to file in any court?

- Not all petitioners and respondents have access to technology
- Technology Group: Potential survey to understand access to technology

The Washington State Women's Commission has been conducting listening sessions. A common theme is advocates/survivors actively asking for more accessibility. A gap identified with filing electronically: delay in time from granting order to entry by law enforcement. Also, most

petitioners don't get a copy of the petition/order. Huge number of reissuances, service of temporary order only, not petition. Flow of paperwork electronically is an issue right now.

Long-term goal: Integrated courts with baseline level of training, consistent practice, lots of access points but same judges over time. Example of similar approach is baby courts.

Advocacy services available at all courts as orders are initiated?

DISCUSSION - TRANSFERS

In some communities, the court accepts filing even if not in the correct court and will transfer—the court takes the burden off of the petitioner

Shouldn't there be a process for transfer already since RALJ appeals transfer the file from district court to superior court?

Some counties allow transfer via e-mail or fax.

Infrastructure and funding for education of judicial officers and court staff. Ongoing training has been a consistent theme throughout our work.

Streamline factors for transfer to superior court between order types. Consistency is better.

ADJOURNMENT & NEXT STEPS

Our next (and FINAL) meeting will be at **noon on November 10th** and the discussion topic will be jurisdiction.



**Gender and Justice Commission (GJC)
E2SHB 1320 – Litigant Rights & Access Group Meeting
Wednesday, November 10, 2021
12:00 PM – 1:00 PM**



MEETING NOTES

Stakeholders Present:

Megan Allen
Samantha Boggs
Claire Carden
Dr. Dana Cuomo
Vonnie Diseth
Michelle Dixon-Wall
Yuridia Equihua
Kate Francis
Commissioner Patricia Fulton
JoDee Garretson
Carolyn Gray
Kristina Hammond
Judge Gregg Hirakawa
Grace Huang
Erin Moody

Riddhi Mukhopadhyay
Ruby Ochoa
Tracee Parker
Karen Pillar
Angela Rogness
Laurie Schacht
Judge Ketu Shah
Sandra Shanahan
Judge Jackie Shea-Brown
Kyler Steffe
Heather Wehr
Mary Welch

Staff:

Moriah Freed
Laura Jones

WELCOME, OVERVIEW

Last meeting before the end of the year. Report due to the Legislature on December 1st. Take a full month break, come back in January to focus on deliverables due to the courts in June 2022.

Second meeting on jurisdiction, last meeting of this year

Jurisdiction draft uploaded on Box, drafts for other sections to be sent out this week. Feedback on these drafts due by Friday, November 19th

Agenda:

1. Jurisdiction draft
2. Other draft recommendations

JURISDICTION

Seemed from surveys, investigation, communication, jurisdiction itself does not seem to be an area of contention. Recommending that maintain as is:

- Flag municipal court jurisdiction issue

- Lack of consistency in transfer process – standardization and allow for direct filing in superior court where district court would have to transfer anyway
- Appropriate funding to ensure that the courts are supported in developing transfer process, education, resources
- Transfer to superior court for consistency in cases involving minors

Opportunity for group to provide additional feedback/concerns:

- Consistency with new forms might eliminate most of the issues that come up with jurisdiction? Did protection order research project awhile back, reviewed petitions from KCSO, and how problematic transfer was from other court. Attorneys in family law work group have said that when start through district court process, it has been disastrous.
 - One petition form – still being developed
 - Focus on transfers, not even county to county, court to court the process is different. Create consistency that in long run less of a burden on court staff and litigants
 - Direct filing remove extra step
- Two points building off previous comment
 - Hope that streamline experience for survivors: mini-trial vs. affidavit
 - Importance of facilitators/advocates to help people as they file
- Read with jurisdiction vs. customer service distinction in mind
- In listening sessions, the issue was really about the experience and training of the judges hearing the cases, familiarity with issues that come up in family court, including for cases without children
- Funding and training consistent among all topics so far
- Looks like decision has been made not to have minor litigants in juvenile court- doesn't seem like it's identified or addressed. In minor litigants section, can be highlighted in this section too. Not all jurisdictions have juvenile court. Let us know if can be highlighted in other sections.
- Those courts that took affirmative step to transfer cases were smaller jurisdictions. Need to also recommend more of a structure, or inform people what happens after their case has been transferred

Action Items:

- Acknowledgment of resources needed for facilitators/advocates
- Correct year that ERPOs went into effect to 2016
- Suggestion to include more information about structure- e.g. that courts inform people what happens after their case has been transferred

COERCIVE CONTROL

Discussion has been nuanced, where we've received the most robust feedback from survey, WSWC listening session, WSCADV membership- quite a bit of feedback and thought, identifying concerns and challenges related to coercive control. Tried to capture all perspectives.

Sees coercive control is supported by history of physical assault. Do it one time, then don't need to do again because underlying threat. Aware of studies? E-mail to Laura—see action items below.

Grace and Tracee will look for resources:

- Men Who Kill by David Adams about coercive control
- Grace identified research on what is coercive control vs. what is not coercive control. Theories of the researchers.
- The more we can see full-text, vetted, scholarly articles on coercive control the better

Action items:

- In bill, cited escalation from coercive control to physical violence. Temporal order not supported by the literature that we have. Current draft points out other reasons why important to recognize harm, but that being said, if people in this group are aware of studies that support that theory, please send our way. Full text summary.
 - We do have literature that literature that highlight controlling behavior correlated with risk of fatality at separation

BEST PRACTICES FOR MINORS

There's research out there, but also a lot of research we couldn't find.

Focus on progressive aspects of the bill- guardian ad litem, language choice- youth vs. juveniles to differentiate between criminal system

Sealing/initialing, Trauma-informed, Therapeutic community and educational resources

Hard to identify a uniform or best approach in a lot of these areas because of the nuances of the cases that come through.

This is a draft that will be helpful to have your eyes on.

DISCUSSION

Opened up for discussion- last opportunity to meet together before the report is due

ADJOURNMENT

Send feedback, edits on drafts of sections to Laura by Friday, November 19th

Thank you. Impressed by this group, appreciate dedication.



Gender and Justice Commission (GJC)
E2SHB 1320 – Litigant Rights & Access Group Meeting
Wednesday, January 12, 2022
12:00 PM – 1:00 PM



MEETING NOTES

Stakeholders Present:

Megan Allen
 Samantha Boggs
 Claire Carden
 Keith Curry
 Ailise Delaney
 Tara Dieng
 Vonnie Diseth
 Michelle Dixon-Wall
 Yuridia Equihua
 Judge Michael Finkle
 Commissioner Patricia Fulton
 Ruth Gordon
 Carolyn Gray
 James Hayes
 Commissioner Jacquelyn High-Edward
 Judge Gregg Hirakawa

Celle Hunsinger de Enciso
 Regina Malveaux
 Dirk Marler
 Riddhi Mukhopadhyay
 Ruby Ochoa
 Tracee Parker
 Angela Rogness
 Judge Averil Rothrock
 Judge Ketu Shah
 Sandra Shanahan
 Cherif Sidiali
 Kyler Steffe
 Mary Welch

Staff:

Moriah Freed
 Laura Jones

WELCOME, OVERVIEW

Agenda:

1. Phase II of 1320 project
 - a. Recap issues, discuss what we know from data request and surveys (Judge Rothrock)
 - i. Concurrent Criminal-Civil
 - ii. Evidence Standards
 - iii. Unrepresented Litigants
 - b. Overview of work structure, put in context with other groups (Riddhi)
2. Breakouts by topic
 - a. Facilitators
 - i. Judge Averil Rothrock: Evidence Standards
 - ii. Riddhi Mukhopadhyay: Unrepresented Litigants
 - b. Discussion Questions:
 - i. Are you aware of other work on this issue?
 - ii. Are you aware of products we can consider?

- iii. From your perspective, what issues do you see related to this topic, and what solution would you propose?

PHASE II OF 1320 PROJECT – JUDGE ROTHROCK & RIDDHI MUKHOPADHYAY

Welcome back, acknowledge work done last year.

Mentioned HB 1901 trailer bill pending. Link provided:

<https://app.leg.wa.gov/billsummary?BillNumber=1901&Initiative=false&Year=2021>

Deliverables to the courts for Phase II of 1320 project:

- Evidence standards
- Promoting access for unrepresented litigants
- Best practices for concurrent criminal and civil proceedings

Concurrent criminal/civil proceedings and approach: Ongoing project, bench card since statute addresses and codifies case law.

Subcommittees for the other topics (evidence standards, unrepresented litigants). We will break out into small groups during our Wednesday meetings. Friday meetings will be larger group discussion.

Ask folks if want to be in one of two groups: Evidence standards, promoting access for unrepresented litigants

Overlap between other groups' work, and committees within Litigant Rights & Access Group. Some of this may be identifying resources and groups we can collaborate with. e.g. forms committee, 1320 Technology Group

**There will be no meetings on February 25th & April 13th **

BREAKOUT – UNREPRESENTED LITIGANTS

Brief introductions

Are you aware of other work on this issue (how does representation work in your county, jurisdiction)?

- King County: Selective appointment of counsel when the respondent is represented—fewer than half represented.
 - o King County District Court - Zero resources for litigants to be appointed counsel. Not aware of any. Some parties have pro bono counsel but very small percentage. No methodology for appointment
- Clerk's perspective: One of the access issues, how does a pro se person actually get a case filed? Contemplated provisions to allow e-submissions, and issue for the courts is that these are civil actions and in terms of civil harassment provisions they have a fee.

- No mechanism for someone to pay fee for filing if otherwise required. Waived, collections process after the fact. Fiscal impact on the court.
- Skagit County: Not a lot of resources. Courts grant continuances to either side to try to find counsel. Try to refer to Northwest Justice Project. That usually doesn't happen. Court does not appoint.
 - Snohomish County: Similar. Sexual Violence Law Center has taken many cases, but unless connected with advocate, doesn't know about those legal services. Legal aid resources overburdened. Limited resources, growing demand.
 - NJP- Hasn't ever heard of county where appoint attorneys. Only time is in SAPO case.
 - No resources in Walla Walla County
 - Could we expand what is not considered unlawful practice of law or allow advocates to provide advice? For example, if I as a layperson or advocate try to direct a petitioner to file a parenting plan, am I violating that? Vast gap, no democratization of information available to the public.
 - o Mistakes made on pieces- petitioner denied order because they could not get it served. Not given notice that that would happen before they came for full hearing. Feels grossly unfair to people in crisis.
 - Sexual Violence Law Center appointed in King, Pierce, Snohomish, sometimes somewhere else. Currently have VOCA funding. Over time have seen more requests for representation.
 - o Previously, public defenders appointed to represent the petitioner.
 - No shortage of pro se litigants seeking some type of civil protection order in King County- majority in disputes with neighbors
 - o Strongly suggest think of it in those terms- going to be a huge floodgate if civil protection order subject to civil appointment
 - o Discuss factors the court may consider in conjunction with appointment such as ability to pay
 - Ways to improve process without appointing counsel?

BREAKOUT – EVIDENCE STANDARDS

Brief Introduction. It was noted that this subcommittee has diverse geographic representation and wide variety of backgrounds.

Are you aware of other work on this issue?

- Is there anything missing that needs follow-up with another group?
- Need to have a comprehensive statewide look. County by county approaches currently – members or individuals could look at practices in their own jurisdiction. No obvious group or organization to reach out to currently working on this
- Is there anything missing that needs follow-up with another group?
- Overlap with Technology Workgroup – will want to stay in contact with their work.
- Previous DV Symposium on technology
 - o ACTION ITEM: Tracee Parker will follow-up on symposium resources.

- Thurston County: Issues of evidence presentation – would allow more types of evidence that needed technology for DVPO (flash drives, etc.) but would not allow them for other proceedings. Still an issue for privacy of litigants and safety for the court.
- Jefferson County: Tech staff would not allow this practice. Safety of litigants is important, and so is safety of technology infrastructure of the county. Digital evidence standards needs to be established for safety of all parties.
- Need to look at formats of evidence presented
- Attorneys know to bring their own technology (laptop, etc.) but pro se litigants do not know this to present evidence.
 - o *Smith v. Smith* – parties agree to longer than 2 weeks for temporary PO in some cases to figure out technology evidence issues, either bringing own technology, printing evidence, etc.
 - o Rules of evidence do not need to be applied in these proceedings – whatever Judge will accept.
- No consistency between counties or even between SAPOs and DVPOs. Not all judges will continue the proceeding so that parties can figure out evidence, some will just not accept it. No communication ahead of time with parties on presenting evidence in courts.
- No consistency b/w judicial officers. Hard to give advice as advocates without consistency b/w judicial officers on evidence standards or even consistency with the same judicial officers and different petitioners.
 - o Hearing in discussion that parties are not informed of evidence practices.
- Issues of the record. Sometimes record does not reflect evidence presented to trial court.
- Judges can explain at the beginning of the hearing what type of evidence will be admitted.
- Could develop a best practices bench card for judges regarding evidence standards

ADJOURNMENT

Next meeting on Friday, January 28th at noon. Large group discussion re: concurrent criminal and civil.

ACTION ITEM: Review the associated summary on Box, and e-mail Laura Jones by 1/26 with any edits, additions, questions you may have.



**Gender and Justice Commission (GJC)
E2SHB 1320 – Litigant Rights & Access Group Meeting
Friday, January 28, 2022
12:00 PM – 1:00 PM**



MEETING NOTES

Stakeholders Present:

Megan Allen
Samantha Boggs
Claire Carden
Ailise Delaney
Tara Dieng
Vonnie Diseth
Natalie Dolci
Yuridia Equihua
Judge Michael Finkle
JoDee Garretson
Ruth Gordon
Carolyn Gray
James Hayes

Commissioner Jacquelyn High-Edward
Judge Gregg Hiramawa
Ret. Judge Anne Hirsch
Monte Jewell
Erin Moody
Riddhi Mukhopadhyay
Ruby Ochoa
Tracee Parker
Angela Rogness
Judge Averil Rothrock
Mary Welch

Staff:

Laura Jones

WELCOME, OVERVIEW

Reminder that we will be splitting into breakout groups during our Wednesday meetings: Evidence Standards and Unrepresented Litigants. Please let Laura know if you haven't been assigned to a group.

Agenda for today's meeting: Large group discussion re: our directive to develop "best practices for courts when there are civil protection order and criminal proceedings that concern the same alleged conduct."

1. What questions do you have about the materials?
2. What are the resources that we're missing, and relatedly, are there any volunteers who can assist with legal research?
3. Are there any "practice tips" that should be incorporated on this subject in addition to statute and case law?

DISCUSSION RE: CONCURRENT CRIMINAL-CIVIL / FEEDBACK ON MATERIALS

- The draft bench card is more like a manual, less useful for a judge. Boil it down for a beginner or someone who doesn't do it all the time. Make more user-friendly—is there some kind of script or list of questions to address?
 - Judicial officers use bench cards differently.

- Outline for a script
- The bigger question is what is a criminal proceeding? Does it start at the time that there is an investigation? When case filed? If a case is filed, respondent is often represented by a public defender. Can advise them of 5th amendment rights but liability doesn't cover ancillary civil proceedings.
 - Can a public defense lawyer weigh in?
 - Whether public defenders appear is county-specific, depends on capacity.
 - Public defenders do appear in King County in DVPO and SAPO proceedings. Most often, the petitioner is unrepresented.
- How do we want courts to approach this in a protection order case? Make sure that addressing due process rights of both parties. How can you protect the respondent's rights and also not make petitioner come back to court? Case law is about how to balance.
- What about incorporating a list of principles as part of a bench card? Empower victims/survivors so not relying on criminal court proceedings to take care of safety. Intended as fast relief.
- Best bench cards are simple and allow people to dig deeper.
- Not a lot of cases on this issue
- Some of the judicial officers stated that the draft provided is too dense for use on the bench. Suggestion to take out a lot of the text, and to use hyperlinks and footnotes.
 - Website with links to statutes and cases
 - Script
 - Bench card summary
 - Bench card explanatory
 - No contact orders are not necessarily going to provide all relief that DVPO can. If organized topically, could tease that out in a longer bench card.
- In King County even just citing *Smith* is often very helpful since it's the controlling standard. Dictum in the case that if parties agree, can exceed the 14 days.
- "Consider this" language. Wide range of things that can be done at the hearing. We cannot give the answer, but the tools to get there.
- Could there be a court rule that says if this is a situation where criminal investigation or case filed, that the court in its discretion could keep reissuing temporary order until time that respondent satisfies due process?
 - Victim advocates/attorneys not in favor of short-term orders. Dangerous to survivors to continue having to come back to court. Every time they go back and have a confrontation with the respondent, it heightens the danger. We want to lessen the amount of times they have to cross paths.
 - Short-term continuances burden to victims. Miss time from work, even with technology advances. Unreasonable when they need to be safe. In crisis. Get concerned when hear proposal to continue until criminal case resolves.
 - DV cases move much faster than SA cases. Not uncommon for SA investigation to take 9 months to over a year. Even asking them to come back every 6 months triggering.
 - Filing decision shouldn't impact civil case outcome because different standards

- Suggested language: “If you choose to exercise your 5th amendment right and not testify to (this incident), this order will be granted. If the criminal matter resolves you may petition the court to re-address this matter.” This would help the petitioner get a speedy remedy and still protect 5th amendment rights.
 - Just because the respondent decides to assert their 5th amendment right and decides not to testify, doesn’t mean that the order is going to be granted. Court still has to assess whether P met the preponderance standard.
 - It’s about knowing that they have that right and how that testimony can be used. Depending on criminal case, there are opportunities to re-open civil case. Purpose of the statute is safety.
- Parties could agree to extend beyond 14 days. If you want to assert 5th amendment rights, need to agree to more than 14 days. Put a finding in there that per *Smith v. Smith*, the parties agree. Tool there. Doesn’t apply in every case.
- What if survivors do not want to agree to that longer-term extension?
- Part of this is about a respondent making an informed decision, but these are separate processes with separate standards.
- Rebuttable presumption against delay in Chapter 7.105 RCW
 - Even before the new rebuttable presumption language, *Smith* held it was “reasonable to decide that the factors heavily weigh in favor of proceeding with the DVPO matter” even though the perpetrator had been charged with rape of a child, had been arrested for witness tampering, and the conduct at issue in both matters was virtually identical
- Discussion re: 14 days
 - Once notice is provided and someone appears, can continue for longer than 14 days
 - With ICWA, have to continue at least 30 days to give notice to tribes.
 - RCW 7.105.400(3) “Good cause” language included because not in previous statutes. Hopefully that gives the court flexibility to issue a longer period instead of requiring the 14 days.
 - Pro se respondents may not know the nuances.
 - Within King County, there is a 21 days rule for reissuances in one courthouse, longer reissuances in another
 - RCW 7.105.100(7): “Upon filing a petition for a protection order, the petitioner may request that the court enter an ex parte temporary protection order until a hearing on a full protection order may be held. An ex parte temporary protection order shall be effective for a fixed period of time and shall be issued initially for a period not to exceed 14 days.”
 - RCW 7.105.100(8): “The court may, at its discretion, issue a temporary order on the petition with or without a hearing. If an order is not signed upon presentation, the court shall set a hearing for a full protection order not later than 14 days from the date of the filing of the petition for a protection order, if the petition for a protection order is filed before close of business on a judicial day. If a petition for a protection order is filed after close of business on a judicial day or is filed on a nonjudicial day, the court shall set a hearing for a full

protection order not later than 14 days from the first judicial day after the petition is filed.”

ACTION ITEMS:

- Subcommittee #1: 5th Amendment Issues (Riddhi Mukhopadhyay, Monte Jewell, Megan Allen, Natalie Dolci, Judge Hirsch)
 - When does the 5th Amendment right attach?
 - Court in a different position once charges are filed. Maybe that is something we can address in a bench card: pre and post-charging considerations
 - When does the investigation end? Don’t want to put the burden on the victim. Victim may have no idea investigation ended. Respondent may not either unless charges filed.
- Subcommittee #2: What does the new statute require regarding continuances (Judge Rothrock, Commissioner High-Edward)
- Subcommittees to report back in writing by March 15, 2022, and be prepared to share findings with larger group for discussion on Friday, March 25, 2022

ADJOURNMENT

Our next meeting is on Wednesday, February 9th at noon and we will be breaking out by topic: Evidence Standards and Unrepresented Litigants



**Gender and Justice Commission (GJC)
E2SHB 1320 – Litigant Rights & Access Group Meeting
Wednesday, February 9, 2022
12:00 PM – 1:00 PM**



MEETING NOTES

Stakeholders Present:

Megan Allen
Samantha Boggs
Claire Carden
Ailise Delaney
Tara Dieng
Natalie Dolci
Yuridia Equihua
Judge Michael Finkle
Commissioner Patricia Fulton
JoDee Garretson
Ruth Gordon
Carolyn Gray
Ret. Judge Helen Halpert
James Hayes
Commissioner Jacquelyn High-Edward
Judge Gregg Hirakawa

Ret. Judge Anne Hirsch
Monte Jewell
Riddhi Mukhopadhyay
Tracee Parker
Karen Pillar
Angela Rogness
Judge Averil Rothrock
Judge Ketu Shah
Sandra Shanahan
Judge Jackie Shea-Brown
Cherif Sidiali
Kyler Steffe
Mary Welch

Staff:

Moriah Freed
Laura Jones

WELCOME

Reminder of Wednesday breakout meetings: Evidence Standards & Unrepresented Litigants

Participants “broke out” at 12:05 pm. Riddhi Mukhopadhyay facilitated discussion in the Unrepresented Litigants breakout and Judge Averil Rothrock facilitated discussion in the Evidence Standards breakout.

BREAKOUT – UNREPRESENTED LITIGANTS

Think about protection order proceedings from your role (advocate, judge, etc.) and what kinds of resources, besides appointment of counsel, would you like pro se litigants to have access to?

Documents to provide instructions:

- Something visual (e.g. flow chart) that explains PO process and timing
- Form for respondents to submit reply, other materials
 - o Cover sheet that is delivered with notice/summons?
 - o No form for anyone other than the petitioner to complete

- Could be an optional form
- Nothing in the statute that requires court maintain information on behalf of the respondent. Who provides this information – civil defense bar?
- Snohomish County has a cover sheet for the respondent:
<https://snohomishcountywa.gov/DocumentCenter/View/47777/Response-Packet?bidId>
- Something that explains how to serve each other with documents. Parties struggling with how to get exhibits served on each other without violating existing orders.
- Concerns as a SV and DV advocate. Agree providing documents could prevent continuances, but how would service work in situations where privacy is a concern?
- Not a problem for the court to offer resources, as long as resources are for everybody – both sides.
 - Many courts have DV resource and case coordinators. Easier for the court if there is this type of assistance available.
 - Form or video bank, possibly on AOC website with information and resources. Don't need to be in a resource rich county for access.
 - ACTION ITEM: Judge Hirsch is aware of national grant and work on this topic. Can connect with additional resources.
- Could civil legal aid and advocates draft materials? A group of stakeholders could periodically review these materials. Also training on how to provide them for assistance.
- Important to have resources available in multiple languages
- Ensure documents readable, plain language to accommodate different levels of reading comprehension.
- Small county, limited resources. Clerks hesitant to give advice due concern over providing legal advice. Resources from AOC would alleviate these concerns.
- Suggestion to develop a resource to clarify what is legal advice versus basic process information
- Issues even with parties not being able to afford copies of exhibits for other side. Is there a way to have some kind of indigence fee waiver for respondents?
 - Could evidence standards group could address this issue? Also, ways for these things to be done electronically and avoid fees.
 - It was observed that most people from courts on the call were not near a public library to make affordable copies as an alternative.
- Handouts on how to ask for disability accommodations.

National Models and Local Resources:

- Address Confidentiality Program as a resource model
- Concern raised that some information on civil legal aid websites is incorrect or wrong. Hesitant to look at things provided by third parties.
 - Protection order process designed to be quick, most people represent themselves. Feel the courts have an obligation to help people through this process without advocating for one side or the other through a process they don't understand.

- Working within AOC to hire a web developer to assist in developing resources for accessibility to the courts.
- Family Law Toolkits. Project was abandoned but could be adopted and adapted to support collaboration between civil legal aid attorneys and community based advocates: <https://endgv.org/tools/civil-and-family-law-related-tools-reports/>
- Thurston County has a “green sheet” list of providers for referrals. Main issue is keeping them updated. Also host quarterly meetings convened by the court of stakeholder groups to work on this type of issue – updating resources, etc.
 - o Other judicial officer noted their court also holds quarterly stakeholder meetings for PO docket, this includes clerk’s office, advocates, attorneys and law enforcement
 - o Quarterly meetings as a best practice
- **ACTION ITEM:** Sandra Shanahan will send a document to Riddhi developed by King County in 2017.
- We need to look to technology as our friend. Notifications are already being built in because of 1320, and a notice could be sent, for example, notifying the parties that evidence was filed.

Evidence Issues:

- No standard way for civil cases to accept video or voicemails. Each judges decides if they will accept it, and how they will preserve it for the record. Hard to work from an advocacy prospective to prepare survivors for PO if it is unclear whether the evidence will be accepted.
- Haven’t heard of a county with a pro se friendly process for submitting evidence. Suggested informative videos about evidence.
- King County doesn’t like taking digital evidence because of technological security risk. Encourages parties to bring their own items to share evidence, i.e laptop.
 - o Potential overlap with technology workgroup.
 - o In King County tried to make Dropbox available to both parties to exchange discovery, but it was not popular. There were barriers to using the program, such as resources needed to access it and time needing to learn the program.

Next Steps:

- The group agreed to have meetings broken down by topic moving forward:
 - o Service
 - o Resource for respondents
- Development of resources in the following areas: Information resource packet for respondents, resources available to explain timeline for litigants in general, service, and filing evidence issues.

BREAKOUT – EVIDENCE STANDARDS

Pulled up the Court Recovery Task Force page to help visualize end product. Home page for recommendations with issue menu, including option for Evidence Standards. Also shared draft working document: *Evidentiary Standards in Protection Order Proceedings*. Thought would be

that we have a home page with this type of information, hyperlinks for additional resources, scripts, etc.

- ACTION ITEM: Laura will circulate this to the group

Discussion re: Evidence Issues- Generally:

- Where should courts make procedures and requirements re: evidence available? Website? Clerk's office? Anywhere else?
- Previous documents focused on digital evidence as fertile ground for recommendations, also recommendations for paper evidence
- Has there been discussion for training for clerks?
 - o Tip sheet/index of information that clerks might want to know
 - o Recommendations geared toward clerks? Maybe that is one of our bullet points
- How specific do we want to get? Each court working within different parameters
- Bullet #5 regarding digital evidence. Might be useful to have sample processes for those bullets
- Many petitioners have things kicked back and don't understand why- model/instruction sheet would be helpful
 - o Plain language
- Should include examples, common authentication labels/stamps/etc.
- Remind the court that under ER 1101(c) the rules of evidence need not apply to protection order hearings. So authentication under the rules of evidence isn't required.
- Timewise, judges not able to review those items of items. For example, texts are important because they show a pattern of harassment. Sample texts from **, **, ** are reflective of other texts.
 - o Cover sheet, even if the parties submit the whole thing. E.g. at x time in this clip is the relevant statement....
 - o Whether an instruction sheet or form, something that encourages someone submitting evidence to summarize it and cite specific page numbers, content for court's attention
 - o Not even specific to voluminous cases, just generally, to help clarify information provided.
 - o In Spokane, if submit anything over certain page limit (20 pages), have to call it out in advance and send into the court 2 days prior to give time to review. Local special proceedings rules. That rule doesn't apply to protection orders, but if a party has a lot of evidence, good to send in advance
 - As try to create statewide resource, there are local rules that will be applicable. Trying to create something general, but each court will have to adapt to their own rules, procedures and resources. Concerned from a practical standpoint about how deep can we get as a group in terms of examples
- DV Mental Health collaboration- toolkit for survivors, advocates, attorneys- created a document for specific jurisdiction, and then created a template from that. Guiding template for a specific county that they could compare it to?
 - o ACTION ITEM: Do any of you have templates? Forms where you ask clients to summarize materials that we can adapt? Federal courts? Object is to gather

what is already in existence, create a share folder on Box, before our next meeting

Sealing:



- Considered a closure of the courts, so constitutional implications
- How are courts doing this? How to ensure things are being sealed as timely as possible?
 - o King County, Snohomish County- different to get cases sealed in both courts, sealed the entire file, agreement between the parties
- Ideal to have some language in statute- what do you do with those documents in the meantime? Certain documents have automatic seal? E.g. family law has automatic seal for some types.
- Could we expand GR 22 for protection order hearings?
- Instead of sealing, GR 15 motion to redact. Lower bar.
- *Ishikawa/BoneClub* analysis
- As we sit here today, don't have a court rule. It has to come from the judge going through the analysis. Court has obligation to go through factors.
- **ACTION ITEM:** Figure out how this is approached in different jurisdictions. Come back with a summary of how sealing is done. Sample sealing motion?
 - o Pattern forms for some other types of cases have a box asking if the party is seeking to have the case sealed
 - o No matter what we do, the challenge is going to be making it understandable to the folks using it.

Next steps:

- For each of these resources we want to develop, assign people to collaborate to draft a work product. Maybe at our next meeting, assign mini teams.
- We will circulate Evidence Standards working document- please redline/provide feedback
- Suggestion to ask for resources, websites more broadly- LRA group, entire 1320 stakeholder group
 - o Broader ask to the LRA Group, larger stakeholder group
- Look at more national clearinghouses for information: National Center for State Courts, Center for Court Innovation, National Council of Juvenile and Family Court Judges

ADJOURNMENT

Next meeting on Wednesday, March 9th at noon. Breakout groups. THERE IS NO MEETING ON FRIDAY, FEBRUARY 25TH

 <p>WASHINGTON COURTS</p>	<p>Gender and Justice Commission (GJC) E2SHB 1320 – Litigant Rights & Access Group meeting (Zoom) Wednesday, March 9, 2022 12:00 PM – 1:00 PM</p>	 <p>GENDER AND JUSTICE COMMISSION GENDER EQUALITY IN THE JUSTICE SYSTEM</p>
<p>MEETING NOTES</p>		

Stakeholders Present:

Francis Adewale
Megan Allen
Keith Curry
Ailise Delaney
Tara Dieng
Yuridia Equihua
Judge Michael Finkle
Commissioner Patricia Fulton
JoDee Garretson
Ruth Gordon
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Laurie Schacht
Judge Ketu Shah
Sandra Shanahan
Cherif Sidiiali
Kyler Steffe
Kim Todaro
Mary Welch

Staff:

Kelley Amburgey-Richardson
Laura Jones

AGENDA

Meeting Agenda - Breakouts

1. Evidence Standards
 - a. Working drafts
 - b. Report back on sealing process in other jurisdictions / sample sealing motions
 - c. Assign members to mini-teams
2. Unrepresented Litigants
 - a. Resources for Litigants
 - b. Review example from Snohomish County

INTRODUCTION

Discussion of HB 1901

- Passed and on its way to the Governor’s office
- The bill does include coercive control, which was a recommendation in December 21 report. It looks like definition work group recommended was adopted.
- Members are reviewing. It doesn’t look like there are any surprises, concerns.

- Discussed JIN for 1901 and whether there were funds for advocacy services. This would be part of another agency's fiscal ask rather than AOC.
- Fiscal note here: <https://fnspublic.ofm.wa.gov/FNSPublicSearch/Search/bill/1901/67> (updated 3/6)

EVIDENCE STANDARDS

Recommend that whatever court practices are, we make them available. Try to gather resources that courts can use through this process.

Resources shared on Box

- Legal Voice: "How to Protect Your Privacy in Court Files"
- NCJFCJ/RCDV: "How to Gather Technology Abuse Evidence for Court" and "10 Steps for Presenting Evidence in Court"
- Privacy Rights Clearinghouse: "Public Records on the Internet: The Privacy Dilemma"
- Sample Findings & Order Redacting (Judge Finkle)
- Ailise Delaney also shared sample motions and orders to seal

Judge Rothrock screen-shared draft working document that participants were invited to provide feedback about with her redlines. Suggestion to organize into teams based on highlighted areas and develop/assemble resources.

Courts are required to allow law enforcement to file ERPO petitions in the same manner as after-hours search warrants. District courts have jurisdiction to issue a temporary order, then must transfer to Superior Court. Concerns: How do I sign petition? No case number from my court. How will I sign order transferring? Don't know how to give the officer and protected person a new court date and time.

- Maybe district court judges could be pro temed to superior court? Good question.
- What does any court do when it has a document it can't sign? No case number?
- Potential for materials to be going back and forth.
- Even though theoretically it's possible that officers go to district court, they probably won't. Perhaps access for ERPO designed so petitioner could go to most local courthouse. Context in which court most likely to see this come up. That type of ERPO is less frequent.

Add a #8 to the working draft: DC and SC need to communicate and create a plan for how they will deal with matters in which jurisdiction is transferred. MOU? Eg. How to deal with after-hours issues

Most courts would not file digital material as a case document, they would treat it as an exhibit because no way to internalize digital material that is not an image. E.g. if a litigant brings a thumb drive, can't attach to case as case document.

- When clerk has an exhibit, it is public if someone asks to see it, but it is not available online like case documents. Difference in nature of those documents.

- Practice tip? seek admission of exhibit

Ask courts to figure out how they'll deal with it in a consistent way, and to clearly explain what is expected. Court has to be telling people what format to present materials in. Right now, courts are all over the map. Some judges allow to play voicemail or to turn in a thumbdrive with video to court and opposing counsel. Then when show up with those materials, told cannot be accepted.

When commissioner allows someone to play thumbdrive or video, how is that captured in the record?

- In King County for SAPO hearing, screen sharing and showing a video as evidence
- Unless way for AV system to capture recording, eg. recording on Zoom, that would be part of the record. If that's not what the court is doing, the judge couldn't consider a video that was not provided in recorded format. There has to be some basis to make an appeal based on what the court reviewed.

Comment about litigant behavior in the courtroom. How is that reflected on the record?

- Best practice: State what's occurring (e.g. litigant behavior) on the record. "Let the record reflect that [petitioner/respondent] said x, did x"

With voicemails, it's really not a problem to receive that because the court can play it into the record. Thoughts? Does that work for pro se litigants?

- Yes, when allowed.
- Verification of VMs and texts & ER 1101(c)

Principles of evidence submission for protection orders: Not have people jump through hoops. Judicial officers should attempt to let people be heard and assign proper weight to evidence.

Version for courts that are going to allow litigants to insert media into computer and those that are not. Each court needs to determine how it will accept video, audio, etc.

There needs to be a happy medium that people can convert to/utilize. Litigants more technologically advanced than the courts.

Group decided to divide into two groups—digital and paper evidence. Most assigned to digital with a couple assigned to paper.

ACTION ITEM: Following this meeting, Laura will circulate an e-mail connecting people. Each group to provide materials by 3/31.

UNREPRESENTED LITIGANTS

Discussion of packets for petitioners and respondents. Possibility of creating a pro se respondent packet. Snohomish County packet shared and feedback provided:

- Like that forms are included. That is half the battle.
- Spokane has a good packet. Also an informative website:
<https://www.spokanecounty.org/4038/Civil-Protection-Orders>
- Challenges with respondents actually using the packet that is provided.
- Content-wise it may be too sophisticated, too overwhelming. May need to be simplified more for pro se litigants.
- Not plain language
- Bold headings would be helpful
- May be a good idea to have WA Law Help people review. Putting things in plain language is something they do all the time.
- Whatever resource we develop needs to be in at least top 5 languages.
- Is it possible to put a few lines at the top to encourage respondents to fill out the form? People don't know what to expect with the hearing. Saying something like, "Putting your case in writing can help..."
 - Acknowledgement that these can be crowded calendars and you may want to respond in writing because court can be stressful and move quickly. The court will only know what you provide to them and the other party to review in advance.
- People show up in court saying they have text messages, other evidence. Don't understand that judge is deciding based on what is on the record that day.
- Highlighting that respondent needs to file that information ahead of time.
- This information should be on clerk's office website as well.
- Clear instructions for filing and service must be included. And explanation of what service is and that court can't consider information if service isn't completed.
- Good to have it available and provided to respondent. Can provide good grounds to say they had the opportunity.
- Should share this with someone who hasn't been involved in these proceedings before to review and see if it makes sense to them.
- Respondents assume judge/commissioner has access to past court records, has reviewed them.
- There are issues that come up at the hearing, such as wanting to share text messages, which cause hearing to be set over (and temporary order extended). Need for packet to be clear about what must be provided and served ahead of time to be considered at the hearing.
- Some respondents may be concerned that serving the other party would be a violation of the no contact restraints.
- Experience shared from another state where hearing was more of a conversation. Judge gives each side a few minutes and then decides. There are benefits to that vs. forms.
- Drop Box where each side could drop their forms as an alternative method of service

- Ideal scenario would be service through My Family Wizard app, but that may be too complicated for parties.
- Packet should include script for judicial officers to share at the beginning of each hearing that explains the process. Should be customizable for individual court procedures.
- Parties and lawyers find preamble helpful. Can set a courteous tone and set expectations. Helps people calm down. People hear the legal rule we're all following.
- If both parties are pro se, 90% of the time they are unprepared for first hearing. This may not make a difference for that.
- In 1320/1901, goal is to issue the order if it meets standard for a different PO than filed (e.g., filed DVPO and doesn't meet but would meet anti-harassment standard).

Do you think it's helpful to have a section that is just definitions?



- Yes, as long as it doesn't take up too much room (less than a page).
- Can we identify which terms? Service would be one.
- New petition from that is up for comment includes definitions.

Should there be information about how to file an appeal?

- Yes, should at least direct them to a different packet. Would be too much information in the initial response packet.
- E.g., if you didn't get the result you wanted, you can request revision through this process (direct link to other packet)
- Script: Could share information about revision and renewal during speech at the top of calendar

What about methods other than writing?

- Info graphics
- Short (5 minute) videos broken out into different topics
- Kitsap county had a packet with flow charts
- NJP could potentially put together some videos

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MEETING NOTES		

Stakeholders Present:

Megan Allen
Samantha Boggs
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Judge Jacqueline Shea-Brown
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Staff:

Kelley Amburgey-Richardson
Crissy Anderson
Laura Jones

AGENDA

Discussion of concurrent civil protection order and criminal proceedings and draft bench card.

DISCUSSION

Length of continuance not proscriptive regarding continuance for pending criminal proceedings

Suggestion to pair with Procedural Justice Bench Card (CourtWatch). Use as a jumping off point for more information.

Script in plain language about 5th amendment. Would help to standardize what is being said. Looking for more consistency across the state. Model language that each court could individualize.

It is anticipated that these materials will be posted via the GJC website along with other deliverables that would be accessible to the public. Can crosslink, e.g. to WashingtonLawHelp.

- If this information was out there and available, open door for people to feel more comfortable sharing. Don't see downside to sharing. Creates endorsement of sharing and that not special legal advice that only an attorney can give.

Specific feedback on the document:

- Under A, move that 3rd bullet, or move up further in explanation. (This is the bullet that the individual's right against self-incrimination is implicated in civil proceedings)
- Include a point to inform the Petitioner and Respondent that they can object to a continuance.
 - It was noted by a victim advocate that they do not see cases go forward when there is a criminal case and Petitioner objects. Continuances granted.
- Reading through questions about pending 5th Amendment, and people in criminal case will struggle to answer these questions. Really struggle to answer them without talking about the allegations or facts. Uncomfortable that someone talking about case. Suggestion to add this caveat to this bench card
- Make a record of what had previously happened regarding continuance. Needs to be added to the bench card. General recommendation that court adequately document 5th Amendment decision to preserve reasoning and conclusions. Clients may not be the best reporters of what happened.
- Looking at part d, interests of petitioners. Useful to add questions like, have there been temporary order? Are the children protected in the temporary order? E.g., they may not have been protected in temporary order and full order keeps getting continued. Has the respondent complied with the order to surrender weapons issued without notice, if applicable? What about when temporary order getting denied at temporary hearing and no opportunity for full hearing? May want to add more so that judges consider different questions.
- Similarities between civil and criminal cases- add bullet that looking at a pattern of behavior. Even if criminal case related to one of the aspects, may not be the entirety of the situation. Especially with coercive control in definition – those behaviors may not be contemplated by criminal proceeding but would be by DVPO
- Suggestion to bold the sentence in section h, "Relief under this chapter must not be denied or delayed on grounds that the relief is available in another action"?
- Under g, add another bullet point. Other litigants in the courtroom observing extended continuances. Employers, educational institutions
- Under section f, do judicial officers want anything else clarified? Court has to be aware that this balancing will take more time.
- What about adding some sort of a summary? E.g. "In applying the 8 factor test to DVPO proceedings, the *Smith* decision found that it was not an abuse of discretion for the trial court to decide a balancing of the 8 factors strongly factors the interests of victims of DV in proceeding with their DVPO proceedings?"
- Add bullet about whether parties represented

Other Feedback/Discussion:



- Often the delay is intentional regarding the family law matter as well. Allows R to file family law case without finding of DV, long-term negative impact on family law case.
 - Is there a way to address in this bench card, or outside the scope?
- Comment about potential for 5th amendment proceedings, always present.
 - *Smith* as incorporates that concern
- 5th amendment clarification: Let R know that if make statement, can be used against them. Not that if R invokes, case won't go forward.
- What is the purpose of the bench card? Concerned that we're going to merge bench card / script into something for pro se litigants. Mixing up our audiences.
- We never know when a case is going to end. *King v. Olympic Pipeline* requires an on the record balancing of the factors. Surprising to see continuance for that reason with no consideration on the record.
- Could there be an improvement to the continuance form? Pass along to forms drafters to allow space for consideration of those factors.
 - Suggestion: Separate form specific to *Olympic Pipeline*
 - Comment that typically include those factors in "Other" category
 - Comment that some commissioners acknowledge they have to do the balancing on the record, then ask Respondent if they want a continuance, and if they do, go ahead and grant without having done the balancing on the record
- Is it helpful to include information for the court about abusive tactics?
 - Appropriate to highlight research about abusive litigation?
 - Deny, Attack, Reverse Victim and Offender (DARVO)
- At the beginning, a few bullet points. In those preliminary points, could refer to principles of the act that go to this. Courts should remain cognizant of...
 - Section h – references a lot of the concerns in the civil protection order statute
 - We should present information in way that helps court apply those factors.
 - Appreciate point of being cognizant of DV dynamics, which includes abusive litigation, but want to be careful when talking about a decision about continuance vs. merits decisions. Maybe more appropriate in other educational materials.

ACTION ITEMS:

- Ailise and Natalie to review *Smith* re: adding bullet point under c regarding delays based on respondent.
- We will incorporate suggested edits from today's discussion into the draft and recirculate in a couple of weeks. If we do not receive feedback, we will move forward. If we do receive feedback, we can reserve some time at our meeting on 4/22 to discuss.
- Commissioner Fulton to send intro script to Laura.

CLOSING & NEXT STEPS

Our next meeting will be on Friday, April 22nd at noon.
Reminder to submit evidence resources by March 30th

	Gender and Justice Commission (GJC) E2SHB 1320 – Litigant Rights & Access Group meeting (Zoom) Friday, April 22, 2022 12:00 PM – 1:00 PM	
MEETING NOTES		

Stakeholders Present:

Francis Adewale
Megan Allen
Samantha Boggs
Claire Carden
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Tara Dieng
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Kate Francis
Commissioner Patricia Fulton
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Frank Maiocco
Erin Moody
Priscilla Moreno
Riddhi Mukhopadhyay
Tracee Parker
Angela Rogness
Judge Ketu Shah
Kim Todaro
Heather Wehr

Staff:

Crissy Anderson
Moriah Freed
Laura Jones

AGENDA

1. Review resources created/provide feedback
2. Discuss other resources we would like to include
3. Identify resources that still need to be developed/collected and who will take the lead

REVIEW RESOURCES CREATED

Evidentiary Standards in Protection Order Proceedings

- Overview provided of recommendations
- Additional explanation provided for evidence submitted as exhibit vs. part of case file
- Feedback/comments from group:
 - o Emphasize the importance of exhibits
 - o Add something to this document regarding the difference between an exhibit and regular filing. Agreement from others about adding clarifying information.
 - o Include additional information to address fees for exhibits, stakeholder mentioned client being charged for submitting flash drive as an exhibit
 - Note about “destruction fee”
 - Question submitted to KC Clerk about whether there is a code for exhibit fees.

- Response: No fee for presenting an exhibit if conforms to GR 14. There is a local fee charged when people try to file documents that do not conform with GR 14 and so their accommodation was to convert to thumb drive to a hearing exhibit rather than refusing to file it.
- Education is key.
- Thurston has a similar fee but unaware if they convert “unfileable” offerings to exhibits. It’s county-by-county.
- First recommendation is about making information public, can emphasize that information about fees be made available
- It was noted that Sexual Violence Law Center/Northwest Justice Project to seek GR 22 rule change to refer to Chapter 7.105 RCW instead of Chapter 26.50

Summary re: Concurrent Civil & Criminal Proceedings Law & Bench Card

- Address preference of the group to have a “shorter” resource and longer/explanatory resource
- Typo noted on p. 3, “Interests of petitioners” should be #4 not #2
- Additional suggestion came in re: consideration of delay in criminal case due to respondent request
 - If it looks like the criminal case is not going to resolve very soon, that can weigh in favor of denying a continuance, the way that type of situation could be resolved
 - The document gives quite a bit of guidance about how to weigh the different factors, including the rebuttable presumption against delay which gives framework for the decision
 - Length of the delay is very fact-specific
- Suggestion made to note that the 8 *Olympic Pipeline* factors are unweighted
- Questions:
 - Will this be made available publicly? (Yes, GJC page)
 - This is lengthy- given the meatiness, will there be specific training based solely on this card? This could lead to a rich discussion.

Protection Order Script

- May need to edit script to include more information about exhibits
- Noted that positive feedback from advocates about using a script, the downside is that proceedings take longer. Helps petitioners/respondents feel more empowered to advocate for themselves
- In the overall picture, advocates appreciate that information explained well.
- Tell the petitioner that they are welcome to apply again at any point. Or if doesn’t result in protection order being granted, emphasize the seriousness of the proceedings. Makes it feel like people can leave knowing the court isn’t closed to them.
- Remove “preferred” re: pronouns
- In the long run, this will help further issues and court intervention issues, e.g. may reduce revisions/appeals. Save time later.

- Suggestion for video of PO process following this script that litigants can review before they come to court

OTHER RESOURCES

Procedural Justice Bench Card (KCSARC) & Pro Se Litigant Bench Card shared with the group, trying to figure out who created so we can give attribution



ACTION ITEM: Riddhi to send draft Litigants Resource packet to volunteers: Heather Wehr, Natalie Dolci, and Ailise Delaney

CLOSING & NEXT STEPS

Our next meeting will be on Wednesday, May 11th at noon.

(Note: May 11th meeting was later cancelled)

Please submit any feedback or additional materials by COB on Monday, May 2nd

	Gender and Justice Commission (GJC) E2SHB 1320 – Litigant Rights & Access Group meeting (Zoom) Friday, May 27, 2022 12:00 PM – 1:00 PM	
MEETING NOTES		

Stakeholders Present:

- | | |
|------------------------------|---------------------|
| Megan Allen | Monte Jewell |
| Claire Carden | Dirk Marler |
| Lori Carossino | Priscilla Moreno |
| Ailise Delaney | Riddhi Mukhopadhyay |
| Vonnie Diseth | Ruby Ochoa |
| Yuridia Equihua | Tracee Parker |
| Judge Michael Finkle | Judge Ketu Shah |
| Patricia Flores | Sandra Shanahan |
| Commissioner Patricia Fulton | Heather Wehr |
| Ruth Gordon | Mary Welch |
| James Hayes | |
| Judge Gregg Hirakawa | Staff: |
| (Ret.) Judge Ann Hirsch | Laura Jones |

AGENDA

1. Demo the deliverable site for the group
2. Entertain questions, feedback – feedback on deliverable content due by COB today

SPARK SITE

Laura Jones shared her screen to demo the deliverable site, talking about each of the groups’ deliverables, including recommendations and resources that were curated or created.

Stakeholder group reminded that feedback on the content due by COB today, and could be provide either via e-mail to Laura or via the comment feature on Box.

FEEDBACK & QUESTIONS

Work group participants asked the following questions/provided the following feedback:

1. How does the content from the spark site print? Imagine that some judicial officers, etc. may wish to print out the information and organize in binders.
2. The WashingtonLawHelp link and a link to court forms should be provided in the text on the website

3. Would it be possible to include an emergency “exit” button? The primary audience is the courts, by imagine courts will link to this and litigants may access information.
4. Will it be translated? (Discussion about primary audience)
5. Suggestion raised to create an FAQ page related to civil protection orders after the recommendations are released and most provisions of the new statute go into effect
6. Can we link various sections of the page to “jump” to other related sections?

There was also a discussion about “unfinished business” and continuing work by the Administrative Office of the courts with regard to the Technology Group’s “Access to the Record” issue.

CLOSING & NEXT STEPS

We are aiming to submit our recommendations early, on June 17th.

Thank you for participating in this process, it has been informative and invaluable to the final product.